Court of King's Bench of Alberta

Citation: Nova Oculus Canada Manufacturing ULC v Sather, 2025 ABKB 760

Date: 20251222
Docket: 2301-02211
Registry: Calgary

Between:

Nova Oculus Canada Manufacturing ULC

Plaintiff

- and -

Justin Sather, MacuMira Medical Devices Inc., Walter O'Rourke and Karmatar Consulting Inc., Jane Doe, John Doe and ABC Corporation

Defendants

Reasons for Decision
of the
Honourable Justice M.A. Marion

I. Introduction and Background

[1] The expressly named defendants (**Defendants**) in this action (**Action**), Justin Sather (**Sather**), MacuMira Medical Devices Inc. (**MacuMira**), Walter O'Rourke (**O'Rourke**) and Karmatar Consulting Inc (**Karmatar**) apply (**Application**) to strike all or parts of the amended statement of claim (**ASOC**) of the plaintiff, Nova Oculus Canada Manufacturing ULC (**Nova**) on the basis that the only court which has subject-matter jurisdiction to award the relief Nova seeks in its main claim is the British Columbia Supreme Court under section 301(2) of the *British Columbia Business Corporations Act*, SBC 2022, c 57 (*BCBCA*). The Defendants also assert that only the British Columbia Supreme Court has subject-matter jurisdiction over breach of fiduciary claims against a British Columbia corporation's directors.

[2] Nova opposes the Application on the basis that it does not (and could not) seek a remedy under section 301(2) of the *BCBCA*, and that the Alberta Court of King's Bench has subject-matter jurisdiction over the action (including the breach of fiduciary claims).

[3] For the reasons set out below, the Application is dismissed. The Alberta Court of King's Bench has both subject-matter and territorial jurisdiction over this matter.

II. Background

[4] The record on the Application is limited to an affidavit of a legal assistant setting out the pleadings. The core pleaded facts necessary to decide the Application do not appear controversial or in dispute.

[5] Nova is a British Columbia corporation incorporated in 2017. Its sole shareholder has at all times been Nova Oculus Holdings Co. Inc, which in turn is wholly owned by Nova Oculus Partners LLC (**Nova US**) (formerly known as The Eye Machine LLC (**TEM**)).

[6] Sather is an individual residing in Calgary. He was an officer and director of Nova from May 2017 to June 2019 and is presently an officer and the sole director and a direct or indirect shareholder of MacuMira.

[7] O'Rourke is an individual residing in Ontario. He was an officer and director of Nova from 2017 until December 2022. Karmatar is an Ontario corporation of which O'Rourke is the sole director and shareholder. Karmatar provided consulting services to Nova pursuant to a Services Agreement.

[8] The action involves a dispute about a biomedical device (**Device**) and related technology for the treatment of an eye disease known as age-related macular degeneration (**AMD**). This matter has previously been before this Court and Justice Neufeld summarized the action as follows, in ***Nova Oculus Canada Manufacturing ULC v Sather***, 2024 ABKB 517 at paras 1-5:

> [1] [...] [Nova] is a medical technology company. By 2019, it had developed a new medical [Device] and related technology to treat age-related macular degeneration. It had also obtained patents and registered patent applications in selected countries and had begun clinical trial testing required for commercialization. [Nova]'s sole shareholder is a US holding company, which is owned by [Nova US]. [Nova US] is majority-owned by Eva Pocklington. Eva Pocklington is the wife of Peter Pocklington, a former [Nova] director, who is well known as a former owner of the Edmonton Oilers.
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> [2] [MacuMira] is a Canadian company whose president and director is [Sather]. In 2015, Eye Machine Canada (Licencing) Corp ("EMC"), a subsidiary of MacuMira, entered into a licence agreement with the precursor of Nova US, [TEM], to lease, market, promote, and distribute the [Device] in Canada. Among other things, that agreement provided that EMC could terminate the agreement and be entitled to the return of its $1MM USD option payment if Health Canada did not grant regulatory approval of the device by October 10, 2016. In 2019, [MacuMira] initiated clinical trials for the medical device.

> [3] On October 27, 2020,[1] [Nova] and [MacuMira] entered into an agreement entitled Assignment of Inventions and Related Patent Rights (the "2020 Agreement"). The 2020 Agreement was negotiated and signed by [O'Rourke] in his capacity as president and CFO of [Nova]. At the time, he was also the sole director and officer of [Nova], and the chief operating officer of Nova US. His counterpart at [MacuMira] was [Sather]. [MacuMira] was represented by counsel, the firm of Maverick Law, and prepared the 2020 Agreement. [Nova] was not represented by counsel.
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> [4] Under the 2020 Agreement, [MacuMira] was granted an assignment of title and transfer of worldwide rights to the [Device] in return for certain benefits, including royalties and other payments. The effect was to upgrade [MacuMira] from licensee of the [Device] to owner. [MacuMira] aimed to secure necessary regulatory approvals in Canada to commercialize the [Device], which it says that [Nova] and its parent, Nova US, would not be able to do because of its inability to raise investment capital—a byproduct of restrictions imposed on Mr. Pocklington due to securities violations in the US.
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> [5] On September 1, 2022, [Nova] and [MacuMira] executed an amended and restated licensing agreement (the "2022 Agreement"). It also increased the consideration that would be payable to [Nova] as and when commercialization was achieved. A patent agent was engaged to undertake the legal work required for the assignments to take effect.

[9] There appears to have been several procedural steps in the Action since it was filed. For the purpose of this Application the following are pertinent:

(a) on February 16, 2023, Nova commenced the action;

(b) on April 24, 2023, O'Rourke and Karmatar filed their statement of defence;

(c) on May 19, 2023, Sather and MacuMira filed an application for summary dismissal, which has not yet been heard and appears to have been directed to be heard in a trial of an issue (**Trial**) by Justice Dario;

(d) on May 31, 2023, Sather and MacuMira filed their statement of defence;

(e) on July 2, 2025, with the consent of the defendants, Nova filed the ASOC;

(f) on August 7, 2025, the Defendants filed the striking Application;

(g) it appears that, on October 17, 2025, Justice Dario directed the Trial to be scheduled and this Application to be scheduled to a separate special application; and

(h) on October 31, 2025, the Application was approved to be heard on the commercial list.

[1] The ASOC asserts that 2020 Agreement was dated October 2020 but was executed at a later date.

[10] I heard the Application on December 17, 2025 and reserved my decision. On December 19, 2025, I received supplemental written submissions.

[11] For the reasons set out below, the Application is dismissed.

III. Issue

[12] The issue on the Application is whether the ASOC, or parts of it, should be struck pursuant to rule 3.68 due to a lack of subject-matter jurisdiction.

IV. Analysis

A. Legal Framework for Striking a Claim for Lack of Subject-Matter Jurisdiction

[13] Rule 3.68 provides the Court jurisdiction to strike all or any part of a claim, provided one of certain conditions exists. One condition that allows the Court to do so is if "the Court has no jurisdiction": rule 3.68(2)(a).

[14] For a court to have adjudicative jurisdiction to hear a matter, it must have both territorial jurisdiction and subject-matter jurisdiction: ***Sharp v Autorité des marchés financiers***, 2023 SCC 29 at para 162 (Côté J. in dissent but not on this issue); ***Cheng v Glencore plc***, 2024 YKSC 272 [***Cheng SC***] at paras 15-18, aff'd 2025 YKCA 8 [***Cheng CA***].

[15] Territorial jurisdiction, known at common law as jurisdiction *simpliciter*, is concerned with the connection between the dispute and the court's territorial authority. It can exist in three circumstances: based on the presence of the defendant in the jurisdiction (presence-based jurisdiction), based on the parties' consent or attornment to the court's jurisdiction (consent-based jurisdiction), or based on the court's assumption of jurisdiction due to a real and substantial connection to the dispute (assumed jurisdiction): ***Phillips v Avena***, 2006 ABCA 19 at para 76; ***Chevron Corp v Yaiguaje***, 2015 SCC 42 at para 82; ***Muscutt v Courcelles***, 2002 CanLII 44957 at para 19 (ON CA); ***Conor Pacific Group Inc v Canada (Attorney General)***, 2011 BCCA 403 at para 38; ***Norex Petroleum Limited v Chubb Insurance Company of Canada***, 2008 ABQB 442 at para 58; ***Durand v Higgins***, 2024 ABKB 108 at paras 21-22; ***Deadman v Jager Estate***, 2019 ABCA 481 at para 12; ***Sinclair v Venezia Turismo***, 2025 SCC 27 at paras 7, 43-48.

[16] Subject-matter jurisdiction, on the other hand, is concerned with the court's legal authority to adjudicate the subject-matter of the dispute: ***Conor Pacific*** at para 38; ***Cheng SC*** at para 16.

[17] The fact that a court may have territorial jurisdiction over a particular party in relation to a particular cause of action cannot give it jurisdiction over a matter that is outside its subject-matter jurisdiction: ***Gould v Western Coal Corporation***, 2012 ONSC 5184 at para 327. Further, parties' agreement or even attornment to the Court's jurisdiction can found territorial jurisdiction, but not subject-matter jurisdiction: ***Gould*** at paras 326-327; ***Calgary (City) v Bagaric***, 2022 ABKB 635 at paras 27-30; ***Cheng SC*** at para 19; ***Cheng CA*** at para 25.

[18] Provincial superior courts have inherent subject-matter jurisdiction over all matters, both federal and provincial, except matters for which a different forum has been specified:

Newfoundland and Labrador (Attorney General) v Uashaunnuat (Innu of Uashat and of Mani-Utenam), 2020 SCC 4 para 104 (in dissent), citing ***Hunt v T&N plc***, 1993 CanLII 43 (SCC), [1993] 4 SCR 289, at p 311; ***Ontario (Attorney General) v Pembina Exploration Canada Ltd***, 1989 CanLII 112 (SCC), [1989] 1 SCR 206, at pp 217 18; ***Lac d'Amiante du Québec Ltée v 2858 0702 Québec Inc***, 2001 SCC 51, [2001] 2 SCR 743, at para 30; ***Baxter Student Housing Ltd et al v College Housing Co-operative Ltd et al***, 1975 CanLII 164 (SCC) at p 480; *Judicature Act*, RSA 2000 c J- at sections 1(1)(a), 4, 5, 8, 15.

[19] A superior court cannot use its inherent jurisdiction to "make an order negating the unambiguous expression of the legislative will" or to conflict with a statute or rule: ***Baxter Student Housing*** at p 480.

[20] On the other hand, it takes precise express wording or necessarily implicit "irresistible clearness" (based on a consideration of several factors) to infer a limit on this Court's "implied plenary jurisdiction": ***Gay v Alberta (Workers' Compensation Board)***, 2023 ABCA 351 at para 22; ***Moore v Sweet***, 2018 SCC 52 at para 70; ***Canada (Attorney General) v TeleZone Inc***, 2010 SCC 62 at para 42; ***Gendron v Supply and Services Union of the Public Service Alliance of Canada, Local 50057***, 1990 CanLII 110, [1990] 1 SCR 1298 at p 1316; ***Hopkins v Kay***, 2015 ONCA 112 at paras 30-33; ***Tucci v Peoples Trust Company***, 2020 BCCA 246 at paras 18-26.

[21] Therefore, rule 3.68(2)(a) can apply to strike claims where the Court does not have subject-matter jurisdiction because another forum has exclusive jurisdiction over the subject-matter of action: ***Transalta Utilities Corporation v Young Estate***, 1997 ABCA 349 at para 16; ***Pickle v University of Lethbridge***, 2024 ABKB 378 at para 10. For example, this Court has referenced this rule to strike or stay actions in Alberta courts for the enforcement of US patents (***JL Energy Transportation Inc v Alliance Pipeline Limited Partnership***, 2024 ABKB 72 at para 122); for trademark claims that are in the exclusive jurisdiction of the Federal Court (***Vermillion Networks Inc v Vermilion Energy Inc***, 2022 ABQB 287 at paras 72-75); for discrimination complaints within the sole jurisdiction of the Alberta Human Rights Commission (***Ubah v Canadian Natural Resources Limited***, 2019 ABQB 155 at para 22); for tax matters within the exclusive jurisdiction of the Tax Court of Canada (***Grenon v Canada Revenue Agency***, 2016 ABQB 260 at paras 36-51); for disputes that must be arbitrated under collective bargaining agreements (***Kniss v Stenberg***, 2014 ABCA 73 at paras 21, 30); for matters covered by a binding arbitration agreement (***Fernandes v Jennings Capital Inc***, 2016 ABQB 594 at paras 27-29); for claims barred by legislation (***Gay v Alberta (Workers' Compensation Board)***, 2022 ABKB 597 aff'd 2023 ABCA 351); and for certain *habeus corpus* related applications (***Dombroskie v Canada (Parole Board)***, 2020 ABQB 699).

[22] In order to determine whether a court has subject-matter jurisdiction over a claim, it is necessary to consider the essential nature or character of the claim or dispute: ***Windsor (City) v Canadian Transit Co***, 2016 SCC 54 at para 25; ***Prodaniuk v Calgary (City)***, 2023 ABCA 165 at para 8; ***Transalta*** at paras 27, 30. The essential character of a dispute is determined not only by how the legal issues are framed but rather on the surrounding facts: ***Transalta*** at para 30; ***Prodaniuk*** at para 8; ***Kniss*** at para 43.

[23] Further, in ***Windsor***, at paras 26-27, in the context of determining whether a matter was within the Federal Court's subject-matter jurisdiction, the Supreme Court of Canada provided this guidance:

> [26] The essential nature of the claim must be determined on "a realistic appreciation of the practical result sought by the claimant" (*Domtar Inc. v. Canada (Attorney General)*, 2009 FCA 218, 392 N.R. 200, at para. 28, per Sharlow J.A.). The "statement of claim is not to be blindly read at its face meaning" (*Roitman v. Canada*, 2006 FCA 266, 353 N.R. 75, at para. 16, per Décary J.A.). Rather, the court must "look beyond the words used, the facts alleged and the remedy sought and ensure . . . that the statement of claim is not a disguised attempt to reach before the Federal Court a result otherwise unreachable in that Court" (*ibid.*; see also *Canadian Pacific Railway v. R.*, 2013 FC 161, [2014] 1 C.T.C. 223, at para. 36; *Verdicchio v. R.*, 2010 FC 117, [2010] 3 C.T.C. 80, at para. 24).
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> [27] On the other hand, genuine strategic choices should not be maligned as artful pleading. The question is whether the court has jurisdiction over the particular claim the claimant has chosen to bring, not a similar claim the respondent says the claimant really ought, for one reason or another, to have brought.

[24] I turn now to the parties' positions.

B. Positions of the Parties

1. Defendants' Position

[25] The Defendants assert that Nova's main claim (**Set Aside Claim**) in the ASOC is to set aside the 2020 Agreement and the 2022 Agreement (together the **Transactions**). As noted above, they argue that the essential nature of the Set Aside Claim is to set a side the Transactions as void under section 301(2) of the *BCBCA*, and that only the British Columbia Supreme Court has the jurisdiction to provide the remedy under the *BCBCA*. They rely on several cases that have held that it is only the court in the jurisdiction of a corporation's incorporation that can provide a statutory remedy or make orders regulating or directing matters about the internal affairs of a corporation.

[26] The Defendants also assert that certain other claims made in the ASOC, which it refers to as ancillary causes of action (breach of fiduciary duty, knowing assistance and knowing receipt, breach of confidence, breach of contract, inducing breach of contract, conspiracy, and conversion (**Additional Claims**)) cannot cloak the Court with jurisdiction. As the argument in the Application progressed, the Defendants also asserted that only the British Columbia Supreme Court has subject-matter jurisdiction over breach of fiduciary claims against a British Columbia corporation's directors.

[27] Although in the Application the Defendants seek to strike the ASOC in its entirety, in its argument the Defendants only seek to strike those portions of the ASOC related to the Set Aside Claim, including the Additional Claims. The Defendants also argue that it would be non-sensical to have the Additional Claims heard separate and apart from the Set Aside Claim. They argue that the Additional Claims also relate to Nova's internal management and are also founded upon setting aside the Transactions.

[28] The only claims the Defendants assert should remain in the ASOC are the alternative claims made in the event the Transactions are valid and enforceable against Nova and not set aside (**Alternative Claims**).

2. Nova's Position

[29] Nova asserts that the only relief and question before the Court is the striking of the entire ASOC, as that is what was approved to proceed on the commercial list. To obtain approval to have the matter heard on the commercial list, the Defendants asserted that the Application had "the potential to substantially dispose of the Action in its entirety." Nova argues that a partial striking application should not now be permitted and the Defendants' admission that only some of the claims should be struck is fatal to the Application.

[30] Nova argues that the essential nature of its main claim is to unwind the Transactions while at the same time preserving its rights to patents and confidential information. Its position is that it does not and cannot seek relief under section 301(2) of the *BCBCA*, its claims arise independently of the *BCBCA* under longstanding common law and equitable principles, and that this Court has inherent jurisdiction to grant rescission of the Transactions completely separate from the statutory set aside remedy under *BCBCA*. It also asserts that this Court has subject-matter jurisdiction over all claims including the breach of fiduciary claims.

C. The Relief Sought Should be Considered

[31] I do not agree that the Application should be dismissed out of hand simply because it sought the striking of the entire ASOC and now the Defendants' position is more refined. This Court has the inherent jurisdiction to control its own process, which includes hearing an application for relief not expressly applied for in appropriate circumstances: ***Debut Developments Incorporated v Redcliff (Town)***, 2025 ABCA 223 at para 18; *Judicature Act*, RSA 2000, c J-2, s 8; *Alberta Rules of Court*, Alta Reg 124/2010 (*Rules*), rules, r 1.2-1.4; ***Pyrrha Design Inc v Plum and Posey Inc***, 2016 ABCA 12 at paras 8-11.

[32] In this case, Nova has had sufficient notice of the revised position of the Defendants by virtue of the Defendants' filed Brief, and Nova has fully responded to that position in its Briefs and in oral submissions. There is no prejudice to Nova to consider the Defendants' revised position. Further, there is no point in dismissing the Application on this narrow ground. The Defendants could then simply reapply based on their refined position, which would just delay the determination of the real issue in dispute on the jurisdictional question. It would be a waste of judicial and party resources.

D. The Essential Nature of the Claim

[33] I have reviewed the pleadings in this matter. I disagree with the Defendants that the essential nature of this claim is to set aside the Transactions under section 301(2) of the *BCBCA*. There are several reasons for this finding.

[34] First, on a plain reading, section 301(2) of the *BCBCA* is a specific statutory remedy provided to specific identified persons, namely a corporation's shareholders, directors or creditors. Its object is to allow stakeholders of a corporation to obtain a statutory remedy when the *conduct*

of the corporation may defeat or adversely affect their interests in the corporation due the sale of all or substantially all of the corporation's business outside the ordinary course. It does not apply to a claim made *by the corporation* for alleged wrongdoing done *to the corporation*. The corporation cannot use section 301(2) of the *BCBCA*.

[35] In contrast, a *BCBCA* corporation has the capacity to commence litigation inside or outside British Columbia because it has "the capacity and the rights, powers and privileges of an individual of full capacity", the capacity to "conduct its affairs" in any jurisdiction outside British Columbia, and the capacity "accept from any lawful authority outside British Columbia powers and rights" concerning its business and powers: *BCBCA*, sections 30 and 32.

[36] The ASOC is not brought by Nova's shareholders, directors or creditors. It is brought by Nova in Alberta. The essence of Nova's claim is to unwind the Transactions as a wrong to Nova, not a claim by Nova's stakeholders to unwind the Transaction as a wrong to Nova's stakeholders.

[37] Second, Nova does not seek a remedy under section 301(2) of the *BCBCA*. Section 301(2) is not engaged on the pleadings at all. In my view, this is the type of genuine strategic choice contemplated in ***Windsor*** at para 27. Nova is not prevented from pursuing other remedies simply because its shareholder, directors or creditors could have sought the specific statutory remedy under section 301(2) of the *BCBCA* in British Columbia. In my view, the Defendants seek to unreasonably shoehorn, or artificially mischaracterize, the ASOC to fit it into section 301(2) of the *BCBCA* for the purpose of then arguing lack of subject-matter jurisdiction. As per ***Windsor***, at para 27, the question is the particular claim "the claimant has chosen to bring, not a similar claim the respondent says the claimant really ought, for one reason or another, to have brought".

[38] Third, Nova seeks common law and equitable relief against those it says wronged it, including its former officer and director and those that gained from the alleged wrongdoing. The essence of the claim is to seek non-statutory rescission of the Transactions, together with other ancillary relief to preserve its business, its confidential information, and its interests in the Device. I agree with Nova that this Court has jurisdiction to the grant the remedy of contractual rescission under the *Judicature Act*, its inherent jurisdiction and under equitable principles: Jason W. Neyers, ed, Fridman's *The Law of Contract in Canada*, 7th ed (Toronto: Thomson Reuters Canada, 2024) at §23:12; ***Urban Mechanical Contracting Ltd v Zurich***, 2022 ONCA 589 at paras 61-72; ***Canada (Attorney General) v Collins Family Trust***, 2022 SCC 26 at paras 10-11.

[39] Equitable rescission can be a flexible and generous remedy that arises in a myriad of circumstances: ***Houle v Knelsen Sand and Gravel Ltd***, 2015 ABQB 659 at para 51; ***Mirage Consulting Ltd et al v Astra Credit Union Ltd***, 2017 MBQB 63 at para 14; ***Urban Mechanical*** at para 6; ***Paradigm Change Consulting Inc et al v Boparai et al***, 2024 ONSC 7068 at para 135; ***Schwab Estate v Warriner***, 2023 BCSC 220 at para 486; ***RJ McLeod Investments Inc v McLeod***, 2021 ABQB 439 at para 23; ***846-6718 Canada Inc v 1779042 Interior Ltd***, 2018 ONSC 1563 at para 330.

[40] Where a corporation enters into a contract based on the fraud or breach of fiduciary duty owed by a person to that corporation, rescission of the corporation's contract is a potentially available remedy: ***Imperial Parking Canada Corporation v Anderson***, 2015 BCSC 2221 at paras 237-273; ***York University v Markicevic and Brown***, 2016 ONSC 3718 at paras 140-147; ***Northern & Central Gas Corporation Limited v Hillcrest Collieries Limited***, 1975 CanLII 276 at paras 299-

304; ***Procon Mining & Tunnelling Ltd v McNeil***, 2010 BCSC 487 at paras 122-138; ***Holley v The Northern Trust Company, Canada***, 2014 ONSC 889 at para 116.

[41] Further, a flexible, equitable, non-statutory rescission remedy may be available to set aside contracts entered into by a corporation based on the wrongdoing of its directors and officers. Directors' fiduciary duties are imposed both by statute and common law, and are equitable in nature: ***Takhar v Phoenix Homes Limited***, 2025 BCCA 152 at para 18; ***PricewaterhouseCoopers Inc v Perpetual Energy Inc***, 2021 ABCA 16 at para 151.

[42] In this context, I pause at this stage to address the Defendants' additional argument raised late in the Application process relating to breach of fiduciary duty. In summary, I disagree with the Defendants' argument that the British Columbia Supreme Court has exclusive subject-matter jurisdiction over claims against a *BCBCA* corporation's directors for breach of fiduciary duty.

[43] There is no express language creating exclusive subject-matter jurisdiction over breach of fiduciary duty claims. I agree with Nova that, had the British Columbia legislature intended to oust the inherent jurisdiction of other provincial superior courts to address breach of fiduciary duty claims in relation to *BCBCA* corporations, as noted above, it would have used express language to that effect.

[44] In my view, it also cannot be reasonably implied that the legislature intended there to be exclusive jurisdiction over such claims. The Defendants rely on cases that refer to Division 3 of part 5 of the *BCBCA* as a "complete code" relating to director conflicts of interest: ***Roussy v Savage***, 2019 BCSC 1669 at para 313; ***Estate Eisler Estate v GWR Resources Inc***, 2019 BCSC 1990 at para 217; ***Dosanjh v Binpal***, 2021 BCSC 1523 at para 41. However, these cases state that those provisions are a codification of common law principles for identifying the circumstances under which a director will be held to account for failing to disclose a material interest in a contract or transaction under the *BCBCA*. This means that the *BCBCA* may be the applicable law to the question of liability, not necessarily that there is exclusive jurisdiction. This is consistent with the remarks in Kevin P McGuiness and Maurice Coombs, *Canadian Business Corporations Law*, 4th Ed (Toronto, Ont: LexisNexis Canada Inc, 2023) at ¶5-107. Further, in my view, the limited statutory remedies in sections 148 and 150 of the *BCBCA* (which are not expressly relied on by Nova) cannot reasonably be taken to be exclusive remedies for all breaches of fiduciary duty.

[45] Further, in my view, sections 142(2) and 154(3) of the *BCBCA* expressly preserves non-statutory rights relating to director liability outside the statutory regime. They provide:

> 142(2) This section is in addition to, and not in derogation of, any enactment or rule of law or equity relating to the duties or liabilities of directors and officers of a company.
>
> 154(3) The liability imposed by subsections (1) and (2) of this section is in addition to and not in derogation of any liability imposed on a director by this Act or any other enactment or by any rule of law or equity.

[46] In ***Takhar***, at para 18, the British Columbia Court of Appeal confirmed that breach of fiduciary duty is imposed both under the *BCBCA* and common law. This is inconsistent with the *BCBCA* being a complete code that ousts the common law for all breach of fiduciary duty claims.

[47] In these circumstances, and having regard to the considerations endorsed by the British Columbia Court of Appeal in ***Tucci***, at para 25-26, when considering whether exclusive jurisdiction should be implied (including the process for dispute resolution, the nature of dispute and the effective redress available under the legislation), I find that the existence of a detailed statutory regime in the *BCBCA* is insufficient to support an inference that the legislature intended to create exclusive statutory jurisdiction over all claims against directors for breach of fiduciary duty. It is far from a complete code on the process, disputes and redress for breach of fiduciary duty. I find it does note create exclusive jurisdiction in the British Columbia Supreme Court, or oust the jurisdiction of other provincial superior courts, to deal with director breach of fiduciary duty claims involving *BCBCA* directors.

[48] Turning back to the Defendants' main position about section 301(2) of the *BCBCA*, and the remedies sought in the ASOC, I agree with Nova that there are different pathways potentially available to set aside the Transactions that are within this Court's subject-matter jurisdiction, without resort to section 301(2) of the *BCBCA*, and that the ASOC engages some of those non-statutory pathways.

[49] Further, the alleged wrongdoing and relief sought both go well beyond just the Transactions and setting them aside. The pleaded facts also go well beyond the lack of a required special resolution – the Defendants' place undue emphasis on this one pleaded fact while ignoring the entire factual context as required by ***Windsor*** and ***Transalta***. The ASOC's factual context relates to conduct that started before the 2020 Agreement, continued during the period between the 2020 Agreement and the 2022 Agreement, and extends to conduct after the 2022 Agreement (for example, in relation to the entering into, effect of, and potential rescission of a 2023 Cooperation Agreement executed by O'Rourke and Karmatar). Nova seeks not only to set aside the Transactions, but for return of its property, confidential information, and damages.

[50] Fourth, as a matter of statutory interpretation, section 301(2) of the *BCBCA* does not purport to oust the jurisdiction of courts of other provinces to provide relief to a British Columbia corporation simply because the transfer of all or substantially all of that corporation's assets is involved in alleged wrongdoing to the corporation.

[51] The modern approach to statutory interpretation requires a court to consider the words of a statute in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of the Legislature: ***Rizzo & Rizzo Shoes Ltd (Re)***, 1998 CanLII 837 at para 21; ***Dow Chemical Canada ULC v Canada***, 2024 SCC 23 at para 101; ***Ferguson v Tejpar***, 2024 ABCA 235 at para 37; ***Alberta Securities Commission v Hennig***, 2021 ABCA 411 at para 22; ***Prince George Airport Authority Inc v Roy***, 2025 BCCA 442 at para 38.

[52] The wording of section 301(2) of the *BCBCA* does not purport to have the meaning suggested by the Defendants. As noted, on its wording, it plainly does not apply to claims by a corporation under the *BCBCA*. Further, it would be an absurd interpretation of section 301(2) of the *BCBCA* if other provincial superior courts could potentially have subject-matter jurisdiction over claims by a British Columbia corporation of wrongdoing against it that involved the transfer of *less* than all or substantially all of its assets, but could not have subject-matter jurisdiction if the wrongdoing is more serious and included all or substantially all of its assets. The Defendants' interpretation would create an impractical and artificial subject-matter jurisdictional barrier to

corporations seeking relief against alleged wrongdoers in other jurisdictions having territorial jurisdiction over the dispute or the parties. That was not the object or purpose of provisions like section 301(2) in business corporations legislation. Rather, its purpose is to provide a statutory remedy to a corporation's stakeholders when the corporation purports to deal with all or substantially all of its assets outside the ordinary course of business without obtaining statutorily required authorizations. That is not the essence of the ASOC in this case.

[53] Fifth, the cases that the Defendants rely on are distinguishable.

[54] I agree with the Defendants that an Alberta Court does not have jurisdiction to *grant specific statutory remedies* under another province's business corporations legislation. As I stated in ***Distinct Real Estate USA 2 v Wazonek***, 2025 ABKB 275 at para 42 (emphasis added):

> [42] Where there is an **express statutory remedy relating to creatures of statute such as corporations** (or, by analogy, limited partnerships), it is well accepted as a matter of Canadian law that it is the court empowered by that statute that has jurisdiction (or alternatively should exercise jurisdiction) to grant the statutory remedy: ***Douez v Facebook, Inc***, 2017 SCC 33 at para 109 (Abella J concurring); ***Obodo v Trans Union of Canada, Inc***, 2021 ONSC 7297 at paras 198-199; ***Ironrod Investments Inc v Enquest Energy Services Corp***, 201 ONSC 308 at paras 14 and 16; ***Incorporated Broadcasters Ltd v Canwest Global Communications Corp***, [2001 CanLII 28395 (ON SC) at paras 100 and 111-113, aff'd 2003 CanLII 52135 (ON CA); ***CAE Wood Products GP v Coe Newnews/McGehee ULC***, 2011 ONSC 1617 at para 31; [***Gould***] at paras 328-339; ***Zi Corporation v Steinberg,*** [2006 ABQB 92] at paras 76-78; ***Voyage Co Industries Inc v Craster,*** [1998 CanLII 1776]; ***Nord Resources Corp v Nord Pacific Ltd***, 2003 NBQB 201 at para 17; ***Raymond Henry Chyc Shelley Pring Family Trust v Concentric Agriculture Inc***, 2020 ONSC 7820 at para 20; ***1523428 Ontario Inc / JB&M Walker Ltd v TDL Group***, 2018 ONSC 5886 at para 29; ***Mickiewicz v Unstoppable Domains Inc***, 2025 BCSC 575 at paras 20-21.

[55] It is for this reason that courts of one province do not have jurisdiction to hear claims seeking a statutory oppression remedy for a corporation incorporated under a statute of another jurisdiction: ***Ironrod*** at paras 14, 16; ***Gould*** at paras 328-339; ***Incorporated Broadcasters*** at paras 111-117; ***CAE*** at para 31; ***Nord Resources*** at para 17; ***Raymond Henry*** at para 20; ***1523428 Ontario*** at para 29; ***Mickiewicz*** at para 20-21 This is also why courts do not have statutory jurisdiction to authorize a derivative action for a corporation incorporated elsewhere: ***Distinct Real Estate*** at paras 38-44 (I did not need to decide whether this Court had a common law basis to do so in that case, because I would have declined to exercise my territorial jurisdiction in any event).

[56] Further, as noted in ***Distinct Real Estate***, as a matter of judicial comity, courts of one province will generally not issue orders purporting to direct or regulate the internal affairs or governance of a corporation incorporated in another jurisdiction: ***Distinct Real Estate*** at para 50; ***Incorporated Broadcasters*** at para 104; ***Cira v Rico Resources Inc***, 2004 CanLII 18394 (ONSC) aff'd 2006 CanLII 3257 at para 3; ***Zi Corporation*** at paras 75, 79; ***Wheatland Industrial Park Inc (Re)***, 2013 BCSC 27 at para 36.

[57] However, the need to apply foreign laws or matters of judicial comity do not necessarily mean this Court does not have subject-matter jurisdiction. If necessary, this Court can apply the law of the other province: ***Distinct Real Estate*** at para 49; ***Phillips*** at para 82. Further, matters of judicial comity may cause this Court to decline to assume or exercise its territorial jurisdiction, which is different than not having subject-matter jurisdiction at all: ***Phillips*** at para 82.

[58] In my view, the cases relied on by the Defendants are distinguishable from this case, including:

(a) ***Distinct Real Estat***e was a claim in Alberta purportedly made on behalf of a Delaware corporation in the nature of a derivative action without appropriate approval from a Delaware court. I was not satisfied I had the subject-matter jurisdiction to grant that approval (and would not have exercised it if I did have that jurisdiction);

(b) ***Gould*** and ***Incorporated Broadcasters*** involved statutory oppression claims. The ASOC does not involve oppression or any such claim against Nova;

(c) ***Ironrod*** was a claim against an Alberta corporation for oppression and misrepresentation in the investment in the corporation's debentures, which agreements also included an attornment provision to the exclusive jurisdiction of the Alberta court;

(d) ***Cira*** involved relief relating to requisition of shareholder meetings and provision of shareholder lists, which were matters purporting to directly regulate the internal affairs of the corporation and which were within the exclusive subject-matter jurisdiction of the place of incorporation;

(e) ***Obodo*** involved a claim in Ontario seeking to certify a class action involving cause of actions under extra-provincial privacy legislation; and

(f) the portion of ***Sinclair*** relied on by the Defendants was from the dissenting judgment and, in any event, ***Sinclair*** addressed territorial jurisdiction, not subject-matter jurisdiction.

[59] In this case, Nova does not seek an express statutory remedy under the *BCBCA* and the essence of its claims is not to *direct or regulate* the internal affairs of Nova – it is to pursue alleged wrongdoers for wrongdoing *against* Nova, which happen to include its former officer and director (O'Rourke), his corporation (Karmatar), the corporation that benefitted from the Transactions (MacuMira), and its principal (Sather), for wrongfully transferring Nova's main asset (the Device) and related confidential information to MacuMira, and then for improperly using the Device and confidential information without Nova's consent.

[60] The essence of the ASOC claim is not in the exclusive jurisdiction of the British Columbia Supreme Court. This Court has inherent subject-matter jurisdiction.

E. This Court Has Adjudicative Jurisdiction

[61] For the reasons noted above, I find that this Court has subject-matter jurisdiction over the claims in the ASOC.

[62] I also find that this Court also has territorial jurisdiction (jurisdiction *simpliciter*) over the claims, including because, at the very least, the Defendants have attorned to this Court's jurisdiction and appear to have been actively litigating here since 2023. I note that the Defendants did not raise a lack of territorial jurisdiction in their statements of defence, in the Application, or before me. In these circumstances, not surprisingly, there is no application before the Court to decline to exercise jurisdiction. I need not opine on whether this Court would have assumed jurisdiction over this matter had territorial jurisdiction or *forum conveniens* been raised at the outset of this matter; this Court may very well have declined to do so. Neither territorial jurisdiction (jurisdiction *simpliciter*) nor *forum conveniens* are issues before me.

[63] I find the Court has adjudicative jurisdiction over the ASOC.

V. Conclusion

[64] The Defendants' Application under rule 3.68 is dismissed.

[65] As the successful party on this Application, Nova is presumptively or *prima facie* entitled to costs: *Rules*, rule 10.29; ***JWS v CJS***, 2022 ABCA 63 at para 24; ***McAllister v Calgary (City)***, 2021 ABCA 25 at para 21. If the parties are unable to reach agreement on the costs of this Application within one month of these Reasons, they may contact my office and I will set a process for the determination of costs.

Heard on the 17th day of December, 2025.
Dated at the City of Calgary, Alberta this 22nd day of December 2025.

M.A. Marion
J.C.K.B.A.

Appearances:

Trevor McDonald and Chelsea Nimmo, BD & P LLP
for Justin Sather and MacuMira Medical Devices Inc.

and as agent for Kevin S. Burron (no attendance)
for Walter O' Rourke and Karmatar Consulting Ltd.

Kourtney Pratt, Lawson Lundell LLP
for Nova Oculus Canada Manufacturing ULC