

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Mission Contractors Ltd. v. Murphy*,
2026 BCSC 459

Date: 20260320
Docket: S250850
Registry: Vancouver

Between:

Mission Contractors Ltd.

Petitioner

And

Jon Murphy and Scott Roberge

Respondents

Before: The Honourable Justice Thomas

Reasons for Judgment

Counsel for the Petitioner:

C.J. Overholt, K.C.
P. Parsons
G. Lo

Counsel for the Respondents:

C. Veinotte
I. Suvorin
D. Shul, A/S

Place and Date of Trial/Hearing:

Vancouver, B.C.
January 26-28, 2026

Place and Date of Judgment:

Vancouver, B.C.
March 20, 2026

[1] This is an application to strike the petition and notice of civil claim (“NOCC”) as an abuse of process pursuant to Rule 9-5(1) of the *Supreme Court Civil Rules*, BC Reg 168/2009.

[2] The applicants also seek Mr. Overholt, counsel for the plaintiff and petitioner in the actions, to be removed for breach of the principle of corporate neutrality.

Background

[3] The applicants, Mr. Murphy and Mr. Roberge, are directors and minority shareholders of Mission Contractors Ltd (“Misco”). The applicants are also former employees of the company who left their employment to create and operate a company which competes with Misco.

[4] The petition seeks relief on behalf of Misco pursuant to allegations of breach of fiduciary duty against the applicants as officers of the company and seeks dissolution of Misco.

[5] The NOCC makes allegations of misappropriation of Misco funds and assets against the applicants on behalf of Misco.

[6] The relevant law governing the application was summarized by Justice Sukstorf in *Mohsenipour v. Mountain Institution (Warden)*, 2025 BCSC 1750 at paras 75–83. To be successful, the applicants must show that the action(s) were brought for an improper purpose or that permitting either to proceed would be so unfair as to offend the court’s sense of justice. The court is not to determine the truth of this allegation, but assess the action(s) broadly and generously in determining whether it is plainly and obviously abusive. The applicant bears a heavy onus in establishing that the matter should be struck.

Factual Overview

[7] Misco is in the process of being wound up. The company’s president, Gabrielle Berard, who is instructing the company’s counsel, is the majority shareholder. The applicants were both directors, employees and minority

shareholders of Misco. Following the death of Misco's founder, the applicants initially attempted to purchase Misco. The purchase did not proceed. The applicants then created a new company whose scope of business was in the same area as Misco. They wish to obtain certain assets and former Misco customers.

[8] Ms. Berard is the founder's spouse, an employee (though this fact is disputed), and a majority shareholder. The actions were brought in the backdrop of a shareholder's dispute. The company's assets were frozen as a result of the allegations of misappropriation of funds.

Application to Strike the Actions

[9] The applicants do not take issue with the pleadings, which they concede (on their face) disclose valid causes of actions.

[10] The applicants raise two issues which they say amount to an abuse of process:

- a) The president of Misco was not authorized to instruct counsel to commence the actions on behalf of Misco; and
- b) The actions are a sham and have been commenced solely as leverage in the underlying shareholder's dispute.

Is Ms. Berard the president of Misco?

[11] The applicants argue that Ms. Berard is unable to exercise the powers of a president because she held both the position of president and secretary at the time that counsel was retained and litigation commenced.

[12] The respondent notes the application of s. 143 of the *Business Corporations Act*, S.B.C. 2002, c. 57 [BCA] provides Ms. Berard with the authority to act despite an irregularity in her appointment. In the context of this case, the president was unanimously appointed by all of the directors, and they supported her acting in that role, until she uncovered allegations of their misconduct and sought to address

them. They now rely on what I characterize as a technicality in her appointment as a basis to invalidate her actions.

[13] In addition, Misco retroactively approved her appointment, which would validate any actions she took should the argument pursuant to s. 143 of the *BCA* fail.

[14] In these circumstances, the applicants have not established that it is plain and obvious that she was not appropriately acting as president.

Does Ms. Berard have the authority to litigate on behalf of Misco?

[15] In *Bajwa Farms Ltd. v. Bajwa*, 2022 BCSC 1056 at paras. 54, 59, and 65, Justice Majawa clarified that a president of a company, or person who has authority to operate the company in its ordinary course and manage its day-to-day business, has implied authority to commence litigation on behalf of the company without authorization of the company's board of directors or without seeking leave of the court.

[16] Justice Majawa noted that the implied authority is not unlimited. It should be limited to day-to-day operations or an emergent situation and should not relate to internal affairs of the company. Examples of day-to-day operations include seeking monies due to the company, and breach of fiduciary duties by directors and preservation of company assets:

[68] The Nupinder Action also seeks remedies resulting from Mr. Bajwa's alleged interference with Bajwa Farms' leasing relationships, misappropriation of company funds and assets, and breach of fiduciary duties. While it may not be usual that a company commences litigation against one of its two directors and its president, this in and of itself does not mean that the litigation relates to the affairs of the company as opposed to its business. The Nupinder Action does not affect or relate to Mr. Bajwa's status as a shareholder, director, or president and does not seek to change those in any respect. Nor does it relate to the organization of the company.

[69] Rather, the Nupinder Action relates to the preservation of Bajwa Farms' business. The preservation and protection of Bajwa Farms' business extends to pursuing a claim against a person who owes a fiduciary duty to the company and allegedly breaches it, whether that person is the president or not. Similarly, pursuing a claim against an individual who has allegedly misappropriated company funds, and therefore, seeking to protect the company's assets is also related to the business of the company as opposed

to its affairs. Neither of these actions are particularly unusual in and of themselves. However, I will note that commencing the lawsuit does not mean that the allegations are meritorious. That is a decision for another day.

[17] Ms. Berard is the president. In addition, there is evidence that she is in charge of the day-to-day operations for payroll and cash flow management to her daughter Renee Berard and continues with the day-to-day operations which include staying up to date on current jobs Misco is engaged in, contract invoicing and general matters required to keep Misco operating.

[18] In my view, it is not plain and obvious that Ms. Berard is not the president and is not in charge of day-to-day operations of Misco. If I am wrong on this issue, the applicants voted in favour of granting themselves unrestricted access to Misco's bank accounts at the January 30 directors' meeting. In my view, this fact satisfies me that emergent conditions existed that merited bringing an action to freeze the company's bank accounts.

Do the actions relate to internal affairs of Misco?

[19] The thrust of the submissions brought by the applicant is that the litigation is a sham and has been brought for an improper purpose: for leverage in an internal shareholder's fight over assets. They say that the mere fact that there is a shareholder's fight in the background combined with the timing of the commencement of litigation establish this fact.

[20] Ms. Berard has set out the factual basis and steps that they took in terminating Mr. Murphy and Mr. Roberge and the basis behind the claims that they misappropriated funds from Misco and breached their fiduciary duties as directors. A helpful summary of the evidence is contained in Exhibit B.

[21] In my view, there is ample evidence to support some basis in fact for commencing the action for a legitimate purpose. I am not satisfied that the circumstantial allegations made by the applicants, in these circumstances, establish that the actions are plainly and obviously abusive or focused on internal issues. To

the contrary, there appears to be a solid basis in fact supporting that the actions are brought on behalf of Misco, and not for leverage in internal company affairs.

Conflict of Interest of Corporate Counsel

[22] All of the directors are represented by their own counsel, independent of the counsel acting for the company. None of the directors objected to Mr. Overholt being retained to act as counsel for the company. It was only when allegations against the defendants were made that they questioned whether Mr. Overholt was in a conflict of interest because he was violating the principle of neutrality owed to all of the directors, which includes Mr. Murphy and Mr. Roberge.

[23] It is clear that Mr. Overholt faces challenges in navigating his retainer. In my view, he has taken care to ensure that he meets his ethical obligations. He solely represents Misco. Ms. Bedard has her own counsel. In fact, her counsel unsuccessfully attempted to intervene in this application. If Mr. Overholt is placed in a position where he becomes uncertain as to how to proceed, he has the ability to apply to the court for instructions.

[24] In my view, the real issue raised by the applicants is not whether Mr. Overholt is in a conflict of interest, but whether it is appropriate for Misco to pursue the actions against the applicants or whether Ms. Bedard should have sought relief through a derivative action.

[25] There are two related bases for these concerns: the principle of neutrality and the legal cost principle. There is also the issue of a party “ganging up” on the opposing party with the corporation in an internal corporate matter.

[26] The applicants rely on *Yen v. Ghahramani*, 2023 BCCA 403 [*Yen*] as support for their position that Misco should remain neutral.

[27] *Yen* involved an oppression action litigated between two shareholders of a corporation. The corporation then filed an independent response and counterclaim against the plaintiff. The corporation's position was not neutral in the internal dispute.

In addition, the corporation was being instructed by the defendant in the same action and was using corporate funds to finance the litigation.

[28] Justice Newbury for the court noted that:

[47] ...In my respectful view, however, the difficulty in this case is not the issue of neutrality, but the question of conflict. The corporation's interests do not necessarily equate to those of the majority shareholder, or even the majority of the board of directors...

[29] These actions do not involve internal issues. They involve issues fundamental to the business of the company: the alleged misappropriation of the company's funds. Ms. Bedard is not a party to either action. Ms. Bedard has her own counsel. Her counsel unsuccessfully applied to intervene in the actions. In my view, it is clear that the action is focused on the interests of Misco and is being pursued by counsel appointed to solely represent the interests of the company.

[30] The applicants say they have similar allegations of misconduct against Ms. Bedard and her daughter, but Misco has not commenced an action to pursue those allegations. The applicants have drafted and are seeking leave to bring a derivative action based on those allegations. Arrangements have been made through a consent order to provide some corporate funds, despite the fact that Misco's accounts are frozen, to investigate or support that litigation.

[31] In these actions I do not see the issues of conflict of interest, participation of both a corporate party and aligned personal party, or improper use of corporate funds (which are currently frozen) to support litigation, as considered by our Court of Appeal in *Yen*, that would create mischief necessitating court intervention.

Resolution

[32] For these reasons, the applications of the defendants are dismissed. Unless the parties wish to make submissions on costs, the usual order will apply, and costs will go to the plaintiff and petitioner.

“Thomas J.”