

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Emadi v. Soleymani*,
2025 BCSC 1178

Date: 20250624
Docket: S245228
Registry: Vancouver

Between:

Pouria Emadi

Petitioner

And

Reza Soleymani and VanEx Currency Exchange Inc.

Respondents

Before: The Honourable Justice Lawn

Reasons for Judgment

Counsel for the Petitioner:

D.R. Eyford, K.C.
D. Lambert

Counsel for the Respondents:

G.F. Gregory

Place and Date of Hearing:

Vancouver, B.C.
April 9, 2025

Petitioner's Written Submissions Received

April 17, 2025

Respondent's Written Submissions Received

April 25, 2025

Place and Date of Judgment:

Vancouver, B.C.
June 24, 2025

Table of Contents

INTRODUCTION 3

BACKGROUND..... 4

ISSUES..... 5

LEGAL PRINCIPLES 6

PETITIONER’S POSITION..... 10

RESPONDENT’S POSITION..... 11

SUPPLEMENTAL WRITTEN SUBMISSIONS 13

ANALYSIS..... 15

 Share sale vs. asset sale..... 15

 Who ought to make the first offer 16

 Disclosure 16

 Offer to sell or offer to buy 17

 Parties’ expectations..... 18

 Shareholders loans 19

CONCLUSION..... 20

COSTS 21

Introduction

[1] This is a petition, originally filed by Mr. Emadi in August 2024, for a just and equitable winding up of the corporate respondent, VanEx Currency Exchange Inc. (“VanEx”). While there are two respondents in this matter, VanEx did not make any submissions and was not represented by counsel at the hearing. As a result, where I use the term “the respondent”, I refer to the personal respondent, Mr. Soleymani. He and the petitioner Mr. Emadi are the two directors of VanEx, which they own in equal shares.

[2] The parties have consented to a declaration that it is just and equitable for VanEx to be liquidated and dissolved pursuant to s. 214(1)(b)(ii) of the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44 [CBCA]. They also agree that this engages the court’s power to grant a remedy under s. 241(3) of the CBCA, and that the appropriate remedy in this case is an order that VanEx be sold to one of the parties. They disagree as to exactly how this should be accomplished.

[3] Despite the fact that a declaration for a just and equitable winding up does not require a finding of wrongful conduct, the court heard submissions and received voluminous materials detailing various grievances between the two shareholders. The parties endeavored to fit these lengthy submissions into a two-hour chambers application. Much of that time was taken up by introductory matters and the airing of the aforementioned grievances, the resolution of which was not before the court. I therefore granted leave for the parties to provide additional submissions in writing, which were of some assistance to the court in addressing the main subjects of controversy.

[4] For the reasons set out below, I grant the declaration sought by the petitioner and consented to by the respondent that it is just and equitable that the affairs of VanEx be liquidated and dissolved pursuant to s. 214(1) of the CBCA. The remedy commonly known as an order for a “shotgun sale,” which both parties sought, is available and appropriate on these facts. However, I have determined that this ought

to be the sale of one party's shares, not of bundles of VanEx's assets, and that the petitioner will make the initial offer to purchase the shares of the respondent.

Background

[5] The factual background to this dispute is long and complex. Given the parties' consent to the declaration described above, I will briefly outline only those facts necessary for an understanding of the context of this dispute and the narrow question I must decide.

[6] VanEx was originally incorporated in 2019 under the BC *Business Corporations Act*, S.B.C. 2002, c. 57 [BCA]. In 2023, it became a federally regulated company due to the petitioner's plans to expand into other provinces. VanEx has a registered and records office in British Columbia and is extra-provincially registered in BC, Quebec, and Alberta.

[7] The petitioner and the respondent are the only two directors and equal shareholders of VanEx. Like Justice A. Ross, who heard an injunction application in this matter on September 19, 2024, I have proceeded on the basis that the petitioner is in control of VanEx: see *Emadi v. Soleymani* (7 October 2024), Vancouver S245228 (B.C.S.C.) at para. 19.

[8] The petitioner and the respondent met in Iran. After each immigrated to Canada, they resolved to start a currency exchange business together to facilitate money transfers between Iran and Canada. Since 2018, such transfers had been made more difficult due to US sanctions that prevented Iran from accessing the SWIFT financial messaging service. The parties set up VanEx to transfer funds through other countries and thereby serve the Iranian community in the Lower Mainland. VanEx is subject to regulation by the Financial Transactions and Reports Analysis Centre of Canada and must report certain transactions to that body.

[9] The company operated for several years without major issues, and its revenues grew each year, from \$207,526 in 2020 to \$1,760,109 in 2023. At the time the petition was filed in August 2024, the company had eleven employees.

[10] The petitioner serves as President of VanEx and has managed the company's affairs since its founding. The respondent has not been as involved in the company's day-to-day management, having worked in other jobs in the Lower Mainland and in Iran. VanEx is one of several business ventures that the parties have together.

[11] The relationship between the parties began to break down in May of 2024 and several major disputes arose between them. Eventually, the company was effectively deadlocked.

[12] In August 2024, the petitioner brought this petition, originally seeking liquidation or, alternatively, an order for a sale under ss. 214(2) and 241(3)(f) of the *CBCA* that the respondent would deliver an unconditional offer to sell his shares, which the petitioner would have five days to accept or, if he did not, the respondent would purchase all the petitioner's shares for the same price. This is often characterized as an order for a shotgun sale.

[13] In September 2024, the respondent applied for injunctive relief to enable him to access the corporation's premises, accounting and banking information, security and surveillance video, and email system. He also sought an order allowing him to record the acts of the corporation's employees. In the alternative he sought an order "essentially to shut down the business affairs of VanEx": *Emadi* at para. 6.

[14] Justice Ross granted some of the relief sought by the respondent in October of 2024. The order was settled and entered in March of 2025. The petitioner says that the appropriate disclosure has occurred, but the respondent takes issue with the level of disclosure he obtained as a result of the injunction. I will address the disclosure issue below.

Issues

[15] The issues before me are as follows:

1. Is an order for the sale of shares by a shotgun process the appropriate remedy, or ought there to be a sale of assets or some other order?
2. If the shotgun sale of shares is appropriate, who ought to make the first offer?
3. How ought the parties' shareholder's loans be addressed?

Legal Principles

[16] The jurisdiction to order a remedy under s. 241 of the *CBCA* and its counterparts in the provincial statutes, is very broad. The legislative framework is ss. 214(1)–(2) and 241(3)(f) of the *CBCA*, which provide:

Further grounds

214 (1) A court may order the liquidation and dissolution of a corporation or any of its affiliated corporations on the application of a shareholder,

(a) if the court is satisfied that in respect of a corporation or any of its affiliates

(i) any act or omission of the corporation or any of its affiliates effects a result,

(ii) the business or affairs of the corporation or any of its affiliates are or have been carried on or conducted in a manner, or

(iii) the powers of the directors of the corporation or any of its affiliates are or have been exercised in a manner

that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of any security holder, creditor, director or officer; or

(b) if the court is satisfied that

(i) a unanimous shareholder agreement entitles a complaining shareholder to demand dissolution of the corporation after the occurrence of a specified event and that event has occurred, or

(ii) it is just and equitable that the corporation should be liquidated and dissolved.

Alternative order

(2) On an application under this section, a court may make such order under this section or section 241 as it thinks fit.

...

Application to court re oppression

241 (1) A complainant may apply to a court for an order under this section.

Grounds

(2) If, on an application under subsection (1), the court is satisfied that in respect of a corporation or any of its affiliates

- (a)** any act or omission of the corporation or any of its affiliates effects a result,
- (b)** the business or affairs of the corporation or any of its affiliates are or have been carried on or conducted in a manner, or
- (c)** the powers of the directors of the corporation or any of its affiliates are or have been exercised in a manner

that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of any security holder, creditor, director or officer, the court may make an order to rectify the matters complained of.

Powers of court

(3) In connection with an application under this section, the court may make any interim or final order it thinks fit including, without limiting the generality of the foregoing,

- (a)** an order restraining the conduct complained of;
- (b)** an order appointing a receiver or receiver-manager;
- (c)** an order to regulate a corporation's affairs by amending the articles or by-laws or creating or amending a unanimous shareholder agreement;
- (d)** an order directing an issue or exchange of securities;
- (e)** an order appointing directors in place of or in addition to all or any of the directors then in office;
- (f)** an order directing a corporation, subject to subsection (6), or any other person, to purchase securities of a security holder;
- (g)** an order directing a corporation, subject to subsection (6), or any other person, to pay a security holder any part of the monies that the security holder paid for securities;
- (h)** an order varying or setting aside a transaction or contract to which a corporation is a party and compensating the corporation or any other party to the transaction or contract;
- (i)** an order requiring a corporation, within a time specified by the court, to produce to the court or an interested person financial statements in the form required by section 155 or an accounting in such other form as the court may determine;
- (j)** an order compensating an aggrieved person;
- (k)** an order directing rectification of the registers or other records of a corporation under section 243;
- (l)** an order liquidating and dissolving the corporation;
- (m)** an order directing an investigation under Part XIX to be made; and
- (n)** an order requiring the trial of any issue.

[17] A declaration under s. 214(1) of the *CBCA* makes all the remedies in s. 241(3) available and obviates the need for a finding of wrongful conduct or oppression. As Justice Steeves observed in *No. 20 CR Ventures Ltd. v. Andrex Developments (1985) Ltd.*, 2019 BCSC 405 [*CR Ventures*], applying the oppression provisions in the *BCA*:

[38] In a previous judgment, Justice N. Smith usefully discussed the differences between s. 227 and s. 324 of the *BCA* (*Mostyn v. Schmiing*, 2011 BCSC 275). Justice Smith noted that “[a]lthough the same remedies are available under either section”, s. 227(2)(a) “requires a finding of wrongful conduct or bad faith” (i.e. oppression) by a company or its directors that harms the legal or equitable interest of a shareholder. In contrast, a finding of a deadlock under s. 324 does not require wrongdoing; “[d]eadlock is not of itself oppression and does not necessarily connote wrongdoing by either party” (*Mostyn* at para. 11, citing *S.G. & S. Investments (1972) Ltd. v. Golden Boy Foods, Inc.* (1991), 56 B.C.L.R. (2d) 273 at 280 (C.A.); see also *Golden Pheasant Holding Corp. v. Synergy Corporate Management Ltd.*, 2011 BCSC 173 at para. 58).

[39] As an example of this, in *Mostyn* there was a finding of deadlock and not of oppression (paras. 12, 17), but still resulting in the sale of the company by auction. The same conclusion was reached at trial in *Whistler Service Park*, where it led to a ‘shot-gun sale’ remedy that was upheld on appeal (at para. 40). And in *Kinzie* only s. 324 was relied on; neither party sought relief under s. 227 (at para. 9).

[40] In addition, there can be overlap between the two provisions as demonstrated by s. 324(3)(b) which states that, under that provision, a court may make “any order under section 227(3) it considers appropriate.” Furthermore, a finding of oppression against a shareholder under s. 227 may result in the equities weighing more favourably in his/her favour under s. 324 (*Mostyn* at paras. 11-12).

[18] A shotgun order is often resorted to where, as here, two parties in a closely held corporation are in deadlock and liquidation of the company is not desired. While it is not the default remedy, it has been recognized as being an efficient means of arriving at a fair sales price in appropriate cases, without the expense of valuation and exposure to the market: *Sonderhoff v. Ellesmere Farm Corp.*, 2021 BCSC 2311 at para. 8.

[19] Both parties referred me to *Kinzie v. The Dells Holdings Ltd.*, 2010 BCSC 1360, where Justice Bruce observed:

[25] A shot gun sale combines the advantages of a market sale with the advantages of buyout by one of the parties. The parties avoid the costs associated with a market sale and are not required to cooperate with respect to the sale to a third party. In addition, the parties are not saddled with a determination of value by the court in circumstances where there is a volatile real estate market. In a shot gun sale, each party has an incentive to make their offer as close to market value as possible. If the offer is too low, it will be readily accepted at an obvious loss to the offeror, and if the offer is too high, the offeror may be forced to pay that price in the event the offeree refuses to accept the offer. The shot gun sale also respects the ownership rights of both parties by giving them an equal opportunity to acquire the other's interest in the business. In addition, both parties in this case are equally familiar with the business and thus equally able to assess its fair market value. The only downside to such an order is that one or both parties may be unable to secure the financing necessary to support their offers within the timeframe fixed by the court.

...

[31] In a "shot gun" sale, the court must determine the party who will make the first offer. Normally, the party who is in the best position to assess the value of the business and determine the fair market value is ordered to make the initial offer: *Whistler Service Park Ltd.* at paras. 43-45. In the case at bar, both parties are equally capable of ascertaining the fair market value of the shopping centre. Each group of shareholders is involved in the day to day operations of the business through their representative on the board of directors. Neither party lacks the expertise to fix a fair price.

[20] In exercising its broad remedial jurisdiction under the shareholder remedy provisions, the court must craft a remedy which is as minimally intrusive as possible, while also being in accordance with the parties' reasonable expectations: *Nanef v. Con-Crete Holdings Ltd.* (1995), 23 O.R. (3d) 481 at 489–490, 1995 CanLII 959 (Ont. C.A.); *Classic Organ Co. v. Artisan Organ Ltd.*, [1997] O.J. No. 2161 at para. 32, 1997 CanLII 12434 (Gen. Div.) [*Classic Organ*]. Where there is a significant dispute about the value of the shares, or where there is no readily identifiable corporate asset such as land which each party can evaluate, a shotgun order may not be the appropriate remedy: *Masala Bites Enterprises Ltd. v. Sohal*, 2018 BCSC 1 at paras. 53–54 [*Masala Bites*].

[21] While not ignoring the parties' business judgment that this type of remedy is appropriate in this case, the court must come to its own conclusion as to the fairness and equity of such an order.

[22] Shotgun offers are typically framed as offers to sell: see *Safarik v. Ocean Fisheries Ltd.* (1996), 17 B.C.L.R. (3d) 354, 1996 CanLII 10202 (C.A.) at para. 23. However, the initial offer in a shotgun sale could conceivably be an offer to buy the shares of the other party which, if refused, would require the offeror to sell his own shares at the same price. I was not taken to any case in which the order granted was structured as a direction to one party to make an offer to buy the other party's shares. Rather, both parties appeared to assume that the party making the initial offer would be making an offer to sell.

[23] An order for a shotgun offer to purchase was contemplated, but not ultimately made, in *Sonderhoff* at para. 23, where Justice A. Saunders observed that an offer to sell was the more conventional structure. In the end, he determined that the offer should be an offer to sell in the circumstances of the case: at para. 25.

[24] There have also been cases where the order is structured as requiring one party to make an offer to buy the other party's shares or sell its own shares, in the alternative: see *Classic Organ*.

[25] Finally, it should be remembered that “[i]n a matter of this kind, there is no right answer. Indeed, whatever order is made, there is no victory”: *Safarik* at para. 22.

Petitioner's Position

[26] The petitioner relies on cases decided under the *CBCA* and *BC BCA* in which courts have ordered a shotgun sale in order to resolve a deadlocked corporate situation in circumstances where two shareholders in a closely held company have lost trust and confidence in each other: see e.g. *Sonderhoff*, *Safarik*.

[27] Relying on *Kinzie and Lee v. Lee*, 2003 BCCA 330 at paras. 13–14, the petitioner submits that normally the party who is in the best position to assess the value of the business is ordered to make the initial offer. This is often the party with the greatest day-to-day involvement.

[28] On the other hand, where one of the directors is more closely attached to the corporation, the petitioner argues it is appropriate for the other director to make the initial offer to sell their shares. This way, the more closely attached director ends up with the company. The petitioner adds that, in an ongoing business, a key consideration is which shareholder is best able to carry on. In particular, where employees are more willing to work with one shareholder over the other, the former ought to have the first option to buy out the latter.

[29] Finally, the petitioner posits that the court can have regard to the pre-petition negotiations of the parties in determining which of them should be ordered to make the first offer. Where one party's dominant motivation in the preceding months was to have their shares bought out, it is appropriate for the court to order that party to make the first offer to sell their shares. This can be viewed as evidence of the parties' reasonable expectations.

[30] The petitioner submits that each party is at an equal advantage and disadvantage when it comes to valuing VanEx. The petitioner runs it on a day-to-day basis, which would normally indicate that he should be the one to make the initial offer. However, the respondent is the only director with access to the company's Hamyar accounting software, which the petitioner argues is necessary to fully value the corporation. The petitioner wishes to end up with the company, therefore if an offer to sell is to be made, it must be an offer to sell made by the respondent. This would have the respondent framing the initial offer, if it is to be an offer to sell.

Respondent's Position

[31] In his response to petition, the respondent dealt with several matters that were no longer in issue by the time the matter came before me.

[32] In his written submissions on the appropriate form of the shotgun agreement, the respondent made two main points. First, the assets, and not the shares of VanEx, should be sold by way of shotgun, and second, the petitioner ought to make the first offer.

[33] In support of his first point, the respondent argued that a sale of the shares of VanEx to one or the other of the shareholders would give the petitioner an unfair advantage because he has a greater knowledge of the workings of VanEx, given his role as day-to-day manager.

[34] He also referred to various events surrounding his exclusion from the premises, and the petitioner's firing and replacement of certain employees, whom the respondent says he will have to fire in turn, if he becomes the owner of VanEx. The respondent also argued that the petitioner has failed to grant access to information to which the respondent was entitled, either under the order of Justice Ross made October 7, 2024 (the "Ross J. order"), or as a director in any event.

[35] The difficulty with these submissions is that the respondent did not appeal the Ross J. order, nor at the time of the hearing had he applied for a remedy under R. 22-7 of the *Supreme Court Civil Rules*, or for a finding that the petitioner be found in contempt. Resolution of these matters was not before me in this petition.

[36] I assume that the respondent's focus on disclosure was in service of his arguments that the petitioner ought to make the initial offer in the form of an asset sale instead of a share sale. An asset sale, he says, will also avoid the unfairness of the respondent potentially having to take over a company hitherto run by someone he does not trust.

[37] Relying on *Sangha v. Reliance Investment Group Ltd.*, 2012 BCSC 355, and *Whistler Service Park Ltd. v. Glacier Creek Development Corp.*, 2005 BCSC 1942, the respondent's second main point was that in a case where one party has a greater knowledge of the business, that party will be required to make the first offer.

[38] In oral submissions, the respondent added another potential unfairness: he is owed \$1,102,198.78 pursuant to a shareholder's loan. The petitioner, I note, also has a shareholder's loan in a similar amount (\$1,085,683.75). I do not understand the parties to take issue with the amounts of these loans. The respondent's view is that the petitioner's form of shotgun order would result in the forgiveness of his

shareholder's loan. He submitted that if the petitioner obtains an order to buy the company, he will immediately file a notice of civil claim the next day and garnishing orders will go out.

[39] Given that the issue of shareholders' loans came up very late in the day, neither party was able to make full submissions on it. I granted leave for written submissions to follow.

Supplemental written submissions

[40] In his supplemental written submissions, the petitioner submitted:

- a) The form of order proposed by the respondent, which he terms the "asset shotgun order" in which four bundles of assets would be separated out for separate shotgun offers, would not bring about finality or resolve the deadlock.
- b) The court has the power to deal with shareholders' loans on a shotgun sale, and indeed they are frequently dealt with in that context: see e.g. *Kular v. Wahlla*, 2011 BCSC 61; *CR Ventures*; *Sonderhoff*.
- c) Any order the court makes ought to address the shareholders' loans. The parties are capable of assessing the value of the loans and reflecting that in any shotgun offer.
- d) Either party is able to value the company and therefore the respondent should make the initial offer, for the sale of his shares to the petitioner. The respondent is experienced in the currency industry and was able to value his shares at \$1 million at the outset of this dispute.
- e) The petitioner made extensive disclosure as set out in the affidavit material. The respondent's attempts to cast doubt on the petitioner's compliance with the Ross J. order was troubling.

- f) The petitioner will seek special costs given the respondent's unsubstantiated allegations of fraud on disputed evidence.

[41] In the respondent's written submissions, he argued:

- a) The court ought not to grant any loan forgiveness in regards to the shareholder's loans.
- b) The petitioner's arguments as to the undesirability of the asset shotgun order are rejected. It is "not expected" that the landlords will refuse the transfer of the company's leases for its offices, but if consent to transfer is not granted, the parties can return to court.
- c) The petitioner acted improperly in failing to make full disclosure as required by the Ross J. order. These alleged improper actions prevent the respondent from being able to value the shares.
- d) The person with the greatest knowledge of the business should make the first offer. In any event, counsel for the petitioner conceded at the oral hearing that the petitioner would make the first offer.
- e) The court has the jurisdiction to make an order other than a share sale in a shotgun style resolution. For example:
 - i. the court ordered an auction of the company's assets: *Mostyn v. Schmiing*, 2011 BCSC 275; and
 - ii. the court ordered an auction and a report by a special referee, with a reference to the registrar to determine the amount of shareholders' loans: *CR Ventures*.
- f) The petitioner's submissions as to unsubstantiated allegations of fraud go beyond the scope of the leave granted to file further submissions, especially given that the parties came to chambers agreeing that "some sort of shotgun remedy" was appropriate. In any event, these submissions

rely on the sufficiency of the respondent's evidence as to the petitioner's improper conduct, which cannot be resolved in this summary proceeding.

Analysis

Share sale vs. asset sale

[42] The respondent urged an order whereby the assets of VanEx would be divided into four asset packages: (1) the name VanEx; (2) the Coquitlam package; (3) the Vancouver Package; and (4) the Backoffice package. Each of the three "office" packages would include associated leases, furniture, computers, databases, software etc., with the intention that the buyer could put staff into the office and start working right away.

[43] The respondent proposes that VanEx will make initial, separate shotgun-style offers for each of the four packages, at prices to be set by the petitioner. If the respondent does not respond to any offer, the petitioner will buy that asset package on the same terms. The party acquiring Asset Package #1 will become the sole director of VanEx and the other party will resign.

[44] The petitioner submits that this form of order will not bring finality to the dispute. I agree. In fashioning a remedy to remedy a deadlock between two warring shareholders, the court must avoid creating a recipe for further litigation: *Kinzie* at para. 16.

[45] The difficulties after a piece-meal share of asset bundles include: (i) uncertainty may be created for employees; (ii) dividing shared assets such as computer software may be difficult; and (iii) the landlords may not consent to a transfer of the leases. In response on the last point, the respondent submits that while refusal by the landlords is "not expected", if it occurs, the parties can simply come back to court. That very submission only serves to reinforce the point that the asset bundle approach lacks the finality sought here.

[46] In a case where the major asset of the corporation is a piece of real estate, it might make more sense to order a sale of the asset, as opposed to shares of the

corporation. This is an entirely different set of circumstances. Here, there is an active business that operates out of multiple premises, sharing resources.

Who ought to make the first offer

Disclosure

[47] The question of who ought to make the first offer was wrapped up in the level of disclosure in the wake of the Ross J. order, in both parties' oral and written submissions.

[48] In his supplementary written submissions dated April 25, 2025, the respondent argued that the petitioner failed to make full disclosure as required by the Ross J. order. The respondent says that this prevents him from being able to value the shares and adds "Mr. Emadi should not be able to force a shotgun on Mr. Soleymani because – among other reasons – he has withheld vital parts of accounting information."

[49] The respondent maintains this position despite the fact that these parties came to court requesting a shotgun remedy – it is not being "forced" on anyone. As Laing J. observed in *Scott v. Robb*, 2005 SKQB 242:

[3] Normally, when a court arrives at a point where it is satisfied that one party should be entitled to purchase the shares of another party as a solution to the impasse in the corporation, and in preference to a dissolution or a winding-up of the company, the court will attempt to determine where the equities lie, and arrive at a decision as to what is most just and equitable as to who should purchase the business. (Vide: *Tilley v. Hails* (1992), 7 O.R. (3d) 257 (Gen. Div.), upheld on appeal at 8 O.R. (3d) 169 (Div. Ct.)) In this case the parties, by agreeing that a shotgun order of purchase is the most appropriate remedy, implicitly agree that the equities between the parties are reasonably evenly balanced.

[50] To the extent that there may be gaps in the petitioner's provision of VanEx's accounting and other records, this can be dealt with in the final order. I make no finding on this issue at this juncture, but I observe that the petition acknowledges at para 243 that the appropriate order will include the petitioner providing full disclosure during the offer period. I expect that this will be carried out. Regardless of who

makes the first offer, both parties need access to the financial records: the offeror to know what price to set, and the offeree to determine whether that price is fair.

Offer to sell or offer to buy

[51] Both parties' submissions rest on the assumption that the initial offer in a shotgun sale situation must be an offer to sell. Resolution of this question is of assistance in determining which party will make the initial offer.

[52] As set out above, while an offer to sell is the customary structure in a shotgun offer, it is not the only option. As the parties acknowledged at some length in their oral submissions, the court's jurisdiction to craft a remedy in the case of an oppression or just and equitable winding up is very broad. It is to be exercised carefully, however, with a view only to rectifying the oppression or resolving the deadlock at issue, as the case may be: *Nanef Concrete* at 488. This remedial flexibility has been central to the success of s. 241(3) of the *CBCA* and its provincial counterparts, for several decades.

[53] In this case, the petitioner's argument on the structure of the shotgun offer was focussed on his role as managing director and the parties' reasonable expectations through past dealings. The petitioner argues that he is better able to run the company; preferred by the employees; and contemplated by both parties as the ultimate buyer of the shares in all their pre-petition negotiations. There are two aspects to this argument.

[54] First, the petitioner is best able to understand the fair value of the corporation because of his role as day-to-day manager. This is subject to the issue that only the respondent apparently has access to the Hamyar accounting software, which access is necessary for a full valuation of VanEx. This can be dealt with in the order, as discussed below. I agree that the petitioner, as the insider, is best able to value this company. The weight of authority supports the importance of this factor: *Safarik* at para. 23; *Lee* at paras. 10–14 .

[55] Second, the petitioner submits that he ought to end up with the ownership of all the shares in VanEx at the end of the day because he has the closer affiliation with the business. This also accords with the parties' reasonable expectations, given that the parties' negotiations leading up to this petition contemplated the petitioner purchasing the respondent's shares.

[56] Both of these submissions would seem to point towards a court order that the respondent sell his shares to the petitioner at fair market value to be determined either by the court or upon valuation by a third party. This is not what the parties have asked the court to do, however. They both want an order for a shotgun style sale – not a sale at fair market value to be determined. I have considered whether, despite the parties' urging, I ought nevertheless to make an order for sale at a price to be determined by a valuator. As noted above, a shotgun sale will not be appropriate in every case: see e.g. *Masala Bites* at para. 53.

[57] In the end, however, these parties need to sever their relationship to enable VanEx to function properly under one owner as swiftly as possible, which is why they have come to court asking for a shotgun style remedy. Indeed, the shotgun structure for this corporate severance seems to be the only thing they have been able to agree on, and the court should be slow to second guess the business decisions of sophisticated parties with legal advice. The benefit of a shotgun sale, in terms of avoiding the time and expense of a valuation, has been widely acknowledged in the cases: see e.g. *Kinzie* at para. 25. No party seeks liquidation, which is a draconian remedy of last resort.

Parties' expectations

[58] As for the parties' reasonable expectations, there is uncontradicted evidence that the parties discussed a sale of the respondent's shares to the petitioner on at least one occasion. On June 11, 2024, at a meeting in a Tim Hortons restaurant, the petitioner presented the respondent with an offer. The respondent countered, also with an offer that his shares be sold.

[59] Thus, these parties have contemplated the petitioner as purchaser, and the respondent as seller. In addition, apparently, both parties were able to place a value on the respondent's shareholdings for this purpose prior to the petition, although the petitioner's offer was subject to receiving access to the Hamyar accounting software, before it would be finalized.

[60] I find that the fairest solution here is for the petitioner to make the initial offer to purchase the respondent's shares at a price to be set out in the offer. If the respondent declines to sell, then he will have to purchase the petitioner's shares at the same price and on the same terms.

Shareholders loans

[61] The petitioner takes the view that the loans ought to be addressed in the order, otherwise this the litigation will never end. He argues that the court has the power to forgive a loan, citing ss. 214 and 241 of the *CBCA*; *Kidner Investments Ltd. v. Totem Mercury Holdings Ltd.*, 2017 BCSC 205 at paras. 66, 106; *CR Ventures* at para. 26; and *Ten Hoeve v. Beukens*, 2020 BCSC 1194 at para. 70.

[62] But his submission, as I understand it, is not that these loans should just evaporate. Rather, "in valuating his shares, it is up to the offering shareholder to assess both his equity in the Company and the value he places on the potential repayment of his individual loan if he acquires the Company." There are stated values for the shareholders' loans in the company's financial records, to which I understand no objection is taken. There may be some question as to whether the company is able to repay these loans in full at present. A shotgun remedy requires the offering shareholder to assess this. It is also open to the offering shareholder to provide for a repayment plan – one that they would also be prepared to live with if the offer is not accepted.

[63] Presumably, since the parties are aware of the amounts of their shareholder's loans, and since they are coming to this court consenting to a just and equitable winding up order and seeking a shotgun sale remedy of some sort, they must both be of the view that there is some value in VanEx above and beyond the amount of

the loans. The business is a going concern and presumably continues to have the potential to thrive, once this dispute is put to rest.

[64] Since the petitioner has submitted that the order ought to include a provision for the shareholders' loans, and since I have ordered that he must frame the initial offer as an offer to buy the respondent's shares, it will be up to the petitioner to set the terms for the repayment of the respondent's loan. The respondent will be free to reject these terms if he wishes to purchase the petitioner's shares and pay back the petitioner's loan on the same terms. Helpfully, the amounts of the loans are very similar.

Conclusion

[65] In summary:

- a) The respondent will take whatever steps are necessary for the petitioner to access VanEx's Hamyar accounting software, within 10 days of the date of this judgment.
- b) The petitioner will make, or continue to make, full and up-to-date disclosure of VanEx's accounting records as per the terms of the order of Justice A. Ross made October 7, 2024, from the date of this judgment until the date of acceptance of an offer.
- c) Within 21 days of the receipt of access to the Hamyar software, the petitioner will deliver to the respondent an offer to purchase all of the respondent's shares in VanEx.
- d) The offer will contain a provision whereby the seller's shareholder loan will be repaid by VanEx, on terms to be agreed. If the parties cannot agree on the terms of repayment, the matter may be referred to a registrar.
- e) The respondent will have a further 21 days to accept or reject the offer. If he rejects it, he must purchase the petitioner's shares on the same terms as set out in the offer.

- f) The obligation to repay the shareholders' loans is stayed until the sale of shares is concluded, and then for a further six months, subject to the parties agreeing in writing to earlier or later repayment.
- g) Upon the sale of his shares, the seller will cease to be an officer or director of VanEx.

Costs

[66] Success has been somewhat divided, in that I have agreed with the petitioner on the subject matter of the shotgun remedy, but with the respondent on the question of who should frame the first offer. I observe that the petitioner made submissions indicating that he wished to pursue special costs due to the respondent's allegations of fraud. If the parties cannot agree on costs, I grant them leave to provide concise written submissions on costs within 21 days of this judgment.

"Lawn J."