

CITATION: DANNY FINORO HOLDINGS, et al. v. CLAYSAM HOMES LTD. et al.,
2025 ONSC 4914
COURT FILE NO.: CV-24-00000272-0000
DATE: 2025 08 28

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:)
)
DANNY FINORO HOLDINGS INC.) Andrew Winton and Annecy Pang,
and PETER FINORO HOLDINGS INC.) for the Applicants
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Applicants)
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- and -)
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CLAYSAM HOMES LIMITED,) Michael Van Bodegom and Mark
2721736 ONTARIO INC. and 2721733) Day, for the Respondent Claysam
ONTARIO INC.) Homes Limited
)
)
Respondents)
)
) **HEARD: March 10, 2025**

REASONS FOR JUDGMENT

Fowler Byrne J.

[1] The Applicants seek the winding up of the Respondent 2721736 Ontario Inc. and 2721733 Ontario Inc., collectively known as NewCo, pursuant to s. 207

of the *Ontario Business Corporations Act*, R.S.O. c.B.16 (“*OBCA*”). They also seek the appointment of corporate counsel, and a sales officer to distribute the net assets between the owners.

A. Background

[2] NewCo is owned equally by three holding companies: the Applicant Danny Finoro Holdings Inc. (“DannyCo”), the Applicant Peter Finoro Holdings Inc. (“PeterCo”) and the Respondent Claysam Homes Limited (“Claysam”). Each holding company has one share.

[3] The principals of DannyCo and PeterCo, namely Danny Finoro (“Danny”) and Peter Finoro (“Peter”), are brothers. The Finoro brothers and the principal of Claysam, namely Sam Scicluna (“Sam”) have participated in joint business ventures in the past. They operated as the sole three shareholders of Lunor Group Inc. and 2079993 Ontario Inc., (collectively “Lunor”) and have been working together in that venture since 2005. Lunor is currently being wound up under the Toronto’s Commercial List supervision.

[4] NewCo is in the business of real estate development. As stated by Sam in his affidavit, it was formed for the purpose of developing lots for sale on the open market, without given the individual shareholders (all home builders in their own

right), a right of first refusal. He stated this was to ensure that their collective business interests were prioritized over their individual business interests.

[5] At the time this Application was argued, NewCo owned five properties.

[6] The first is Part Lot 8, WDH Concession 1, Port Dover, Norfolk County (“Quanset Property”). The second is also in Port Dover, but no specific details of this property were provided.

[7] The third property is at 725 Tenth Line, Collingwood, Ontario (“Collingwood Property”). This is a piece of land for which NewCo has received draft plan approval. It is adjacent to Blue Mountain Golf and Country Club.

[8] The fourth property is approximately 25 acres of farmland in Elmira, Ontario (“the Elmira Property”). This land was leased to a local farmer in November 2022, which lease was renewed in November 2023. The lease extends to December 2024.

[9] The fifth property is located at 215 Victoria Street, Simcoe, Ontario (“Simcoe Property”). This is a commercial property that was to be converted to a multi-unit residential building. In May 2024, various consultants were retained by NewCo in accordance with the site plan approval process. A landscaping company had been retained to control the weeds on the property.

[10] NewCo does not have office space but uses the same registered address as Lunor. Lunor pays \$500 per month in rent to Finoro Custom Homes Inc. (“Finoro Homes”), a company owned by Danny and Peter. Finoro Homes also has office space in the same building. Finoro Homes is a competitor of Claysam Homes, another company owned and operated by Peter.

[11] NewCo uses the services of Lunor’s one employee, Mr. Shawn McGuire. Given Lunor’s status, the office and Mr. McGuire may no longer be available. There is no lease agreement in place for NewCo.

[12] NewCo’s operations are governed by a Shareholder’s Agreement, dated October 16, 2019 (“the Agreement”). For the purposes of this Application, the relevant provisions are as follows:

ARTICLE 4 – BOARD OF DIRECTORS AND MANAGEMENT

- 4.1At all meetings of The Board of Directors, every question shall be decided by a majority of the votes cast by those present at the meeting and in case of an equality of votes, the Chairman of the meeting shall not be entitled to a second or casting vote.

ARTICLE 5 – FUNDAMENTAL CHANGES

- 5.1 No action of the Corporation shall be taken without the unanimous consent of the Shareholders on any of the following matters:
- (a) any amendments to the Articles or By-laws;
 - (b) any sale, transfer or other disposal of all or a substantial part of the assets and undertaking of the Corporation other than the sale of serviced lots;

- (c) the issue or transfer of Shares in the capital stock of the Corporation or any obligations, charges or debts convertible into such Shares or involving rights to vote under any circumstances;
- (d) the hiring of any person (provided that each Shareholder has the right, without the agreement of any other Shareholder, to terminate the employment of any person);
- (e) the payment of any dividends, purchases of any Shares by the Corporation or the making of any distribution to Shareholders;
- (f) save for in accordance with Article 10, the repayment of any shareholder loans;
- (g) purchasing, leasing as an agent, acquiring, selling or disposing of any real property or other material assets other than the sale of serviced lots;
- (h) the sale of serviced lots to a Shareholder; and,
- (i) the dissolution of the Corporation.

ARTICLE 8 – DISPUTE RESOLUTION

- 8.1 The Shareholders shall, by separate instrument in writing signed by all Shareholders, appoint a Casting Voter whose role shall be to resolve all disputes, disagreements, controversies, questions or claims arising out of this Agreement save for those matters described in Articles 3.1, 5.1 and 7.
- 8.2 A Shareholder may refer a matter or decision to the Casting Voter by delivering a written notice of dispute to the other Shareholders at any time provided that the other Shareholders have been given no less than ten business days to express either approval or disapproval with respect to the matter or decision.
- 8.3 The Casting Voter shall have the authority, notwithstanding anything else contained herein, to incur on behalf of the Corporation such reasonable expenses as are necessary in order to fulfill his or her role.
- 8.4 The resolutions of disputes by the Casting Voter pursuant to this Article shall be binding upon the parties to this Agreement, and there shall be no appeal therefrom, including, without limitation, any appeal to a court on a question of law, a question of fact or a question of mixed fact and law.
- 8.5 Any Shareholder may, at any time, require the appointment of a replacement Casting Voter upon the provision of written notice to the other Shareholders of not less than thirty days. In the event that the Shareholders cannot agree upon a replacement Casting Voter prior to the expiry such notice period, then the Corporation's solicitor shall appoint the replacement Casting Voter.

[13] Accordingly, no fundamental changes can be made without the unanimity of all the shareholders. The Dispute Resolution provision of the Agreement does not apply to any fundamental changes. If there is no unanimity on a fundamental change, then no change is to be made. Otherwise, conflicts can be resolved by a Casting Voter, as set out in the Agreement.

[14] The parties are faced with a number of disagreements. Some of them can be categorized as fundamental changes, for which there must be unanimous agreement. For the other matters in dispute, they are also at a standstill. Unfortunately, upon the formation of NewCo, the parties never appointed a Casting Voter. They have not been able to agree on one even leading up to this Application. Up until this Application was commenced, they were not able to agree on corporate counsel who could appoint a Casting Voter.

[15] Accordingly, the Application was commenced to wind up NewCo, as it is unable to move forward. The Respondent does not agree, and claims that their differences are surmountable, and NewCo should proceed with its development plan.

[16] For the reasons set out here, I find that NewCo should be wound up.

B. Law

[17] The Applicants rely on s. 207(1)(b)(iv) of the *OBCA*, which states:

- 207(1) A corporation may be wound up by an order of the court,
- (b) where the court is satisfied that,
- (iv) it is just and equitable for some reason, other than the bankruptcy or insolvency of the corporation, that it should be wound up.

[18] The Applicants argue that it is just and equitable that NewCo be wound up.

[19] The words “just and equitable” are words of the widest significance, and do not limit the jurisdiction of the Court in any case. They should be given a broad interpretation. Each case depends on its own facts: *Rogers and Agincourt Holdings* (1977) 14 O.R. (2d) 489 (Ont. CA) at pg. 493; *R.J. Jowsey Mining Co. Ltd.* [1969] O.J. No. 1358 (Ont. C.A.) at para. 20, affirmed at [1970] SCR v.

[20] It is not necessary that there be a finding of oppression, nor does the company proposed to be wound up, have to be a quasi-partnership: *Falus v. Martap Development 87 Limited*, 2012 ONSC 2301 at para. 40; *Animal House Investments Inc. et al. v Lisgar Development Ltd. et al.*, (2007) 87 O.R. (3d) 529 (Ont. S.C.J.), at para.45-49, relying on *Ebrahimi v. Westbourne Galleries Ltd.* [1973] A.C. 360 (H.L.).

[21] Instead, in *Animal House*, relying on *Ebrahimi*, the court found that in order for me to exercise my discretion to wind up a company under this section, the Applicants must demonstrate:

- a) there must be “rights, expectations and obligations *inter se*” that are not submerged in the corporate structure;
- b) such rights, expectations and obligations must not have been satisfied or discharged, whether as a result of a breach by one party, a dispute among the parties, or otherwise;
- c) the resulting circumstances must result in an unfairness or prejudice to one or more of the shareholders; and
- d) such unfairness or prejudice must be sufficiently serious that it can only be rectified by a winding-up or other relief contemplated by the *OBCA* (see para. 50).

[22] The court in *Animal House* went further and indicated that a winding up cannot be invoked merely to address disharmony between the shareholders, even in a private corporation. Quarrelling and incompatibility, even a breakdown in the personal relationships between the shareholders of a private company, is not sufficient, on its own. Only if the disharmony resulted in a sufficiently serious

failure of the reasonable expectations of the parties is this relief warranted:

Animal House at para. 56-7.

[23] In *Yousufzay v. Eksir* 2023 ONSC 3793 at para. 155, the court summarized succinctly that an equitable winding up is appropriate in the following circumstances:

If the relationship of trust and confidence between partners in corporate guise has broken down and the continuation of the business between them operating as equal partners is not possible, such a situation is enough to trigger the court's powers under section 207. However, the Court will usually only exercise its discretion to order a "just and equitable" winding-up if the disharmony has resulted in a sufficiently serious failure of the reasonable expectations of the parties to warrant such equitable relief. (citations omitted).

[24] To find that there was a sufficiently serious failure of expectations, the Applicants must show that the parties, if they turned their minds to it at the time they formed their business relationship, would have considered the particular circumstances before them to constitute the termination or repudiation of their business relationship. If the disharmony results in the reasonable expectations of the parties being unattainable, then I can reasonably assume that the business arrangement between the parties has been repudiated or terminated: *Animal House* at para. 57.

[25] Also, there must be a breakdown in mutual confidence between the shareholders such that they cannot work together in the way originally

contemplated. There must be a link between the breakdown of mutual confidence and the financial fate of the corporation: *Falus v. Martap Developments 87 Limited* 2012 ONSC 2301 at para. 44. As stated in *Wittlin v Bergman*, 1995 CanLII 790 (Ont.C.A.) at para. 8,

The usual situation for a finding that liquidation or dissolution is appropriate is where a corporation is deadlocked with each of two shareholders or groups of shareholders holding fifty percent of the shares. In such a situation, *if the shareholders cannot work together, the company is likely doomed to failure within a foreseeable time. To avoid the inevitable deterioration in value of the company, liquidation or dissolution could be the appropriate solution (emphasis in the original).*

C. Current Disagreements

[26] The following are the current disagreements plaguing Newco.

Lack of Corporate Counsel

[27] Historically, NewCo and Lunor were represented by Frank Brewster at Miller Thomson. When he retired, these clients were transitioned to Scott Galajda, also of Miller Thomson. Mr. Galajda also represented Claysam and Peter.

[28] As early as 2021, Peter and Danny felt Mr. Galajda was conflicted due to his representation of Claysam and Peter. As a result, they did not believe he should continue as NewCo's corporate counsel.

[29] In or around 2022, Miller Thomson closed its Guelph office, and Mr. Galajda continued as a sole practitioner. Miller Thomson kept NewCo and Lunor as clients, but with another lawyer, Thomas Sanderson, who worked from Miller Thomson's Waterloo office.

[30] As will be detailed below, in or about 2022, NewCo was required to convey a small parcel of land as part of its Collingwood Property project, known as Taylor's Creek. At that time, Mr. Sanderson identified that he had a conflict vis-à-vis the Town of Collingwood and could not act on this particular transaction.

[31] Initially, Mr. Sanderson confirmed that Mr. Galajda was willing to act in that matter. Peter and Danny were not agreeable to Mr. Galajda, for the reasons already expressed herein. Mr. Sanderson then recommended another firm in Waterloo to assist, namely Duncan, Linton LLP. Danny and Peter were agreeable, but Sam was not. Coincidentally, Duncan, Linton LLP are Claysam's counsel on this Application.

[32] After a great deal of back and forth, and in order to move the Collingwood Property project forward, Peter and Danny agreed to permit Mr. Galajda to represent NewCo for this transaction only, if Claysam would agree to someone else representing NewCo going forward. This was in February 2023. Sam would

not agree. He wanted Mr. Galajda to remain corporate counsel for NewCo despite Mr. Sanderson being otherwise available.

[33] In Sam's responding affidavit, approximately 1.5 years after this disagreement, Sam has now suggested three other lawyers to act as corporate counsel for NewCo. Mr. Sanderson is not on this list. These three individuals were only proposed to Danny and Peter a few days prior to Sam swearing his affidavit.

[34] Despite this late suggestion, the Applicants, in their October 2024 affidavit, indicated that they would consider these lawyers. They believe though, even if corporate counsel is selected, that their relationship is otherwise too broken to continue with NewCo.

[35] Currently, due to their disagreement, there is no agreed upon corporate counsel for NewCo.

Lack of Casting Voter

[36] As seen, the Agreement calls for the appointment of a Casting Voter to resolve all non-fundamental disputes. Unfortunately, no Casting Voter was ever appointed when NewCo was formed. While the Dispute Resolution provisions

allow for corporate counsel to appoint a Casting Voter, there currently no corporate counsel to do so.

[37] In June 2021, Danny and Peter started speaking with Mr. Galadja (who was still their corporate counsel) about appointing a Casting Voter. Sam's response was that it was not necessary because there were no disputes requiring one. Nonetheless, there appeared to be an agreement in principle that Mr. McGuire be appointed. Unfortunately, the necessary corporate documentation was never signed.

[38] A dispute did arise in May 2022 regarding the Quanset Property in Port Dover. There was a possibility that it could be leased to two potential parties. When they could not agree to whom the land should be leased, Danny and Peter asked Mr. McGuire to decide. When Mr. McGuire made his decision, Sam would not recognize him as the Casting Voter. He believed that Mr. McGuire, who was also an employee of Lunor, would be in a conflict of interest if he had to decide a dispute between the shareholders. He also believed that Mr. McGuire was more loyal to the Finoro family.

[39] In June 2022, Sam suggested Paul Magahay, from a local land surveyors' firm, as the Casting Voter, and Danny and Peter agreed.

Unfortunately, Sam never contacted Mr. Magahay to see if he was agreeable to act as the Casting Voter.

[40] Accordingly, Danny and Peter took the position that pursuant to s.8.5 of the Agreement, Mr. Sanderson as corporate counsel could appoint a Casting Voter. In the end, a Casting Voter was never appointed because Sam decided he did not want to lease the property at all.

[41] In February 2023, Danny again raised the issue of appointing a Casting Voter to help resolve the dispute of who would be their legal counsel for the Collingwood Property conveyance, who will be their legal counsel going forward, and where NewCo should carry on business. Again, Danny suggested Mr. McGuire as the Casting Voter. Sam rejected Mr. McGuire but suggested no other person.

[42] In this Application, Sam has maintained the position of a Casting Voter was not necessary until now. He still believes that Mr. McGuire is not appropriate. He suggests that once corporate counsel is appointed, he or she can appoint a Casting Voter, as contemplated in the Agreement.

[43] On the date of this hearing, the parties advised that they did agree to an individual to act as the Casting Voter. Again, it was not until the parties were in

court that this was agreed to. Nothing has been finalized though, so as of this date, there is no operable dispute resolution process for any disputes, fundamental or otherwise.

Collingwood Property

[44] NewCo has received draft plan approval from the local municipality for this project. In March 2022, the draft plan approval was amended to include a number of conditions. One such condition was the conveyance of Taylor's Creek, back to the municipality. Taylor's Creek had a walking trail on it and was environmentally protected. NewCo already discussed and agreed to this conveyance in 2021 and was waiting for the formal amendment to the draft plan before they proceeded.

[45] In addition, the neighbouring property – Blue Mountain Golf & Country Club, had made an agreement with the municipality that it could locate one of its irrigation pipes on the lands to be conveyed by NewCo. It was waiting for the conveyance to take place before it commenced construction.

[46] The conveyance has not yet occurred. As indicated above, Mr. Sanderson advised that his firm had a conflict of interest vis-à-vis the municipality and had to withdraw. Mr. McGuire wanted the shareholders to make a decision

on counsel for this conveyance, failing which the project would be jeopardized. The golf club even offered to cover NewCo's legal expenses for the conveyance. Claysam would not agree to move forward, as indicated above. Eventually, the golf club relocated their irrigation pipe, but this condition on the draft site plan remains outstanding.

Port Dover, Quanset

[47] The Quanset Property has two access points – one through a field that NewCo has leased to a cash crop farmer, and the second through a neighbouring property owned by George Kloet. Carpet One wanted to lease the Quanset Property, but Claysam took the position that access through the adjacent leased land could result in a loss of cash crop yield. Also, the cost of constructing and maintaining a road to the proposed property would be too costly.

[48] Previously, Mr. Kloet indicated he was interested in leasing the Quanset Property. Carpet One indicated that Mr. Kloet agreed to give Carpet One access to the Quanset Property, but Claysam did not feel it was in NewCo's best interest to proceed in that manner. It would prefer to lease the lands to Mr. Kloet.

[49] As indicated above, Mr. McGuire provided a solution, but Claysam would not recognize him as the Casting Voter. As of the hearing of this Application, this issue had not been resolved.

D. Analysis

1. Rights, Expectations and Obligations

[50] As indicated, I must first determine if there are any rights, expectations, and obligations amongst the parties, that are not submerged in the corporate structure.

[51] After reviewing the evidence, I find that it was the expectation of the parties that they work together in order to advance the goals of NewCo and all their joint business ventures. The Agreement was structured so they *had* to agree on all fundamental issues. There was no dispute resolution mechanism available for the fundamental changes as defined in the Agreement. Accordingly, continued cooperation, even if acrimonious, was expected.

[52] This is confirmed in an email sent by Sam to Danny in November 2023, wherein he speaks of the “fundamental principles of fairness and collective decision-making” in their business venture.

[53] I also find that it was the expectation of the parties that they *facilitate* the use of the dispute resolution clauses of the Agreement. While the Dispute Resolution clause of the Agreement provides for a Casting Voter for non-fundamental decisions, it was assumed that the parties would actually cooperate and appoint one, or at least retain corporate counsel to do so.

2. Non-satisfaction of Rights, Expectations and Obligations

[54] Having reviewed the evidence and hearing the submissions of counsel, I do find that the rights, expectations, and obligations amongst the parties, outside of the formal corporate structure, have not been fulfilled.

Breakdown of Relationship

[55] Clearly, the parties are unable to work cooperatively and professionally. This has been made evident in many ways.

[56] First, there has been an acrimonious breakdown in their other business venture, namely Lunor. Lunor was the foundation on which the parties built NewCo. This does not mean that Lunor had to stay active for NewCo to stay active, but it was necessary that the relationship between the shareholders in Lunor had to remain workable and professional for both Lunor and NewCo.

[57] I make no finding with respect to why Lunor broke apart but rely only on the fact that DannyCo and PeterCo commenced an arbitration, seeking to wind up Lunor, due to Lunor's inability to move forward with its projects. While the arbitration was not determinative, eventually, all parties agreed to the winding up through a court application.

[58] The affidavit of Peter makes it clear that the winding up of Lunor was the beginning of the deterioration of the relationship between the three principle parties of NewCo. In an affidavit sworn in the Lunor proceedings, the Applicants outline their difficulties with Peter in appointing an arbitrator in Lunor's affairs. After finally agreeing to an arbitrator (which took three months), when the arbitrator was contacted two months later in order to proceed, Peter withdrew his consent to that arbitrator. The Applicants had to commence an application to have an arbitrator appointed. Eventually, Peter agreed to the original arbitrator proposed and that application was abandoned.

[59] The parties eventually agreed to wind up Lunor. They agreed their ongoing business ventures could not continue. With the same principle shareholders involved, it would be hard to accept that the disputes that led to the winding up of Lunor would not spill over to NewCo. The evidence shows that they did.

[60] Secondly, the parties have been unable to agree on something as basic as appointing corporate counsel. When NewCo started, they were represented by Miller Thomson. There was no reason for that not to continue, other than their conflict of interest on one particular project – the Collingwood Property. Rather than just appoint other counsel for this one project and continue on with their pre-existing corporate counsel, it became a dispute that lasted for years, and resulted in unnecessary delay.

[61] Sam and Claysam understood the principle of a conflict of interest. They acknowledged that Mr. Sanderson could not act on the Collingwood Property project. Sam also raised a conflict of interest when dismissing Mr. McGuire as a Casting Voter. Nonetheless, he refused to see that Mr. Galajda could have the same type of conflict, given his ongoing representation of Sam and Claysam.

[62] The last-minute suggestion of new corporate counsel – after litigation was commenced, does not address this concern. A business venture such as this, which requires ongoing mutual respect, professionalism, and unanimity, cannot proceed if litigation is necessary to resolve the most basic of challenges – such as appointing an arbitrator to resolve a dispute, or appointing corporate counsel who could appoint a Casting Voter in a dispute.

[63] Things have not gotten better. In September 2023, after the Lunor arbitration was concluded, Sam filed a complaint with the City of Guelph regarding the offices of Lunor, which was also the registered head office of NewCo. The city building inspector inspected the office and asked to see a building permit for work done previously. Peter and Danny cooperated, and the file was closed within a week. A few days later, Sam brought the fire department inspector into Lunor's offices. He also brought the fire inspector into the offices of Finoro Homes, which is a competitor to Claysam. The fire inspector later reported that there were no concerns.

Inoperable Dispute Resolution Process

[64] The failure of the parties to appoint a Casting Voter is another example of the rights, expectations, and obligations of this business relationship not being fulfilled.

[65] As indicated, the dispute resolution process was created in the Agreement, but it was never facilitated. The Casting Voter should have been appointed upon the formation of NewCo. It never was. Sam's refusal to appoint one in the following years was also problematic. The process should have been in place from the beginning so that non-fundamental disputes could be resolved

quickly, and not give the parties an opportunity to manipulate the process to bring about the desired result. This is what happened here.

[66] I also find it problematic that the Casting Voter could be changed by any party if they requested it. That could lead to a situation whereby if a party did not like the decision that a Casting Voter was going to make, they could simply advise the other parties that a replacement Casting Voter should be appointed. The resolution of disputes could be continually delayed.

[67] Finally, this process was further disrupted by not having corporate counsel. Again, Peter and Claysam's refusal to accept any corporate counsel other than Mr. Galajda (until after litigation commenced), shows the difficulty with this process.

[68] As for fundamental changes, there is no dispute resolution clause. If there is no agreement, there is no action taken. Accordingly, the Agreement, as structured, and the conduct of the Respondent, has led to a situation where the dispute resolution process is non-existent or inoperable.

4. Resulting Unfairness or Prejudice to one or More Parties

[69] The failure to agree on corporate counsel has had serious and financial consequences. As identified by Mr. McGuire in as early as March 2023, the

failure to convey the Taylor Creek lands in the Collingwood Property project, could result in:

- a) no extensions given to the draft plan approval, which would jeopardize the project;
- b) NewCo could be liable if someone is injured on the Taylor Creek trail; and
- c) it was causing delay and expense to the golf club which wanted to proceed with construction of the irrigation pipe and was willing to pay NewCo to proceed.

[70] The draft plan approval was set to expire, and NewCo needed to apply for an extension by December 2024. It does not appear that they have yet applied for an extension. It may not be renewed due to inaction, which Peter and Danny say is Sam's fault, as described herein. While I have no evidence on this particular fact, I can assume that to reapply for draft plan approval will require NewCo to expend more funds.

[71] There also was a proposal to possibly sell the Collingwood Property in 2023, but the three principals of NewCo could not agree, thereby missing out on

an opportunity to recoup their investment. It appears that the Collingwood Property project has stalled.

[72] Even if corporate counsel is agreed upon, and a Casting Voter appointed, I see no way forward for NewCo. There is simply no way to resolve fundamental disputes. Either the parties agree, or they do not. If they do not, nothing happens. The history of NewCo shows that matters remain at a standstill for years, with serious financial consequences. The model is not workable without parties who are vested in working cooperatively and in good faith. That is not possible in this scenario, where their other ventures (Lunor) have broken down, Peter and Claysam have remained steadfast in their positions until which time litigation is commenced, and have even resorted to such behaviours as calling building and fire inspectors on the other party in the dispute.

4. How Can it be Rectified?

[73] Now that I have identified the unfairness to the parties and the serious financial consequences of the disagreements, I must determine if such unfairness or prejudice must be sufficiently serious that it can only be rectified by a winding-up. For the reasons described, I see no other option but to wind up NewCo.

[74] Claysam argues that NewCo is capable of operating and in fact, is doing so. It points to the continued lease of the Elmira Property and the progress on the Simcoe Property. It acknowledges the difficulty with the conveyance of the Taylor's Creek plot in the Collingwood Property project but states it can be resolved by the Casting Voter. In other aspects, the development continues. Financing for the project was renewed in May 2024.

[75] Claysam maintains that the dispute resolution process can work. Even though the Respondent does not now want to proceed with the conveyance of the Taylor Creek lands (for reasons of leverage with the municipality), he states that a Casting Voter can be appointed to resolve it.

[76] I pause to note that this conveyance is a condition of draft plan approval. Claysam did not propose a corporate counsel, who could appoint a Casting Voter until this application was commenced. I also note that the conveyance of land is something that is not subject to the Dispute Resolution provisions of the Shareholders Agreement (see Article 5.1(g) of Shareholders Agreement).

[77] Also, the Respondent argues that the issue of leasing the Quanset Property can also be resolve by a Casting Voter. For the same reason, I believe that the lease of the Quanset Property is something that is categorized as a fundamental change, and cannot be resolved by a Casting Voter.

[78] The Applicants argue that the projects are only progressing if Claysam is agreeable, or they are proceeding on minor matters which Mr. McGuire can agree to, and to preserve the *status quo*.

[79] They indicate that the other Port Dover project is languishing. It was acquired before the Simcoe Property, Elmira Property, and the Quanset Property. The Applicants want to set a budget to move forward, but as of September 2023, Claysam indicated that there was no urgent need to undertake that project.

[80] In addition, Mr. McGuire will soon no longer be working with Lunor, and therefore can't be expected to continue with NewCo on a "as needed" basis.

[81] I disagree that this business venture, in these circumstances, can continue. With the ongoing conflict, the need of litigation to move matters forward, and an unworkable dispute resolution process, I find that a winding up of NewCo is the only way to rectify the situation.

E. Appointment of Receiver and Solicitor

[82] The Applicants have proposed Alvarez & Marshall Canada Inc. to act as Sales Officer for the winding up. The Respondent disagrees but has provided no evidence as to why this company should not act. If anything, it is another

indication of how these parties cannot work together to make a simple decision. Alvarez & Marshall Canada shall be appointed.

[83] As for corporate counsel, the Applicants propose Ingenuity LLP. It is not one of the counsel suggested by the Respondent as corporate counsel. No other suggestions were made by the Respondent for counsel for the purposes of winding up. Ingenuity LLP shall be appointed.

F. Conclusion

[84] It is my finding that in these circumstances, the rights, expectations, and obligations of the parties, over and above what is set out in the corporate architecture, have not been fulfilled. I am confident that if the parties had considered this scenario, where they were at a standstill and there was no path forward without litigation, and no operable dispute resolution process in place, they would have considered the business venture at an end. NewCo has suffered financially as a result of this situation. I find that it is just and equitable in these circumstances, that NewCo be wound up.

[85] Accordingly, for the forgoing reasons, I make the following judgments:

- a) Service on 2721736 Ontario Inc. and 2721733 Ontario Inc. is dispensed with;

- b) 2721736 Ontario Inc. and 2721733 Ontario Inc. shall be wound up pursuant to s.207 of the *OBCA*;
- c) There shall be a rateable distribution of Newco's net assets to each of the shareholders in accordance with their respective shareholdings in 2721736 Ontario Inc. and 2721733 Ontario Inc.;
- d) Alvarez & Marsal Canada Inc. are appointed as the Sales Officer of 2721736 Ontario Inc. and 2721733 Ontario Inc. for the purposes of the winding up;
- e) Ingenuity LLP is appointed as corporate counsel of Newco;
- f) Given the result, the Applicants are entitled to their costs; the parties are encouraged to agree to the issue of costs; if they are not able, the Applicants shall serve and file their written costs submissions, limited to 4 pages, their Bill of Costs and any Offers to Settle, on or before September, 19, 2025; the Respondents shall serve and file their written costs submissions, limited to 4 pages, their Bill of Costs and any Offers to Settle, on or before October 10, 2025; if the Applicants wish to make any written reply submissions, they shall do so on or before October 24, 2025, limited to 2 pages; and

g) The remainder of the Application is dismissed.

[86] The parties may forward a more detailed order for the purposes of the winding up, for my signature.

Fowler Byrne J.

Released: August 28, 2025

CITATION: DANNY FINORO HOLDINGS, et al. v. CLAYSAM HOMES LTD. et al.,
2025 ONSC 4914
COURT FILE NO.: CV-24-00000272-0000
DATE: 2025 08 28

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

DANNY FINORO HOLDINGS INC.
and PETER FINORO HOLDINGS INC.

Applicants

- and -

CLAYSAM HOMES LIMITED,
2721736 ONTARIO INC. and 2721733
ONTARIO INC.

Respondents

REASONS FOR JUDGMENT

Fowler Byrne J.

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