IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Green Mile Original Ltd. v. MacDonald,* 2025 BCSC 1851

Date: 20251003
Docket: S257007
Registry: New Westminster

Between:

Green Mile Original Ltd.

Petitioner

And

David William MacDonald

Respondent

Before: The Honourable Mr. Justice Harvey

Reasons for Judgment

Counsel for the Petitioner:	G. Buchanan
Counsel for the Respondent:	M. McDonald
Place and Date of Hearing:	New Westminster, B.C. July 16, 2025
Place and Date of Judgment:	New Westminster, B.C. October 3, 2025

Introduction

[1] This is an application by the respondent, David MacDonald, pursuant to Rule 22-1(3) of the *Supreme Court Civil Rules*, to set aside orders and declarations made by me on May 16, 2025 after a Chambers hearing at which he was not present.

[2] The petitioner, Green Mile Original Ltd. ("Green Mile"), opposes the application arguing, primarily, that the respondent was wilfully absent from the proceeding after having been properly served and, once served, notified of the hearing date despite him not having filed a response to the petition.

Background

[3] The petitioner, Green Mile, is a company incorporated pursuant to the laws of Canada. It produces marihuana under a production license. The respondent was employed by the petitioner as the grower and was one of the three original shareholders.

[4] On or about July 28, 2022, Shaun Ashworth, Grant Curtis and the respondent were each issued 1,000,000 common shares in Green Mile. The consideration for the share allocation was a subscription price of $100.

The Underlying Petition

[5] In addition to the subscription price, Green Mile, through its director Mr. Ashworth, asserts the three shareholders were, by agreement, to pay an additional $100,000 to Green Mile "in exchange for their shares". It is contended that both Mr. Ashworth and Mr. Curtis have complied with the agreement.

[6] On July 28, 2022, Mr. Ashworth, on behalf of Green Mile, acknowledged that he had "received the monies from the shareholders the amounts set opposite their names, in full payment of the subscription price of the following shares in Green Mile".

[7] In its petition, Green Mile asserts that contrary to the text of the resolution and contrary to the aforementioned acknowledgement, the respondent made no payment in relation to the shares of Green Mile.

[8] The petition states that, since August 2024, the respondent has neglected or refused to sign any of Green Mile's corporate documents, has had no involvement with Green Mile, and has rebuffed any efforts by either Mr. Ashworth or Mr. Curtis to communicate with him. The petition carries on to note "any outstanding offer for MacDonald to purchase shares in Green Mile has since been revoked".

[9] In his sole affidavit before the Court at the May 16 hearing, Mr. Ashworth deposed that both he and Mr. Curtis complied with the purchase price for the shares; $100 for 1,000,000 shares and payment of the additional $100,000 to Green Mile which was "understood and agreed by the parties" to be paid. Nothing in writing was produced respecting the $100,000 payment.

[10] Despite assertions of non-compliance with funding agreements and/or failing to sign corporate documents, the sole basis upon which the petition is brought forward is that Mr. MacDonald's shares were wrongfully issued as a result of his failure to pay the subscription price and that he was incorrectly entered on the security register as the owner of those shares.

[11] The affidavit of Mr. Ashworth goes on to say:

> Contrary to the text of the Resolution, the Subscription, and the Receipt, and contrary to the Agreement, no payment has ever been received from MacDonald in relation to the shares of Green Mile.

[12] In opposition to that assertion is the fact that Mr. McDonald's name was subsequently entered into Green Mile's security register as owner of 1,000,000 shares and a receipt for payment was issued.

[13] That situation endured from July 28, 2022 until in or about August 2024, at which time the Ashworth affidavit asserts "MacDonald has had no involvement with

Green Mile and has refused to return any attempts made by myself or Curtis to communicate with him".

[14] Mr. Ashworth deposed that the documents purporting to confirm the issuance of Green Mile shares to the respondent were mistakenly signed by him and, "[p]rior to executing those documents, I should have waited to confirm that MacDonald had made the payment as agreed". Finally, it is noted "[i]f any offer for MacDonald to purchase shares in Green Mile still existed, it was formally revoked in writing on February 25, 2025".

[15] Curiously, at least to me, the corporate records attached to the Ashworth affidavit provide confirmation of a share subscription receipt for both Mr. Curtis and Mr. MacDonald, but nothing for Mr. Ashworth. Nonetheless, all three are noted on the securities register as shareholders in the amount of 1,000,000 shares each.

[16] No reference was made to any written agreement respecting payment of $100,000 by each of the shareholders to Green Mile, nor was there any documentary support in the Ashworth affidavit of monies actually having been received in the corporate account of Green Mile from either Mr. Ashworth or Mr. Curtis.

[17] The letter to Mr. MacDonald referenced in the Ashworth affidavit reads, in part:

> We are informed that Dave failed or refused to pay the subscription price for 1,000,000 Common shares in the Company (the "Shares") at an issue price of $0.0001 per share (or $100.00 in aggregate). We also are informed that any property given by Dave to the Company, and all services rendered by Dave benefitting the Company, were paid for or otherwise reimbursed by the Company at the respective fair market value of such property or rendered services. Lastly, we are informed that Dave refused or failed to fulfil two conditions of the issuance of the Shares, namely: (a) provide the Company with $100,000; and (b) to sign an unanimous shareholders agreement.

[18] It carries on to state:

> Pursuant to s.25(3) of the *Canada Business Corporation Act*, shares cannot be issued until due consideration is fully paid.

> Take notice that the Company is rectifying its corporate records on the basis that Dave's Shares were not validly issued and therefore were not issued. For greater certainty, the offer of the shares and have Dave as a shareholder of the Company is revoked.

[19] The legal basis underlying the petition and Green Mile's application before me on May 16, 2025 is s. 243(1) of the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44 [*CBCA*], which reads:

> 243 (1) If the name of a person is alleged to be or to have been wrongly entered or retained in, or wrongly deleted or omitted from, the registers or other records of a corporation, the corporation, a security holder of the corporation or any aggrieved person may apply to a court for an order that the registers or records be rectified.

[20] Section 248 of the *CBCA* provides that such an application may be made by petition. Section 243(3) of the *CBCA* provides that, in connection with such an application, the court is empowered to pronounce, if it thinks fit, an order requiring the registers or other records of the corporation be rectified.

The May 16, 2025 Hearing

[21] The hearing before me on May 16, 2025 took place in the respondent's absence. Counsel for the petitioners provided an affidavit of Mahmood Thawer, process server, deposing to personal service upon Mr. MacDonald on March 31, 2025, of the petition, the affidavit of Shaun Ashworth, as well as a letter from Graham Buchanan to Mr. MacDonald dated March 11, 2025.

[22] Mr. Thawer deposed he served the document upon the respondent at 13481 Harris Road, Pitt Meadows, British Columbia, at 5:51 p.m. on March 31, 2025. The means by which identification was made is "that the person I served acknowledged they were David William MacDonald when I asked for them by name".

[23] Additionally, the petitioner's counsel provided me with the affidavit of attempted service of Gregory Carrington, who deposed that on April 27, 2025, he attended the Harris Road residence and spoke with the homeowner, an adult female. Mr. Carrington identified himself as a process server attempting to serve Mr. MacDonald with a copy of the notice of hearing of the petition. He further

deposed that the homeowner stated she knew the respondent for a long time but he did not live at her residence but lives “somewhere in Surrey BC”.

[24] The affidavit goes on to state the homeowner attempted to place a phone call to the respondent but advised Mr. Carrington he did not answer. However, minutes later, the homeowner answered a call on her cell phone and appeared to be speaking with the respondent and informed him that there was someone present to serve him with a court document relating to the “Green Mile Original Ltd matter”. The conversation ended “abruptly”.

[25] Mr. Carrington deposed that the unidentified homeowner then stated that the conversation she had was with David William MacDonald. She went on to say he was “too busy to talk with either I (Carrington) or her”. Mr. Carrington deposed “I left my cellphone number … with the homeowner, requesting that she contact the respondent again and have him call me”.

[26] Mr. Carrington deposed that, on April 27, 2025, he placed a call to 604-805-0357 but no one answered. Moments later, he received a call back from that number and a male “who sounded to be Caucasian and 30 to 45 years old asked if I had just called his number". The Carrington affidavit goes on to say he asked if the caller was Dave, to which the caller replied yes and asked what the call was about.
Mr. Carrington then asked if he was Dave MacDonald and told the caller he was a process server. The caller abruptly ended the phone call.

[27] Mr. Carrington deposed that he re-called the number above and left a voice message stating that he was process server attempting to serve a document on Mr. MacDonald and asked for a call back. No return call was ever received.

[28] The May 16, 2025 hearing proceeded in the respondent’s absence and all of the orders sought by the Green Mile were granted.

The May 16, 2025 Order

[29] The May 16, 2025 order reads as follows:

THE COURT DECLARES that:

1. David William Macdonald was wrongly entered into the central securities register of Green Mile Original Ltd. as the owner of 1,000,000 common shares.
2. The Subscription, as defined in Part 2 of the Petition filed in this action on March 10, 2025 (the "Petition"), is void and of no legal effect.
3. The Notice, as defined in Part 2 of the Petition, is void and of no legal effect.

THIS COURT ORDERS that:

4. All references to David William MacDonald in the Green Mile Original Ltd. central securities register be removed.
5. All references to David William MacDonald in the Resolution, as defined in the Petition, be removed.
6. The Subscription, as defined in the Petition, be removed from Green Mile Original Ltd.'s minute book.
7. All references to David William MacDonald in the Receipt, as defined in the Petition, be removed.
8. The Notice, as defined in Part 2 of the Petition, be removed from Green Mile Original Ltd.'s minute book.
9. All references to David William MacDonald in the ISC Register, as defined in the Petition, be removed.
10. Green Mile Original Ltd. is authorized and directed to take all further steps reasonably necessary to give effect to the declarations and orders above, including making all required corrections to its corporate records and filings so as to reflect that David William MacDonald owns no Green Mile Original Ltd. shares.

Parties' Positions

[30] The respondent denies being served as described by Mr. Thawer, noting he has never lived at the Harris Road address referenced in the affidavit. Instead, he says "a process server left the Petition and the Letter at 13481 Harris Road, Pitt Meadows, British Columbia. I was never personally served with the Petition."

[31] The respondent goes on to say he lives at an address in Surrey and that the address listed as the place of service is his girlfriend's address. He similarly denies being served with the Notice of Hearing but made no reference to that portion of the Carrington affidavit dealing with the phone calls.

[32] In a subsequent affidavit, the respondent expanded on his previous statement and acknowledged his girlfriend told him “a package of documents” had been left for him. He said his only experience with a “petition” was a document circulated to obtain signatures to try to legalize cannabis. He said he did not appreciate that he “was required to file a response at that time”. He denied any call advising of the hearing date.

[33] The respondent submits that he brought this application to set aside the May 16, 2025 order in a reasonably prompt manner. He submits that while the order was made May 16, 2025, he was only made aware of the order on June 11, 2025, and Green Mile has not taken any irrevocable steps in reliance on the order.

[34] The respondent argues that he has a number of defences to the underlying petition which are meritorious or at least worthy of investigation. He submits that allowing the May 16, 2025 order to stand and denying him the opportunity to advance these defences would constitute a miscarriage of justice.

[35] Green Mile submits that the respondent was personally served with the petition and the Ashworth affidavit, failed to take any steps to respond, and is thereby guilty of wilful default in respect of his non-appearance at the May 16, 2025 hearing. While Green Mile accepts that the respondent’s application to set aside the May 16, 2025 order was made in a reasonably prompt fashion, it disputes that the respondent has raised a defence worthy of investigation. In sum, Green Mile argues that allowing the May 16, 2025 order to stand would not constitute a miscarriage of justice and thus that the order ought not be set aside under Rule 22-1(3).

Discussion

The Legal Framework

[36] The respondent applies to set aside the May 16, 2025 order pursuant to Rule 22-1(3) of the *Supreme Court Civil Rules*, which deals with setting aside orders made under Rule 22-1(2) as follows:

> Failure of party to attend
>
> (2) If a party to a chambers proceeding fails to attend at the hearing of the chambers proceeding, the court may proceed if, considering the nature of the chambers proceeding, it considers it will further the object of these Supreme Court Civil Rules to do so, and may require evidence of service it considers appropriate.
>
> Reconsideration of order
>
> (3) If the court makes an order in circumstances referred to in subrule (2), the order must not be reconsidered unless the court is satisfied that the person failing to attend was not guilty of wilful delay or default.

[37] The test to set aside an order under Rule 22-1(3) is essentially the same as that for setting aside a default judgment. In *First West Credit Union v. Bizarro*, 2024 BCSC 2047, I stated that test as follows:

> [45] The test for reconsideration under Rule 22-1(3) is essentially the same as that for setting aside a default judgment as described in *Miracle Feeds v. D. & H. Enterprises Ltd.* (1979), 10 B.C.L.R. 58 (Co. Ct.): *B2B Bank v. Sinnarajah*, 2021 BCSC 1475 at paras. 42–43.
>
> [46] That test is as follows:
>
> > a) the applicant must not be guilty of any willful default in respect of the nonappearance;
> >
> > b) the application to set aside must have been made as soon as reasonably possible; and
> >
> > c) the applicant must show there is a meritorious defence to the action or at least a defence worthy of investigation.

[38] Subsequent case law analysing the test set out above makes clear that an applicant need not satisfy all three elements of this test to succeed in setting the order aside. Rather, as Justice Kirchner recently explained in *Jerry Brar Mortgages Inc. v. Schuetz*, 2025 BCSC 62, when an application to set aside an order is brought under Rule 22-1(3), the court must be satisfied that permitting the impugned order to stand would not constitute a miscarriage of justice:

> [24] In *CMHC v. Bhalla*, 2008 BCSC 1352, Justice Martinson outlined a three-prong test as follows for the application of this rule:
>
> > a) the applicant must not be guilty of any wilful default in respect of the non-appearance;
> >
> > b) the application to set aside must have been made as soon as reasonably possible; and

> c) the applicant must show that there is a meritorious defence to the action or at least a defence worthy of investigation.
>
> [25] Justice Martinson added at para. 32 that even if the applicant fails to establish all three components, the court must still be satisfied on a balance of probabilities that permitting the order to stand would not constitute a miscarriage of justice.
>
> [26] This approach has been restated more recently in *The Toronto-Dominion Bank v. Buchholz*, 2022 BCSC 313 at paras. 19-22.

[39] As MacNaughton J. (as she then was) stated in *Liu v. Choi*, 2023 BCSC 866:

> [12] … even in the face of wilful default, the court retains jurisdiction to set aside an order granted in default if not doing so would amount to a miscarriage of justice.
>
> [13] Assessing whether a miscarriage of justice would occur requires considering the timing of the application to set aside the default order and whether there is a meritorious defence to the petition or, at least, a defence worthy of investigation.

Analysis

[40] The primary basis on which Green Mile opposes the respondent's application is the respondent's wilful default.

[41] Green Mile argues I should reject the respondent's denial of service of both the petition and supporting affidavit. It notes the absence of any material from the occupant of the Harris Road address or the respondent to rebut the assertions contained in the affidavit of Mr. Carrington as to the follow-up attempt to serve the respondent with the Notice of Hearing.

[42] On the question of wilful default, given the totality of the evidence, I find it more likely than not the respondent had, at the very least, constructive notice of these proceedings via the conversation he relates with his girlfriend.

[43] Turning then to the second component of the test, Green Mile concedes, and I am satisfied, that the respondent's application to set the May 16, 2025 order aside was made in a timely fashion. Green Mile does not suggest that it has taken any irrevocable steps pursuant to the May 16, 2025 order.

[44] As to the issue of whether the respondent has raised a meritorious defence to the petition or at least a defence worthy of investigation, I find that he has.

[45] The respondent deposes to the fact he paid the subscription price in cash to Mr. Ashworth, the sole director of Green Mile, and the shares were issued. His payment, he says, was acknowledged by the confirmation of the share subscription receipt on Green Mile's behalf, confirming receipt of full payment of the subscription price from both himself and Mr. Curtis. Further, on the same date, notice was provided as to the issue of shares on behalf of Green Mile, confirming 1,000,000 common shares had been issued to the respondent on July 28, 2022. Green Mile's security register reflected that shareholding by the respondent.

[46] The respondent further referenced an unsigned copy of a shareholder's agreement, a document he says he signed but did not maintain an executed copy. The agreement makes no reference to the payment by each of the shareholders of $100,000 to the account of Green Mile.

[47] The respondent further notes that despite Green Mile's cash flow difficulties throughout the term of his involvement, and especially in November and December 2023, neither Mr. Ashworth nor Mr. Curtis requested payment from him of any amount let alone the $100,000 alleged to be outstanding from the informal agreement.

[48] The respondent attached text messages received from Green Mile during the relevant period of time following his disengagement from management – i.e. after August 2024. None of them reference the cash call on the shareholders or any default on the part of the respondent either as to the alleged agreement or default in his obligation to pay for the issued shares.

[49] More compelling are portions of those text messages attached to the respondent's affidavit where Mr. Curtis advised:

> I hope nothing but the best for you Locks at united have been changed alarm codes as well Farm as well If you want to book a call with Shaun and I this

> week to discuss buyout let us know what day and time I expect this doesn't come as a surprise since you have not spoken to either of us in 6 days

[50] Clearly, by the date of that text, there was no mention of revocation of the respondent's shares for non-payment.

[51] In a later email from Mr. Ashworth to the applicant on September 8, 2024, Mr. Ashworth notes:

> Not sure where you got your numbers from but if I do the math, you would still owe us money ($100,000 buy-in) which was never received.
>
> What we are doing here is trying to make this a simple and easy exit. The truck payment for a year and insurance is a very good deal. If you do not think so then I will ask you to return it and we have to get lawyers involved. This is not a simple and easy exit as it will just cost us both money. For me personally, I would prefer us not to go down this road as it will make things a lot worse. Either way I am prepared. I just don't think it is in your best interest.
>
> …
>
> I would like to remind you that when you joined our team you were supposed to pay $100,000.00 buy in to the company. This never happened. The above offer seems very fair. Once agreed upon I will have lawyers draft up a document for you to sign, you will also sign the shares back to Green Mile.

[52] The respondent notes and I agree that nowhere in the communications is there any reference, more than two years after the alleged error of issuing shares, to the rationale underlying the petition: non-payment of the $100 for the initial share distribution. Nowhere in the material before me is it explained how, two years after the preparation of the corporate documents referenced above indicating payment by the respondent, Green Mile came to learn of the alleged mistake.

[53] While issues of credibility will no doubt arise given the asserted payment was made in cash, without reference to the corporate accounts which were not before the Court at the May 16 hearing or now, the applicant's allegations in my mind raise, at the very least, a defence to the allegation of non-payment for the shares worthy of investigation.

[54] I have concluded, in light of the above, that there is a real risk of a miscarriage of justice if the May 16, 2025 order is not set aside; that being forfeiture

of his interest in the petitioner company based upon a disputed assertion; the non-payment for the respondent's share allotment despite written confirmation at the time of the issuance and no mention of the respondent's failure to pay until years after they were issued.

[55] While I have concluded that the respondent was, at best, wilfully blind to the nature of the documents, whether personally served upon him or simply brought to his attention through telephone calls, such wilful default is, according to the authorities I have cited, not determinative. The respondent brought this application promptly and Green Mile has made no irrevocable steps in reliance on the May 16, 2025 order. Further, and more importantly, given my statement about the merits of the defence offered on the singular ground upon which the petition has been brought (non-payment of the issue price of the shares), I am satisfied that there is a real risk a miscarriage of justice could occur if the order is allowed to stand and, in the result, set aside the order of May 16, 2025.

[56] That being said, given my conclusion that the respondent was, at the very least, wilfully blind as to the outstanding legal proceedings, it is my view that the proper remedy is to order costs, which I set in the amount of $1,500, for the petitioner's appearance before me on May 16, 2025. Further, I order such costs payable forthwith.

[57] Upon payment of the costs, the respondent will be at liberty to file a response to the underlying petition. Given the nature of the credibility issues I referred to, the parties should consider whether this matter should be referred to the trial list despite the wording of s. 243(1) of the *CBCA*.

[58] Costs of this application shall be costs in the cause.

"Harvey J."