IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Au v. Sunrise Engineering & Manufacturing Inc.,* 2025 BCSC 1968

Date: 20251010
Docket: S234382
Registry: Vancouver

Between:

Jimmy Tat Yin Au, personally and as Trustee of the Au 2021 Family Trust

Petitioner

And

Sunrise Engineering & Manufacturing Inc., Kayland Investments Inc., Peterson Cheung, Jean Huang and Yuyan Tan

Respondents

Before: The Honourable Justice Thomas

Reasons for Judgment

Counsel for the Petitioner:	P. Roberts, K.C.
Counsel for the Respondents:	D.D. McWhinnie R. Sissons
Place and Date of Trial/Hearing:	Vancouver, B.C. September 18, 2025
Place and Date of Judgment:	Vancouver, B.C. October 10, 2025

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Nature of Application

[1] This is a shareholder oppression proceeding seeking relief pursuant to ss. 227 or 324 of the *Business Corporations Act*, S.B.C. 2002, c. 57 [*BCA*].

The Parties

[2] Sunrise Engineering & Manufacturing Inc. ("Sunrise") is a privately held company which is in the business of manufacturing and repairing machines used in the pulp and paper industry. It was established in 1981.

[3] Kayland Investments Inc. ("Kayland") is a holding company that holds the property in which Sunrise operates its business.

[4] The petitioner, Mr. Au, and the respondents, Mr. Cheung and Ms. Tan purchased Sunrise and Kayland in 2022.

[5] The respondent, Ms. Huang, is the daughter of Ms. Tan and acts as her mother's representative.

Nature of the Dispute

[6] In 2021, Mr. Au was an engineer who was employed as a salesperson at Sunrise.

[7] In 2021, the former shareholders of Sunrise and Kayland approached Mr. Au about purchasing the companies from them so they could retire.

[8] Mr. Au, Mr. Cheung and Ms. Tan purchased Sunrise and Kayland. They created a new company to facilitate the purchase of and hold the shares in Sunrise and Kayland. They each owned an equal one-third interest in the new company.

[9] Mr. Au, Mr. Cheung and Ms. Tan became directors of the company and Mr. Au, Mr. Cheung and Ms. Huang became employees of the company after the purchase.

[10] The roles that each owner had in the company's operation as employees were undefined at the time of purchase. Additionally, there was no shareholders' agreement that would have specified how shareholders could divest their interests in the company.

[11] Shortly after the purchase, a dispute arose between Mr. Au and Mr. Cheng and Ms. Tan over the roles that Ms. Huang and Mr. Au would have in the company. This resulted in Mr. Cheng and Ms. Tan terminating Mr. Au’s employment with the company and removed him as a director.

[12] Mr. Cheng and Ms. Tan have offered to purchase Mr. Au’s shares. The parties have been unable to agree on a purchase price.

[13] Mr. Au brings this claim seeking the remedy of oppression to compel Mr. Cheng and Ms. Tan to purchase his shares in the company at a price set by the court.

[14] The key issue in determining an appropriate price are:

a) Whether Mr. Au’s shares should be subject to a minority discount; and

b) The methodology used by the appraiser in determining the value of the companies.

Reasonable Expectations and Exercise of Business Judgment

[15] The test to be applied when assessing a claim of oppression has been summarized in *BCE Inc. v. 1976 Debentureholders*, 2008 SCC 69 at paras. 72-88; and 89-94 [*BCE Inc.*] as follows:

a) Does the evidence support the reasonable expectations asserted by the claimant? This assessment includes consideration of:

   i. general commercial practice;

   ii. the nature of the corporation;

   iii. the relationship between the parties;

   iv. past practice;

   v. steps the claimant could've taken to protect themselves;

   vi. representations and agreements; and

   vii. fair resolution of conflicting interests.

b) Does the evidence establish that the reasonable expectation was violated by conduct falling within the terms "oppression", "unfair prejudice", or "unfair disregard"? Such conduct could include:

   i. wrongs of 'the most serious sort';

   ii. squeezing out a minority shareholder or giving preferential treatment to some shareholders; or unfairly reducing dividends.

[16] Not all conduct that is harmful to a shareholder gives rise to a remedy for oppression. The application of the principles noted above have to recognize that directors have a fiduciary duty to act in the best interests of the company. At times, this requires them to balance competing interests. Deference should be accorded

to business decisions made by directors taken in good faith; *BCE Inc.* at paras. 99-100.

[17] The central issue on this petition is whether removing Mr. Au from his roles as director of the company and an employee was oppressive or unfairly prejudicial to his rights as a shareholder.

[18] I agree with the respondent that, in order to resolve this issue, the court should consider the reasonable expectations of the petitioner and the business judgment exercised by Mr. Cheng and Ms. Tan in terminating Mr. Au's directorship and employment with the company.

Mr. Au's Expectations

[19] The fundamental dispute between the parties was a difference in the expectations between Mr. Au and Mr. Cheung and Ms. Tan with respect to:

a) The scope of Mr. Au's role as chief executive officer; and

b) The scope of Ms. Huang's role as chief financial officer. There was no dispute that Ms. Huang was acting on her mother's behalf such that for all intensive purposes Ms. Huang and Ms. Tan can be treated interchangeably.

[20] Mr. Au believed that he and Mr. Cheung would have equal responsibility for the day-to-day management of the company and would make decisions by consensus. Either of them could authorize expenditures of money up to $50,000 without the need for director or shareholder approval.

[21] Mr. Au was upset that Ms. Huang was involving herself in the day-to-day operation of the company and questioning a number of his decisions.

[22] On August 11, 2022, Mr. Au met with Mr. Cheung and expressed his concerns over Ms. Huang's involvement in the day-to-day management of the company; and that Mr. Cheung had been involving Ms. Huang in the day-to-day management of the company and providing her with access to financial information, the administration and distribution of passwords and deciding who has access to employment records.

[23] Mr. Au and Mr. Cheung disagreed over the role that Ms. Huang had in the company. This disagreement was not resolved at the August 11, 2022 meeting.

[24] On August 24, 2022, Mr. Au again met with Mr. Cheung and discussed his concerns over the role that Ms. Huang was playing in the company. Mr. Au made it clear that his view was that Ms. Tan was only an investor and Ms. Huang was to have no role in the day-to-day operations of the company.

[25] Mr. Au thought that there was an agreement with respect to a limitation on Ms. Huang's role in the day-to-day operations.

[26] On October 14, 2022, Mr. Au received an email from Ms. Huang rejecting two of his expense claims for international business trips and advising him that she had instructed payroll to deduct 12 days from his annual leave for the trips.

[27] Mr. Au replied to Ms. Huang that she was merely a shareholder of the company and that she had no authority to make these decisions. He told her that he would advise payroll to disregard her instructions. He sent a further email to Ms. Huang advising her that she was a shareholder and had no management role in the company.

[28] Mr. Cheung and Ms. Huang then met and terminated Mr. Au's employment and directorship with the company.

[29] Mr. Au says that he expected that Mr. Cheung and himself would be the sole managers of the company and that Ms. Huang's role, was limited to looking after her mother's interests as a shareholder; such that she would have no role in the management of the company.

[30] I do not accept that this expectation was reasonable for Mr. Au to hold. Ms. Huang was the chief financial officer and was paid a salary. Mr. Au was aware of this and simply did not accept that this provided her a role in the management of the company. He was mistaken in this regard.

[31] However, it was reasonable for Mr. Au to believe that his purchase of shares was linked to his position of a director and manager of the company, along with Mr. Cheung and Ms. Tan. This does not mean that he could not be fired from his employment position with the company, or lose his directorship.

[32] This issue depends on the basis for his removal from the company.

Was Mr. Au's Removal from the Company Reasonable/Executed in Good Faith?

[33] Mr. Cheung says that Mr. Au did not understand, or did not want to acknowledge, Ms. Huang's role in business. Regardless of what was right or wrong, he was concerned that Mr. Au's combative response to Ms. Huang was not consistent with the best practices of a manager or executive, nor was it in the best interest of Sunrise.

[34] Mr. Cheung believes that for the company to succeed, Mr. Au, Ms. Huang, and himself needed to work together in their respective roles. Based on the interaction described above, Mr. Cheung formed the impression that as long as Mr. Au remained in any position involving management or oversight of the company, whether as a director or employee, he would not be able to collaborate effectively with Ms. Huang and himself.

[35] Ms. Huang believed that Mr. Au appeared to have difficulty working cooperatively with both herself and Mr. Cheung and that it was not in the best interest of the company to continue with Mr. Au's involvement because of this. Ms. Tan agreed with Ms. Huang's assessment of this issue.

[36] The fundamental concern that I have with the positions put forward by Mr. Cheung and Ms. Huang is that the company did not have a formal shareholder agreement, and did not particularize the roles of the positions that Mr. Au, Ms. Huang and Mr. Cheung had as employees of the company.

[37] The root of the problem was that Mr. Au mistakenly believed that Ms. Huang had no role in the management of the company and her involvement was to be limited to that of a proxy director/shareholder acting on behalf of her mother.

[38] Although this issue was discussed a number of times, and a consultant was brought in to help clarify the situation amongst the parties, Mr. Au maintained his belief that Ms. Huang was not an employee of the company.

[39] In the past, when the three directors disagreed on issues, such as hiring employees, they put the matter to a vote. In each of these situations, Mr. Cheung and Ms. Huang voted together, defeating Mr. Au's position.

[40] In my view, given that Mr. Au's employment in the company was clearly tied to his purchase of shares, as directors of the company, Mr. Cheung and Ms. Tan had an obligation to amend the shareholders' agreement and clarify the exact roles that Mr. Au, Mr. Cheung and Ms. Huang had in the company. If Mr. Au disagreed with the resolutions and agreement, the matter could be put to a vote.

[41] I have no doubt that Mr. Au would have been disappointed if the result of the resolution would be to formalize Ms. Huang's role in the day-to-day management of the company. However, it would then be clear to Mr. Au that Ms. Huang was involved in the day-to-day management of the company.

[42] Mr. Cheung and Ms. Huang essentially terminated Mr. Au's role in the company for insubordination. In my view, it was not reasonable to do so until the exact roles of all of the parties had been specifically clarified and approved by the directors of the company. If Mr. Au then persisted, in my view, termination of his role in the company may have been appropriate.

[43] However, this was not done. Proceeding as they did was neither reasonable nor appropriate in the circumstances.

Remedies

[44] In my view, the appropriate remedy is to declare that the company conducted itself in a manner that was oppressive and unfairly prejudicial to Mr. Au, entitling him to relief pursuant to s. 227 of the *BCA*.

[45] I further order that the respondents are responsible for paying the fair market value of the petitioners' shares and the value of their shareholders' loan, plus pre-judgment interest from June 16, 2023, to the date of judgment.

Minority Discount

[46] There is a dispute as to whether a minority discount should be applied to the fair market value of the company.

[47] In this case, the respondents are seeking a minority discount and thus bear the burden of establishing its propriety. See *Olafsun v. Stomberg*, 2020 SKQB 122 at paras. 110 and 114, affirmed at 2023 SKCA 57.

[48] As a general proposition, the courts do not apply minority discounts to the valuation of an oppressed shareholder's shares in determining their fair market value, particularly where the transaction is an internal sale: *1043325 Ontario Ltd. v. CSA Building Sciences Western Ltd*., 2015 BCSC 1160 at paras. 18-19 and 29 [*1043325 Ontario Ltd.*].

[49] The rationale for this rule was summarized as follows in *1043325 Ontario Ltd.* at para. 29 as follows:

> … This is not a situation where a third party purchaser of the shares is receiving a minority position in the company the effect of the share purchase in this case will only be to increase the majority position of the respondent purchaser, and I'm satisfied that there is no reason in this case to reward the parties oppressive action with the discounted purchase price.

[50] Given my findings of fact, which form the basis for my declaration that the conduct of the company was oppressive, I see no reason to depart from the general rule that no minority discount should be applied.

Fair Market Value

[51] There is a dispute over the fair market value of the company. The company has been valued with respect to its two corporate assets, Sunrise and Kayland.

Sunrise

[52] The petitioner obtained a fair market valuation of Sunrise dated June 14, 2024 from XPS Group Inc. ("XPS"). This report concluded that the fair market value of Sunrise was a low valuation of $7,604,000, a midpoint valuation of $8,089,000 and high valuation of $8,573,000.

[53] The respondents engaged Tenet Valuations to prepare a limited critique on the XPS valuation. The limited critique agreed with the basis of valuation done by XPS for Sunrise and agreed that the asset approach used by XPS was appropriate. There was a substantial agreement between assumptions and adjustments made by XPS in the initial report.

[54] The critique does not purport to value the company but rather raises areas of concern that may cause the court to discount the valuation contained in the XPS report.

[55] XPS provided an updated appraisal which responds to all of the critiques raised in the critique report. In accepting and responding to the critiques, XPS provides an updated valuation of Sunrise, calculating a low valuation of $6,792,000 with a midpoint valuation of $7,000,000 and a high valuation of $7,208,000.

[56] The critique raises four critical concerns that the XPS report takes particular issue with.

Market Rent

[57] The critique calculates market rent based on 31,926 square feet and $19 per square foot, based on discussions with Sunrise management and Mr. Adam Xu. Neither of these sources are in evidence. The appraisal uses inputs based upon the Penny & Keenleyside Appraisal reports, modified by the 2024 property assessment, coming up with 32,967 square feet and $20 a square foot. In my view, the explanations provided by XPS are reasonable and I prefer their response in the updated appraisal on this issue.

Small Business Tax Deduction

[58] The critique assumes that the purchaser of the shares will likely be a competitor to the company and thus unable to use the small business tax deduction in determining corporate taxes. XPS includes this deduction based on the fact that the company utilizes this deduction and the sale will be to existing shareholders. In my view, the explanations provided by XPS are reasonable and I prefer their response in the updated appraisal on this issue.

Annual Maintainable Capital Expenditures

[59] The critique report notes that the assumptions and methods used in the appraisal were not unreasonable; however, it criticizes XPS for not considering the April 11, 2024, Paine Machine’s inspection report. This report is not in evidence, and I do not attribute any weight to the impact this has on the valuation.

Capitalization Rate

[60] The final issue relates to the appropriate capitalization rate, which includes the assessment of the weighted average cost of capital. The critique notes that the rate is somewhat discretionary and sets out a number of considerations upon

which it opines that the appropriate rate should be between 21.4% and 22.4% resulting in an overstatement of value of $900,000 on the high end and $1,900,000 on the low end.

[61] This alone would reduce the XPS appraisal from a low valuation of $5,704,000 to a high valuation of $7,673,000 with a middle valuation of $6.688,500; this does not account for the impact that this calculation would have on XPS's updated valuation.

[62] In response, XPS notes that there is no specific criticism of their methodology, only a preference for different facts. XPS provides a detailed analysis of the differences in the two methodologies and supports their calculations with calculations and specific criticisms of the inputs considered in the critique.

[63] In my view, the XPS calculations are detailed, rigorous and demonstrably supported by the literature. However, the key issue that remains is that the XPS assessment contains significant subjective factors that reasonable evaluators inevitably disagree over; and that these disagreements can have a considerable impact on the valuation.

[64] Consideration of subjective factors that go into an assessment of value are difficult to assess in this type of hearing. I am impressed with the detailed and logical explanations provided by XPS for how they accounted for these factors. However, I do have concerns arising from the issues raised by the critique report with respect to capitalization that the updated valuation may be higher than the fair market rate.

Other Issues

[65] The issues set out above are not the only points of disagreement. The reports illustrate a detailed back and forth on a number of issues that I have not mentioned. After reviewing the reports, my impression drawn from the exchange of the experts with respect to the capitalization rate remains; there are a number of subjective factors in the appraisals that reasonable people may differ over that could result in a reduction from the XPS appraisal. I was impressed by the fact that the XPS appraisal acknowledged issues raised by the critique report and revised their initial appraisal in the updated appraisal.

Conclusions

[66] Since the critique does not provide an assessment of value, in my view the appropriate starting point is to begin with is XPS's updated appraisal which provides a low valuation of $6,792,000, a midpoint valuation of $7,000,000 and a high valuation of $7,208,000.

[67] I am impressed with the detail and thoroughness of XPS's reply to the critique report and explanations of the methodology used in conducting the appraisal. However, as I noted previously I do have some concerns, in particular with the issues raised in the critique with respect to capitalization, that the XPS valutions through subjective factors overstates the market value and the company.

[68] Having considered these issues, in my view, the low estimate of valuation from the XPS updated appraisal represents the fair market value of Sunrise; which is $6,792,000.

[69] This would result in a value of the petitioner's shares of $2,264,000. In addition, he is entitled to repayment of his shareholder's loan of $677,333.

Kayland

[70] XPS provides a valuation of Kayland consisting of a low appraised value of $8,933,000, a midpoint of $9,071,000 and a high of $9,208,000.

[71] XPS provides a critique report which raises two substantive issues.

Discount Rate and Tax Year

[72] The critique report says that the use of a 5% discount rate by XPS in calculating an adjustment for the unrealized tax shield and the failure to account for the "half-year tax rule on new asset additions", led to an overstated valuation of $52,000 on the high end of the range. There would be no impact on the low end of the valuation.

[73] In addition, the critique report says that the use by XPS of an adjusted recoverable tax and distribution of $234,000 relying on the liquidated approach would overstate the value of the property by $234,000 at the low end of the assessment. There would be no impact on the high end of the valuation.

[74] XPS did not provide a response to these criticisms. I accept these two issues raised in the critique report and reduce the valuation accordingly.

Conclusions

[75] The adjusted valuation for Kayland would be a low of $8,699,000 and a high of $9,156,000 with a midpoint of $8,927,000.

[76] In my view, considering the appraisal report and the critique report as a whole, a fair market value for Kayland is $8,927,000. This would result in a value of the petitioner's shares for Kayland of $2,975,536.

Value of Shares and Loan

[77] I have calculated that the petitioner is entitled to the following from the respondents in exchange for his shares:

a) $2,264,000 for his shares in Sunrise;

b) $2,975,536 for his shares in Kayland; and

c) $677,333 in repayment of his shareholder's loan.

[78] Although the petitioner was successful and would normally be entitled to costs, the respondents conceded that the petitioner was entitled to the fair value of his shares and repayment of his shareholder loan.

[79] In these circumstances, I would like additional argument before making an order on costs.

[80] Therefore, if the parties are unable to agree on costs, they are to make a request to appear before me to resolve this issue. The request to appear (not necessarily the date of the appearance) is to be made within 30 days of the date of judgment.

"Thomas J."