IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *1154557 B.C. Limited v. Skychain Technologies Inc.*, 2025 BCSC 1924

Date: 20251003
Docket: S248843
Registry: Vancouver

Between:

1154557 B.C. Limited

Petitioner

And

Skychain Technologies Inc.

Respondent

Before: The Honourable Justice Kirchner

Reasons for Judgment

Counsel for the Petitioner:	A. Sabur S. Fitterman C. Speedie, Articled Student
Counsel for the Respondent:	P. Sullivan S. Shuchat
Place and Date of Hearing:	Vancouver, B.C. August 28, 2025
Place and Date of Judgment:	Vancouver, B.C. October 3, 2025

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I. Introduction

[1] The petitioner, 1154557 B.C. Limited (the "Petitioner"), seeks relief under the shareholder oppression provisions of the *Business Corporation Act*, S.B.C. 2002, c. 57. It alleges that a class of proxy votes, representing a majority of the shares in the respondent, Skychain Technologies Inc., were unlawfully disqualified by Skychain's management in advance of the company's 2024 Annual General Meeting. As a result, a dissident slate of board candidates nominated by the Petitioner could not be voted on at the AGM and Skychain Management's slate was acclaimed. The Petitioner argues the wrongful exclusion of the proxies was contrary the Petitioner's legitimate expectations for a fair and democratic voting process at Skychain's AGM.

[2] Skychain responds that the proxies were properly disqualified because the Petitioner failed to comply with provisions in Skychain's articles of incorporation (the "Articles") that require disclosure of certain information by a shareholder who nominates a dissident slate of board candidates. Specifically, Skychain argues the Petitioner failed to disclose that it was working jointly and in concert with other shareholders, including Skychain's former CEO, to replace Skychain's board with a slate of directors with close ties to the former CEO.

[3] For the reasons that follow, I find the proxies were improperly disqualified and their exclusion from the AGM constitutes oppressive or unfairly prejudicial conduct as against the Petitioner.

II. Background

[4] Skychain is a British Columbia company listed on the TSX-Venture Exchange. From April 2018 until a change in management in early 2022, its core business was in cryptocurrency mining. It now focuses on non-fungible tokens and decentralized finance.

[5] The Petitioner is a British Columbia company which holds 1,069,801 shares in Skychain, representing approximately 3.986% of the outstanding shares at the

time of the November 2024 AGM. Mark Zhou is the Petitioner's CEO and also a personal shareholder of Skychain.

[6] Prior to 2022, Skychain's main project was a data centre being constructed in Birtle, Manitoba (the "Birtle Project"). That project was advanced under the direction of Skychain's then-CEO and board member, Bill Zhang, with a significant investment from The9 Limited, a NASDAQ-listed company in the cryptocurrency sector. The9 presently holds 2,631,576 shares in Skychain representing approximately 9.81% of the outstanding shares. The9 also had a representative on Skychain's board.

[7] Bill Zhang is neither a party nor a deponent in these proceedings but he is central to it. In addition to being his former roles as Skychain's CEO and board member, Mr. Zhang is also a shareholder, both personally and through two companies – 1151152 B.C. Ltd. ("1151") and Vling E-Business Ltd. ("Vling") – in which he holds the controlling interests. Mr. Zhou and Walson Wang, another former director of Skychain, are also shareholders in 1151 (which is not to be confused with the Petitioner, 1154).

[8] In December 2021, Skychain's board approved a $2 million direct capital investment from Richard Du, who received 4,761,905 shares constituting 19% of the issued shares. Mr. Du was also appointed to the board and named CEO in place of Mr. Zhang who resigned to make way for Mr. Du. Mr. Zhang remained involved with the company as a director and was appointed CEO of some of its subsidiaries.

[9] In February 2022, Skychain's new management investigated certain financial transactions Mr. Zhang had carried out in his time as CEO. Mr. Zhang was then terminated from Skychain and its subsidiaries, purportedly for cause but Mr. Zhang is challenging that in other proceedings. The Petitioner contends the investigation was a tactic used by the new controlling faction of Skychain that came to oppose Mr. Zhang and the Birtle Project.

[10] Following the investigation or purported investigation (I offer no opinion on that dispute), Skychain sued Mr. Zhang in both British Columbia and Manitoba

alleging that he and others used the Birtle Project as a scheme to advance their personal interests. Mr. Zhang, 1151 and Vling have commenced an action in British Columbia against Skychain and several of its subsidiaries claiming wrongful dismissal, that Skychain wrongfully retained Mr. Zhang's personal effects, and for certain debts said to be owed to 1151 and Vling. I make no findings or comment as to the merits of any of these three proceedings.

[11] Over the next six months, under Mr. Du's leadership, there were new appointments to Skychain's board (I presume under the authority of s. 122(2) of the *Business Corporation Act*) and new persons appointed to executive positions such that Skychain came under control of a new management group. This group terminated the Birtle Project and announced a pivot into decentralized finance and non-fungible tokens. This change put Skychain in breach of its contractual obligations to The9, which, along with its subsidiary, 1111 Limited, successfully sued Skychain and was awarded damages of just over $2 million: *The9 Limited v. Skychain Technologies Inc.,* 2022 BCSC 1666, aff'd 2023 BCCA 150.

[12] On August 5, 2022, the British Columbia Securities Commissioner issued a cease-trade order against Skychain for failing to file audited financial statements and other necessary documents for the fiscal year ending March 31, 2022. On November 8, 2023, Skychain was downgraded by the TSX to the NEX. In December 22, 2023, Skychain informed its shareholders that it had generated no revenue in 2022 or 2023 and had net recorded losses of $6,634,695 for 2022 and $5,290,930 for 2023. Skychain did not hold an annual general meeting in either year.

[13] On September 12, 2024, The9's subsidiary, 1111, initiated a process to requisition an AGM and a vote for a dissident slate of directors to replace Skychain's management. It filed a dissident proxy circular and form of proxy on SEDAR+ as a concerned shareholder in Skychain and advised it had requisitioned an AGM for October 10, 2024. This would be the first since 2021. The circular asserted that Skychain "is being very poorly managed by the current management and Board of Directors" and is in "dire need of a change". It lists several concerns about

Skychain's management including the cease trade order, the failure to hold AGMs in 2022 and 2023, the failure to file annual reports, turnover in the board, the failure to generate revenues, the net losses in 2022 and 2023, and payment of management compensation. Each board candidate on the dissident slate had some level of connection to Mr. Zhang, although those connections were not disclosed in the circular.

[14] On September 13, 2024, 1111 issued an advance notice to the company providing the list of proposed candidates as required by Skychain's Articles.

[15] Skychain's board quickly met on September 15, 2024 and resolved to call an AGM for November 7, 2024. That AGM was announced the following day in a press release in which Skychain characterized 1111's effort to requisition an AGM as a "failed attempt" by "small minority dissidents".

[16] On September 17, 2024, Skychain's corporate counsel, Boughton, wrote to 1111's corporate counsel, Richards Buell Sutton LLP ("RBS") asserting that 1111's circular was invalid "for a number of reasons, the most important of which is the requirement to be given by registered shareholder." Boughton said the Skychain board had now called an AGM and asked RBS to issue a press release "acknowledging the invalidity of your client's requisitioned meeting."

[17] On September 26, 2024, Boughton again wrote RBS asserting that 1111's advance notice was "deficient in many respects" and that additional information was required. Among the claimed deficiencies were:

a) 1111 "does not appear in Skychain's shareholder listings as a holder of one or more shares carrying the right to vote" at an AGM or who "beneficially owns shares that are entitled to vote"; and

b) the advance notice failed to provide particulars required under s. 14.12(5)(b) of the Articles.

[18] The second point is key to this application. Section 14.12 of the articles set out rules for the nomination of directors. It provides that nominations may be made by the board or by any "Nominating Shareholder". When made by a Nominating Shareholder, that shareholder must give advance notice to the secretary of the company not less than 30 days before the AGM and that notice "will be deemed to be in the proper form" if it includes particulars specified in s. 14.12(5)(a) for each nominee and other particulars called for under s. 14.12(5)(b). The interpretation of that latter provision is the core dispute in this proceeding. It reads:

> (5) A Nominating Shareholder's notice to the secretary of the Company will be deemed to be in proper form if:
>
> …
>
> (b) as to the Nominating Shareholder giving the notice, such notice sets forth full particulars regarding any proxy, contract, agreement, arrangement or understanding pursuant to which such Nominating Shareholder has a right to vote or direct the voting of any shares of the Company and any other information relating to such Nominating Shareholder that would be required to be made in a dissident proxy circular in connection with solicitations of proxies for election of directors pursuant to the *Business Corporations Act* and Applicable Securities Laws.

[19] Boughton's September 26, 2024 letter gave no details as to why it suggested 1111's advance notice failed to comply with s. 14.12(5)(b). It merely quoted the provision and asserted that the notice was "missing information required" under it.

[20] On October 7, 2024, 1111 filed a notice on SEDAR+ cancelling the October 10, 2024 AGM it had requisitioned.

[21] On October 3, 2024, the Petitioner took up 1111's mantle in seeking to replace the Skychain board. It issued an advance notice to Skychain setting out the same slate of board candidates proposed in 1111's circular and advance notice (the "Dissident Slate"). On October 10, 2024, it issued a dissident proxy circular soliciting "yellow proxies" in favour of the Dissident Slate. The form and content of this circular were almost identical to 1111's September 12, 2024 circular. In fact, RBS, which had prepared 1111's advance notice and circular, also prepared the Petitioner's advance notice and circular.

[22] Also on October 10, 2024, Kornfeld LLP, the Petitioner's litigation counsel, wrote to Boughton seeking access to a list of registered shareholders and non-objecting beneficial owners for the purposes of influencing the vote of shareholders at the AGM. In its response, Boughton asserted that Kornfeld's letter "raise[d] some of the same issues that we have previously canvassed with RBS" and directed Kornfeld to RBS as Boughton did "not intend to communicate with you at unnecessary additional expense to the company unless you feel it is necessary". Boughton's letter went on to suggest that the Petitioner had failed to meet the company's advance notice requirements for nominating directors but gave no particulars of alleged defects, other than by reference to its earlier communications with RBS.

[23] On October 16, 2024, Kornfeld replied to Boughton confirming it was aware of Boughton's prior critique of 1111's advance notice, including alleged non-compliance with s. 14.12(5)(b), but asserted the Petitioner's advance notice addressed any defects. Kornfeld also asked that Skychain appoint an independent chair for the AGM. Under the Articles, AGMs are to be chaired by Skychain's board chair but Kornfeld asserted the board chair was in an "unequivocal conflict of interest" because the Petitioners' had put forth the Dissident Slate to challenge the slate proposed by management.

[24] On October 11, 2024, Skychain filed and distributed a management proxy circular and form of white proxy with management's proposed slate of board candidates. On October 18, 2024, the Petitioner filed its dissident proxy circular and a form of yellow proxy urging shareholders to vote for the Dissident Slate.

[25] In an October 24, 2024 press release, Skychain's management asserted the dissident circular and yellow proxies were of no effect and only the white proxies issued in management's circular could be voted at the AGM. The press release did not give reasons for this assertion other than to say the advance notice did not comply with the Articles. The Petitioner responded with its own press release on October 29, 2024 asserting the advance notice is fully compliant with the Articles,

that the dissident circular and proxies are lawful, and management's claims to the contrary are false.

[26] On October 30, 2024, Skychain issued another press release that restated its assertion that the dissident proxy circular and yellow proxies are "meritless because they have failed to comply with applicable legal requirements." For the first time, Skychain provided some explanation for this assertion:

> Amongst other things, the dissident group failed to disclose that its principal, Jialiang (Mark) Zhou, is a long-time business associate of Ningtao (Bill) Zhang, who is the former CEO and a former director of the Company and whom the Company is currently suing in relation to his conduct while a director and CEO of the Company (the "Bill Zhang Lawsuits").

[27] Th press release then alleged that "Mr. Zhou and [the Petitioner] are working jointly and in concert with 1111 Limited, who previously nominated the same slate of candidates in its own failed attempt to convene a shareholder meeting". It alleged the Petitioner "has failed to disclose the arrangement among itself and other parties including but not limited to 1111 Limited." It stated that Mr. Zhou "is a shareholder or former shareholder of one of the defendants in the Bill Zhang Lawsuits" and the Dissident Slate "is composed primarily of past and current employees or consultants of the Company under Mr. Zhang's mismanagement, as well as his close friends and business associates." It suggested that, if elected, the Dissident Slate would discontinue Skychain's lawsuits against Mr. Zhang.

[28] The Petitioner responded with another press release on a November 1, 2024 denying any arrangement with one or more shareholders to vote their shares and said no other deficiencies have been identified in the advance notice or dissident proxy circular. It accused Skychain management of making "false claims" and described the litigation against Mr. Zhang as a distraction. It denied any arrangement or agreement between the Petitioner and one or more shareholders that had to be disclosed under s. 14.12(5)(b) of the Articles.

[29] On November 4, 2024, Boughton wrote RBS in response to the Petitioner's November 1, 2024 press release asking for a "concise statement as to the nature of

the relationship between [the Petitioner], its principals and 1111 Limited and its principals" so Boughton could understand the position that there was no relationship disclosable under the Articles. Boughton also proposed that both sets of counsel meet with Skychain's board chair, William Ying, the day before the AGM to present their respective positions on the validity of the dissident proxies. Mr. Ying is the same chair whom Kornfeld suggested was in an "unequivocal conflict of interest".

[30] RBS declined this proposal in a November 6, 2024 letter. Tracking the wording of s. 14.12(5)(b), it stated that Boughton already had its position that the Petitioner has no disclosable contract, agreement, arrangement, or other understanding pursuant to which it has a right to vote or direct the voting of any shares of the Company. It said Boughton's suggestion to the contrary was a bald assertion with no particulars. It suggested Skychain's management was not being transparent with the shareholders and, for that reason, it declined to meet privately with Mr. Ying whom it regarded as "far from independent".

[31] On November 6, 2024, Boughton went ahead with the proposed meeting with Mr. Ying without RBS or Kornfeld. It presented Mr. Ying with a memorandum setting out Skychain's position on why it said the Petitioner's advance notice failed to comply with the Articles. The reasons it gave were essentially that the Petitioner had not disclosed its relationship with Mr. Zhang, it appeared to be working jointly and in concert with 1111 and The9 without disclosing particulars of that relationship, one member of the Dissident Slate had allegedly proposed a resolution to the proxy battle with an offer said to be backed by Mr. Zhang and The9, and Mr. Zhang had allegedly been approaching shareholders to buy their shares.

[32] The Petitioner did not receive a copy of this memorandum until after the AGM and was unaware that Boughton proceeded with this advance meeting with the chair.

[33] By the time of the AGM, the Petitioner had received 115 yellow proxies. Another former board member, Frederick Jung, also received yellow proxies from his mother, brother, and late father's holding company, all of whom were shareholders.

Collectively, the yellow proxies held by the Petitioner and Mr. Jung represented a majority (54.77%) of the Skychain shares.

[34] Mr. Jung was a Skychain board member when Mr. Zhang was still on the board and remained so after Mr. Zhang left. Mr. Jung eventually left the board when the new management group took over. He was later named as a defendant in Skychain's Manitoba lawsuit against Mr. Zhang and others. In cross-examination in this proceeding, he readily acknowledged his close connections with Mr. Zhang.

[35] The AGM proceeded on November 7, 2024. As expected, Mr. Ying chaired the meeting. Jonathan Woolley, a lawyer at RBS, attended as the Petitioner's appointed corporate representative. When the meeting was convened, he confirmed the Petitioner had requested the appointment of an independent chair and this request had been denied. Steven Lucas, one of Skychain's lawyers from Boughton, agreed to record this in the minutes.

[36] The chair then explained that he had previously ruled the yellow proxies invalid and yellow proxyholders would have no standing at the meeting. Mr. Woolley stated the Petitioner's objection to the ruling and asked the chair to state the reasons for it. Mr. Lukas stepped in with a response as follows:

> I think there was an opportunity given to your client through counsel to address these issues with the chair prior to the meeting, and that was declined by counsel. And so this isn't the time to go through that. If you want to have a conversation afterwards, I'm sure that's fine. But that opportunity for you to challenge the question and to put your position on the chair -- that window has opened and closed. And it's time for the meeting to move on.

[37] Mr. Wooley then asked to have his objection noted in the minutes and Mr. Lukas and the chair agreed.

[38] With the yellow proxies disqualified, the management slate was acclaimed. Mr. Wooley then asked that the Dissident Slate be nominated for election but the chair denied because of his ruling on the yellow proxies.

[39] In the meantime, Frederick Jung had joined the meeting. He was initially denied entry because he was not a shareholder and held yellow proxies for his family members. However, he had previously been authorized by his family members under a white proxy and, after locating a digital copy of that on his phone, he was admitted to the meeting.

[40] Mr. Jung noted he was not present at the outset of the meeting and asked what the chair's response had been on the nomination of the Dissident Slate. Again Mr. Lukas responded rather than the chair. He repeated his statement that the Petitioner's counsel declined the opportunity to meet with the chair the previous day and stated that "press releases have had a public campaign on peoples' different views". He then said the reasons for the chair's decision had not been disclosed:

> The dissident shareholder's counsel chose not to take up the opportunity to meet with the chair, so the chair was required, prior to the meeting, to make a decision based on the information in front of him and already made that decision. The details of the information that was provided to someone, that was not disclosed.
>
> [Emphasis added]

[41] Mr. Jung then asked why there was a requirement to meet with the chair and Mr. Lukas responded:

> There isn't a requirement to meet with the chair. The requirement is that there is a disagreement between two sides as to whether or not these yellow proxies should or shouldn't vote. It is the chair's call on what the answer to that is. There have been legal positions taken over the past several weeks as to whether they were or weren't. There was a disagreement. Ultimately, that disagreement falls to the chair, and under the articles of the company, the chair was required to make a ruling, and it made a ruling based on the information he had in front of him.

[42] Mr. Jung then asked what the chair's reason was for invalidating the yellow proxies and Mr. Lukas said those details are not public at this point:

> Mr. Lukas: As I said, the reasons were not gone into in detail. That was done, and I'm sure it will -- the details will come out.
>
> Mr. Jung: It's not public?
>
> Mr. Lukas: It's not -- not at this point, no.

[43] In short, the chair, through Mr. Lukas, declined to provide reasons at the AGM for declaring the yellow proxies invalid.

[44] The AGM proceeded with the appointment of auditors and approval of a stock option plan. Before it concluded, Mr. Woolley again raised an objection to the ruling invalidating the yellow proxies and that objection was noted for the minutes.

[45] Later that day, the company issued a press release announcing the results of the AGM and reiterating, without an explanation, that the yellow proxies were declared invalid.

[46] The Petitioner then commenced this proceeding on December 19, 2024. The petition response was filed in late January and cross-examinations on affidavits were held in April 2025. The petition was heard August 25, 2025.

III. Parties' Position

[47] The Petitioner argues Skychain's refusal to accept the yellow proxies was unlawful and oppressive conduct under s. 227 of the *Business Corporations Act.* It argues the advance notice and the dissident proxy circular fully complied with Skychain's Articles and applicable corporate and securities law. It argues Skychain's position to the contrary and the chair's decision to disqualify the yellow proxies, evidently based on s. 14.12(5)(b) of the Articles, are simply wrong. The Petitioner argues that it and other shareholders who had given yellow proxies were deprived of their legitimate expectations for a fair voting process at the AGM. It also argues Skychain's refusal to particularize its reasons for impugning the yellow proxies and the chair's decision to invalidate them was contrary to its legitimate expectation for an open and transparent process of proxy voting at an AGM.

[48] Skychain argues the advance notice and dissident proxy circular did not comply with s. 14.12(5)(b) of the Articles because neither disclosed "the involvement of Bill Zhang", the Petitioner's "arrangements with Bill Zhang", and agreements and arrangement with others working to achieve the election of the Dissident Slate. Skychain argues s. 14.12(5)(b) "[e]ssentially … require[s] a nominating shareholder

to disclose whether the shareholder is acting jointly or in concert with others. It argues the evidence shows that each member of the Dissident Slate had some connection to Bill Zhang and that the Petitioner was working jointly or in concert with Mr. Zhang, 1111, Walson Wang, and others to have the Dissident Slate elected but failed to disclose that in the advance notice and the circular. It argues this information was critical for shareholders given Mr. Zhang's history with the company and the pending lawsuits against him. It also argues the chair's decision was made in good faith and is therefore entitled to significant deference from the court.

IV. Analysis

A. Legal Principles for Oppression

[49] I do not propose to address the law of oppression in detail. Skychain did not take issue with the proposition that the exclusion of the yellow proxies, if improper, could qualify as oppressive conduct under s. 227 of the *Business Corporations Act*. The focus of its submissions was on the merits of the chair's decision to exclude those proxies and the deference the court should show to that decision.

[50] Under s. 227, a shareholder may apply to the court for an order granting relief where the affairs of the company or the powers of the directors are being exercised in an oppressive or unfairly prejudicial manner as against the shareholder. Section 227(2) states:

> **227.** (2) A shareholder may apply to the court for an order under this section on the ground
>
> (a) that the affairs of the company are being or have been conducted, or that the powers of the directors are being or have been exercised, in a manner oppressive to one or more of the shareholders, including the applicant, or
>
> (b) that some act of the company has been done or is threatened, or that some resolution of the shareholders or of the shareholders holding shares of a class or series of shares has been passed or is proposed, that is unfairly prejudicial to one or more of the shareholders, including the applicant.

[51] If oppression or unfair prejudice is established, s. 227(3) gives the court wide discretion to grant “any interim or final order it considers appropriate” including a long list of potential remedies outlined in paragraphs (a) through (r).

[52] To be entitled to relief under s. 227, the applicant must first show it had a reasonable expectation with respect to the conduct of the affairs of the company and secondly that the reasonable expectation was violated by oppressive or unfairly prejudicial conduct: *BCE Inc. v. 1976 Debentureholders*, 2008 SCC 69 at para. 68.

[53] The claimant must subjectively identify the expectations that it had and then show those expectations were reasonably held: *BCE Inc.* para. 70. Each oppression claim is fact-specific and conduct found to be oppressive or unfairly prejudicial in one case might not be so in others: *1043325 Ontario Ltd. v. CSA Building Sciences Western Ltd.,* 2016 BCCA 258 at para. 50.

[54] In *International Energy and Mineral Resources Investment (Hong Kong) Company Limited v. Mosquito Consolidated Gold Mines Limited*, 2012 BCSC 1191 at para. 56, Justice Fisher (then of this court) described a shareholder’s right to oversee the management of the company by its board of directors by way of votes at shareholder meetings as “one of the fundamental rights included in the ‘bundle of interrelated rights’ of shareholdings.”

[55] Proxy voting is a routine aspect of corporate AGMs and fundamental to shareholder democracy. It follows that shareholders have a legitimate expectation that dissident proxy initiatives will be fairly considered and properly addressed at AGMs in accordance with corporate and securities law and the articles and constitution of the corporation.

B. Deference to the Chair and Procedural Expectations

[56] I begin by considering what deference should be given to the chair’s decision to declare the yellow proxies invalid. Skychain argues significant deference should be accorded pursuant to the Articles and broader legal principles. The Petitioner

argues the chair's decision was on a question of law and is not entitled to any deference.

[57] With respect to the Articles, Skychain relies on s. 11.19 and argues the chair's decision is final and conclusive if made in good faith. That provision reads:

> In the case of a dispute as to the admission or rejection of a vote given on poll, the chair of the meeting must determine the dispute, and his or her determination made in good faith is final and conclusive.

[58] I am unable to find this section applies in the present case. Justice Steeves considered identical wording in *Hastman v. St. Elias Mines Ltd.*, 2013 BCSC 1069 at para. 114 and held that it did not apply to a decision to reject the proxies there because the decision was not made following a vote given on a poll. As in this case, the decision was made by the chair the day before the meeting.

[59] Skychain argues the chair nevertheless has a broad discretion under common law principles to make both procedural and substantive decisions, and those decisions are entitled to deference. In *Hastman*, Steeves J. canvassed some Australian authorities on the scope of judicial review of decisions taken by a chair at a general meeting of a corporation. He concluded that such decisions are reviewable only if they are unreasonable or where there was an error of law. He wrote at para. 121:

> … a chair's decisions are entitled to deference from the courts and the latter will not readily intervene in those decisions. A chair can be wrong on an issue that does not involve an error of law without interference from the court. An example of a decision where this deference may arise is a decision by the chair to rule certain motions out of order, including situations where proxies are invalid. However, errors of law are reviewable by the courts, as are decisions by the chair that are unreasonable.

[60] In this case, I have difficulty giving deference to the chair's decision. He offered no explanation for his decision either at the time it was made the day before the AGM or when asked to give reasons at the AGM itself. I agree with the Petitioner that a shareholder can legitimately expect the chair of a contested shareholder meeting to give some explanation for the very consequential decision to reject a class of proxies, especially when that class appears to represent a majority of voting

shares. I do not suggest those reasons must be elaborate but some amount of explanation is called for.

[61] Here there was no explanation. The chair did not respond himself to the question but deferred to Skychain's lawyer who said the details of the information on which the decision was based "was not disclosed", and, the reasons for the decision "were not gone into in detail" and were not public "at this point". I find the chair's refusal to offer even a cursory explanation for the decision was oppressive or unfairly prejudicial to those who had signed a yellow proxy, including the Petitioner.

[62] The chair's refusal to explain the decision also affects his impartiality. When asked why he had rejected the yellow proxies, he did not answer but instead allowed Skychain's lawyer respond. This coordinated refusal of both the chair and management to explain the very consequential decision to invalidate the yellow proxies gives rise to a reasonable apprehension that the chair was not impartial but was simply doing management's bidding in rejecting the yellow proxies.

[63] I would add that the fact the Petitioner's counsel was given an opportunity to meet with the chair the day before the AGM to discuss the proxy issue is not an explanation for the decision. I am not persuaded it was procedurally or substantively wrong or unfair for the chair to make the decision on the yellow proxies the day before the AGM after giving the Petitioner an opportunity to make submissions. However, in declining to attend that meeting, the Petitioner did not forfeit its right or legitimate expectation to receive an explanation at the AGM for the chair's decision. The Petitioner and the shareholders who endorsed yellow proxies had a right to know why their votes would not be counted at the AGM.

[64] Nor am I persuaded that the reason for the decision was readily discernable from the press releases or other correspondence that were exchanged in advance of the AGM. Skychain and its corporate counsel offered only general and conclusory assertions that the advance notice and circular failed to comply with s. 14.12(5)(b) of the Articles. At no time did they offer any facts or particulars for this conclusion. The most information that was provided was in Skychain's October 30, 2024 press

release which stated that the dissident group failed to disclose that Mr. Zhou and Mr. Zhang were long-time business associates and that Mr. Zhang is a former director and CEO of Skychain who was being sued by the company. This press release does not explain why omitting this information from the advance notice and circular invalidates the yellow proxies under s. 14.12(5)(b).

[65] For these reasons, I find the chair's decision to reject the yellow proxies failed to meet Petitioner's legitimate expectations that the decision would be made by an impartial chair and that some explanation for the decision would be given for the decision. Thus, I find the process by which the yellow proxies were rejected and the management slate claimed was oppressive or unfairly prejudicial to the Petitioner.

C. Compliance with s. 14.12(5)(b) of the Articles

[66] To the extent the chair's reasons for rejecting the yellow proxies can be discerned from the record, it could only be that the advance notice and dissident proxy circular did not comply with s. 14.12(5)(b) of the Articles and corporate or securities laws. That is the substantive basis on which Skychain now seeks to support the decision.

[67] As I set out earlier, s. 14.12(5)(b) requires a "Nominating Shareholder" to include in its advance notice:

> …full particulars regarding any proxy, contract, agreement, arrangement or understanding pursuant to which such Nominating Shareholder has a right to vote or direct the voting of any shares of the Company…

[68] Skychain argues that under this provision, the Petitioner had to disclose in the advance notice and circular that it was acting jointly and in concert with other shareholders, particularly Mr. Zhang, 1111, Mr. Jung, and perhaps others, to elect the Dissident Slate. It stated the issue this way in its written submissions:

> Skychain's concerns about the Defective Notice were significant: [the Petitioner] had failed to set out the particulars of any arrangements, agreements, or understandings it had with other shareholders <u>regarding the voting of shares</u>, and it excluded material information about the Dissent Nominees and their connections to Bill Zhang.
>
> [Emphasis added]

[69] However, s. 14.12(5)(b) does not require the nominating shareholder to disclose any arrangement, agreement or understanding with other shareholders "regarding the voting of shares". An arrangement, agreement, or understanding need only be disclosed if it gives the nominating shareholder "a right to vote or direct the voting of any shares of the Company". There is nothing s. 14.12(5)(c) that requires the Nominating Shareholder to disclose that it is simply working or collaborating with other shareholders towards electing a dissident slate. Even if the Nominating Shareholder has an arrangement, agreement, or understanding with others to collaborate on the election of a dissident slate, that only falls within s. 14.2(5)(c) if the arrangement, agreement, or understanding confers on the Nominating Shareholder "a right to vote or direct the voting of any shares". There is no evidence of such an agreement, understanding, or arrangement here.

[70] Mr. Zhou deposed that "at no time was 115 [the Petitioner] under any arrangement or agreement with any other shareholder that obliged it or any other person to direct the voting at the 2024 AGM in any particular way." Nor is there evidence of such an agreement or arrangement in the record as it existed when the advance notice and dissident proxy circular were issued.

[71] It is undeniable some or all of Mr. Zhou, Mr. Zhang, the directing minds behind 1111/The9, Walson Wang, possibly Frederick Jung, and perhaps others worked in a co-ordinated way to achieve their common objective of replacing the Skychain board with a slate that was sympathetic to, if not aligned with, Mr. Zhang. Mr. Zhou was frank about this in cross examination on his affidavit:

> Q. And so you, Bill [Zhang], and Walson all agreed that you would work together towards replacing the board and management of Skychain; correct?
>
> A. Right.
>
> Q. And as part of that, you, Bill and Walson all agreed that 1154557 [the Petitioner] and 1151152 would also be part of trying to change the board and management of Skychain; correct?
>
> A. Yes

Mr. Zhou also confirmed that he and Mr. Zhang discussed the nominees for the Dissident Slate before the dissident proxy circular was issued.

[72] The fact that the Petitioner adopted, word for word, 1111's dissident proxy circular and the law firm that drafted it shows there was at least an arrangement if not an agreement between the Petitioner and The9 (which controlled 1111) regarding the voting of shares. However, none of this amounts to an agreement, arrangement, or understanding "pursuant to which [the Petitioner] has a right to vote or direct the voting of any shares of the Company".

[73] In this respect, s. 14.12(5)(b) is worded differently than similar types of provisions found in articles of other companies. For example, Skychain cites *Swan v. Nickel 28 Capital Corporation*, 2023 BCSC 1262, but in that case the provision in the company's articles included this requirement for the content of an advance notice:

> (b) as to each Nominating Shareholder giving the notice, and each beneficial owner, if any, on whose behalf the nomination is made:
> …
>
> (v) full particulars of any proxy, contract, relationship arrangement, agreement or understanding pursuant to which such person, or any of its affiliates or associates, or any person acting jointly or in concert with such person, has any interests, rights or obligations **relating to the voting** of any securities of the Company or the nomination of directors to the board;
>
> [Emphasis added]

[74] Skychain argued this case as though its Articles were similarly worded. Had that been the case, it may be that the Petitioner would have been required to disclose its coordination with other shareholders as an understanding or arrangement "relating to the voting of any securities" but that is not how s. 14.12(5)(b) is written.

[75] Nor is there anything in s. 14.12(5)(b) that would have compelled the Petitioner to disclose connections between members of the Dissident Slate and Mr. Zhang or other information found in the memorandum Skychain presented to the chair at the November 6, 2024 meeting. Skychain argues disclosure of these connections was critical for Shareholders to make an informed choice about their

proxies, particularly in light of Mr. Zhang's history with the company and the litigation against him. That may well be true but it does not change the clear wording of s. 14.12(5)(b) which does not require disclosure of such information.

[76] Moreover, Skychain's deponent conceded in cross-examination that this information was given to shareholders through Skychain's press releases:

> Q. And those press releases contained the information that you considered to be important for the shareholders to know?
>
> A. Correct.
>
> Q. And while there could have been more details, there was nothing significant that you left out?
>
> A. I can't say that. But we picked this one key information.
>
> Q. Would you agree with me that the shareholders had information about Bill [Zhang] and his group from your press releases before the AGM?
>
> A. I don't know how many people read the news releases. I -- I don't know.
>
> Q. That's not the question. The question is that the shareholders had that information available to them?
>
> A. We made it available to the shareholders.

[77] Skychain further argues that the Petitioner was required to disclose this information and its coordinated efforts with other shareholders under applicable corporate and securities laws as mandated by the second part of s. 14.12(5)(b), which calls for disclosure of:

> …any other information relating to such Nominating Shareholder that would be required to be made in a dissident proxy circular in connection with solicitations of proxies for election of directors pursuant to the *Business Corporations Act* and Applicable Securities Laws.

[78] Skychain argues that National Instrument ("NI") 51-102 compelled the Petitioner to include information in its circular about each Dissident Slate candidate's connections with Mr. Zhang. Section 9.2(b) of NI 51-102 sets out the requirement for any person who solicits proxies from registered securityholders to send an information circular to each registered securityholder. It defines an information circular as a "completed Form 51-102F5 *Information Circular".* Skychain argues the Petitioner was required by item 5(b) of that form to "describe and disclose each

person or company by whom, or on whose behalf, directly or indirectly, a proxy solicitation is made".

[79] Item 5(b) reads:

> Briefly describe any material interest, direct or indirect, by way of beneficial ownership of securities or otherwise, of each of the following persons or companies in any matter to be acted upon other than the election of directors or the appointment of auditors:
>
> …
>
> (b) if the solicitation is made other than by or on behalf of management of the company, each person or company by whom, or on whose behalf, directly or indirectly, the solicitation is made;

[80] I do not read the form as requiring disclosure of the coordinated efforts among the Petitioner, Mr. Zhang, The9/1111, and others. Nor does it call for disclosure of connections between the Dissident Slate candidates and Mr. Zhang. It calls for disclosure of solicitations that are made on behalf of others. Although there was coordination amongst the various players in the effort to replace the board with the Dissident Slate, the Petitioner's solicitation was not made on behalf of anyone other than itself. Further, item 5(b) applies to any matter to be acted upon "other than the election of directors". Here the proxies concerned the election of directors.

[81] Thus, to the extent it can be inferred that the chair's decision to invalidate the yellow proxies was based on s. 14.12(5)(c), as Skychain suggests, I find it was based on an incorrect and unreasonable reading of that provision. The wording of the section clearly applies where an agreement, arrangement or understanding confers on the Nominating Shareholder a right to vote or the direct the votes of shares. It does not capture the kind of coordination the Petitioner engaged in with others in this case.

[82] It follows that I find that the chair improperly excluded the yellow proxies with the effect that the Petitioner and others who signed yellow proxies were deprived of their right to vote at the AGM. I find that is oppressive or unfairly prejudicial conduct against those shareholders, including the Petitioner.

V. Remedy and Conclusion

[83] In summary, I find the decision to invalidate the yellow proxies procedurally and substantively offended the Petitioner's legitimate expectations relating to the voting of shares at the November 2024 AGM. Procedurally, the Petitioner and other shareholders who signed yellow proxies were entitled to at least some explanation from an independent chair for the decision to reject their proxies. There was no such explanation and the chair's refusal to give that explanation in the circumstances gave rise to a reasonable apprehension that he had not decided the matter impartially.

[84] Substantively, the chair's decision cannot stand as it was based on an unreasonable reading of Skychain's Articles. There is nothing in the Articles that compelled the Petitioner to disclose its coordinated effort with other shareholders in the absence of an arrangement or understanding pursuant to which the Petitioner had a right to vote or direct the voting of securities of the company. Whatever arrangements or understandings existed in this case, there is no evidence they went that far.

[85] I therefore accept that the AGM was conducted in a manner that is oppressive or unfairly prejudicial to the Petitioner.

[86] The court has a very broad discretion under s. 227(3) to remedy oppressive conduct. The Petitioner seeks a number of orders including a declaration that the AGM was conducted oppressively, an order setting aside all resolutions passed at the AGM, an order setting aside the acclamation of the board, declarations as to the validity of the yellow proxies, and orders essentially declaring the yellow proxies to have been voted with the effect that the Dissident Slate should be declared elected. It also seeks an order invalidating all decisions taken by Skychain management since the AGM.

[87] However, the Petitioner made no written or oral submissions on these remedies and Skychain simply argued that many of them are unworkable. I am not prepared to make the sweeping orders sought by the Petitioner without submissions.

Some of those proposed orders, such as invalidating past actions of the company, could have far reaching effects that have not been addressed. The issue of remedy is also complicated by the fact that the petition was heard on August 28, 2025, almost ten months after the AGM, and Skychain's 2025 AGM must be held before the end of this year.

[88] Based on the submissions I have received, I would make the declaration that the conduct of the 2024 AGM was oppressive or unfairly prejudicial to the Petitioners and that the Chair improperly found the yellow proxies to be invalid. It would seem to follow from that declaration that an order setting aside the business conducted at that meeting might be appropriate but the implications of this have not been addressed in argument.

[89] Thus, I would invite the parties to make submissions on the appropriate remedy and form of order. They may do so either in brief written submissions or in person or both. Counsel are to agree on a schedule to exchange any written submissions. Those submissions are to be filed with the court and provided electronically to Supreme Court Scheduling no later than two weeks from the date of this judgment unless counsel agree to a different schedule. If counsel wish to address the matter orally, they may submit a request through Supreme Court Scheduling for a hearing of not more than one hour at 9:00 a.m. on a date suitable to the parties and the Court. Submissions are to be based on the record as it stands. Neither party has leave to add to the record.

[90] I award costs to the Petitioner at scale B.

"Kirchner J."