In the Court of Appeal of Alberta

Citation: 1880499 Alberta Ltd v Warwick & Kent (Canada) GP Ltd, 2026 ABCA 119

Date: 20260416
Docket: 2401-0103AC
Registry: Calgary

2026 ABCA 119 (CanLII)

Between:

**1880499 Alberta Ltd., Garth Deacon Family Trust,
Keith Basnett Family Trust and Don Basnett Family Trust**

Respondents
(Plaintiffs/Defendants by Counterclaim)

- and –

Warwick & Kent (Canada) GP Ltd.

Appellant
(Defendant/Plaintiff by Counterclaim)

- and –

**Metalmark Capital Partners (C) II, L.P., MCP II (Outbound), L.P.,
MCP TE II (Outbound), L.P., Metalmark Capital Partners Cayman II, L.P.,
Metalmark Capital Partners II Co-Investment, L.P.,
Metalmark Capital Partners II Executive Fund L.P. and PTW Energy Services Ltd.**

Appellants
(Defendants by Counterclaim)

The Court:

**The Honourable Justice Michelle Crighton
The Honourable Justice Anne Kirker
The Honourable Justice Joshua B. Hawkes**

Memorandum of Judgment

Appeal from the Order of
The Honourable Justice Allison G. Kuntz
Dated the 5th day of April, 2024
Filed on the 1st day of May, 2024
(2024 ABKB 197, Docket: 2001-09395)

Memorandum of Judgment

The Court:

Introduction

[1] This is an appeal of a chambers judge's decision granting summary judgment to the respondents and directing that certain shares held by a Canadian limited partnership be returned to them: *1880499 Alberta Ltd v Warwick & Kent (Canada) GP Ltd*, 2024 ABKB 197 (*Chambers Judge's Decision*).

Background

[2] The facts leading to the litigation are set out in the chambers judge's reasons and need not all be repeated here. The following is sufficient to explain the background.

[3] The dispute arose from a transaction that combined three energy services businesses built or acquired by the respondents (collectively, the "Pyramid Group").[1] The Pyramid Group set out to create a larger company that would be attractive to an investor. The anticipated "liquidity event" would allow the principals of the Pyramid Group to realize their investments.

[4] The transaction was structured so that the Pyramid Group received 46.13% of the common and preferred shares of the larger company, PTW Energy Services Ltd ("PTW"). The Pyramid Group members are also limited partners in a Canadian limited partnership, Warwick & Kent (Canada) II LP (the "Canadian LP"), formed in accordance with the *Partnership Act*, RSA 2000, c P-3. After the PTW transaction closed, the Canadian LP held 7.18% of the PTW common and preferred shares, through its general partner, Warwick & Kent (Canada) GP Ltd (the "Canadian GP"). The Canadian GP is the recorded owner of those shares.

[5] PTW and the Canadian GP are both appellants. The other appellants[2], referred to collectively as "Metalmark", invested $125 million cash in the PTW transaction in exchange for a 38.02% preferred share interest in PTW.

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[1] 1880499 Alberta Ltd, Don Basnett Family Trust, Keith Basnett Family Trust, and Garth Deacon Family Trust (collectively, the "Pyramid Group").

[2] Metalmark Capital Partners (C) II, LP, Metalmark Capital Partners II Co-Investment, LP, MCP II (Outbound), LP, MCP TE II (Outbound), LP, Metalmark Capital Partners Cayman II, LP, and Metalmark Capital Partners II Executive Fund LP.

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[6] Several other entities and individuals, including a US limited partnership, Warwick & Kent (US) LP (the "US LP"), hold the remaining PTW shares. They are not parties in this proceeding.

[7] There are several transaction agreements that are relevant for the purposes of this appeal. The Canadian LP limited partnership agreement (the "Canadian LP Agreement"), made effective February 24, 2014, was executed by the Canadian GP as general partner and members of the Pyramid Group as limited partners.[3] PTW and Metalmark are not parties to the Canadian LP Agreement. The US LP amended and restated limited partnership agreement (the "US LP Agreement"), dated April 16, 2014, was entered by the general partner NCA Warwick LLC (the "US GP"), a limited liability company established under the laws of the state of Washington, and several limited partners resident outside Canada. A Cooperation Agreement, dated February 28, 2014, was made between the Canadian LP, the Canadian GP, the US LP, and the US GP. The partnerships agreed that all discretionary decisions made by their general partners would be the same in all material respects for each partnership and that any amendments made to the limited partnership agreements would match in all material respects. The PTW Energy Services Ltd Amended & Restated Unanimous Shareholder Agreement (the "USA") was executed by all PTW shareholders in April 2014. Among other things, it placed certain restrictions on share transfers without Metalmark approval.

[8] At the time the parties were negotiating the PTW transaction, they shared an expectation about the timing of a liquidity event. Unfortunately, no investor materialized.

[9] On February 20, 2020, the initial term of the Canadian LP expired. It was not extended in accordance with section 3.3 of the Canadian LP Agreement, which provides:

> Subject to Section 14.1[4], the Partnership shall continue until February 20, 2020 (the "Initial Term"). Notwithstanding the foregoing, the General Partner shall be entitled, by delivering notice in writing to the Limited Partners not less than thirty (30) days prior to the end of the Initial Term, to cause the term of the Partnership to be extended for an additional one-year period (an "Extension Term"). The General Partner shall be entitled to extend the Initial Term of the Partnership in accordance with the foregoing sentence for a maximum of one Extension Term, unless a further extension of the term of the Partnership is approved by an Extraordinary Resolution. Upon the termination of the Partnership, the Partnership

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[3] In addition to the Don Basnett Family Trust, Keith Basnett Family Trust and Garth Deacon Family Trust, the other limited partners listed in the Canadian LP Agreement are 1764536 Alberta Ltd, of which 1880499 Alberta Ltd is the amalgamation successor, Trevor Haynes and NCA Warwick LLC, a limited liability company established under the laws of the state of Washington. Mr. Haynes and NCA Warwick LLC are not parties in this proceeding.

[4] Section 14.1 of the Canadian LP Agreement sets out the circumstances in which the Canadian LP must be dissolved earlier than the termination date as determined under section 3.3, none of which apply here.

shall be dissolved and its affairs wound up in accordance with the provisions of Article 14.

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[10] On March 6, 2020, the Pyramid Group wrote to the Canadian GP requesting a return of the PTW shares held by the Canadian LP through the Canadian GP. The Pyramid Group noted that since the Canadian LP Agreement had terminated, the Canadian GP had to take steps to dissolve the partnership and wind up its affairs. It was the Pyramid Group's expectation that the PTW shares would be returned promptly.

[11] The Canadian GP responded on March 24, 2020, advising that the Pyramid Group had "no present entitlement to demand either dissolution of the Canadian [LP] or transfer of [the PTW] shares". The letter explained steps were being taken to extend the initial term of the US LP Agreement and that pursuant to the Cooperation Agreement, the Canadian LP must do the same. The Canadian GP also reminded the Pyramid Group about: (i) the provisions in the USA that "expressly restrict any transfer of shares (including by way of a dissolution/distribution in kind of the Canadian and US Partnerships) without the approval of Metalmark" (emphasis in original); and (ii) the dissolution provisions of the Canadian LP Agreement. We address these provisions in our analysis below.

[12] On April 7, 2020, the Pyramid Group responded that it understood the initial term of the US LP Agreement had expired without extension, which meant the Cooperation Agreement had also terminated. The Pyramid Group further confirmed that it did not agree to extending the initial term of the Canadian LP Agreement and it reiterated the demand for the return of the PTW shares, asserting that "[i]n the current economic climate, the return of the shares [was] the only commercially reasonable solution." The Pyramid Group contended that because the return of shares would not financially impact Metalmark, "it would be unreasonable for Metalmark to withhold its consent" to the transfer.

[13] The Canadian GP responded on April 30, 2020, with confirmation that the US LP Agreement had been extended.[5] It asked the Pyramid Group to extend the Canadian LP Agreement. The Pyramid Group refused and the litigation followed.

[14] On July 23, 2020, the Pyramid Group filed a statement of claim against the Canadian GP. It alleged that since the Canadian LP had terminated and dissolved, the Canadian GP had no right, contractual or otherwise, to hold the PTW shares and ought to distribute them to the Pyramid

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[5] On February 21, 2020, the US LP Agreement term expired. In late April 2020, the US LP limited partners passed an extraordinary resolution to extend the agreement, and a Second Amended and Restated Limited Partnership Agreement was made effective April 22, 2020, with the term continuing until February 22, 2023. On January 17, 2023, a Third Amended and Restated Limited Partnership Agreement was made effective, with the term continuing until February 22, 2026.

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Group. The Pyramid Group claimed in the alternative that if the Canadian LP had not dissolved, the Canadian GP was required to dissolve the Canadian LP and return the PTW shares to the Pyramid Group pursuant to the Canadian LP Agreement.

[15] The Canadian GP defended the claim alleging that the Canadian LP continued to exist and there had always been an intention to extend the term of the Canadian LP as had been done with the US LP. The Canadian GP asserted that because the US LP continued to exist and the Cooperation Agreement required the Canadian LP to amend the Canadian LP Agreement to match, in all material respects, amendments to the US LP Agreement, any termination of the Canadian LP would be contrary to the Cooperation Agreement.

[16] The Canadian GP also filed a counterclaim against the Pyramid Group, PTW, and Metalmark. Among other things, the Canadian GP sought a declaration that it had the authority to amend the Canadian LP Agreement and extend the Canadian LP's term to February 22, 2023, in accordance with the Cooperation Agreement.

[17] In their respective statements of defence to counterclaim, PTW and Metalmark supported the relief sought by the Canadian GP and disputed the Pyramid Group's claim of entitlement to the return of the PTW shares. Metalmark asserted that its contribution to the PTW transaction was premised on receiving significant minority shareholder approval rights regarding corporate governance, ownership and investment structure. If the Pyramid Group was granted the relief sought it would have majority corporate control over PTW, contrary to the investment purpose and the parties' reasonable expectations.

[18] In January 2021, the Pyramid Group and the Canadian GP each brought competing applications for summary judgment. The Pyramid Group sought an order requiring the Canadian GP to return the PTW shares held in the Canadian LP. In the alternative, it requested specific performance of the Canadian LP Agreement requiring the Canadian GP to dissolve the Canadian LP and return the PTW shares to the Pyramid Group. In its application, the Canadian GP sought summary dismissal of the Pyramid Group's claim and summary judgment on its counterclaim. It asked for an order declaring the term of the Canadian LP renewed and extended to February 22, 2023.

The Applications Judge's Decision

[19] The applications were first heard by an applications judge. He concluded that the Canadian LP Agreement could not be amended and extended retroactively based on the Cooperation Agreement. He acknowledged the general remedial powers requiring the Canadian LP Agreement and US LP Agreement to be aligned under the Cooperation Agreement; however, he determined "it would be abusive and inconsistent with the applicable principles of contractual interpretation to read them as enabling a unilateral amendment after the fact to override the clear and

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unambiguous terms of an agreement that was specifically negotiated between the parties": *1880499 Alberta Ltd v Warwick & Kent (Canada) GP Ltd*, 2022 ABQB 385 (*Applications Judge's Decision*) at para 22.

[20] In terms of remedy, the applications judge found that the Canadian LP Agreement provided for "dissolution" but the return of the PTW shares was "not indisputably automatic": *Applications Judge's Decision* at para 35. He was not satisfied based on the record before him that he could summarily determine the appropriate remedy because there was no evidence as to the current economic climate and likelihood of a liquidity event, nor was there evidence about the tax consequences of dissolution. He was also concerned about how the potential methods of dissolution could affect control of PTW and the expectations of the parties, including minority shareholder protections negotiated in favour of Metalmark.

[21] In the result, the applications judge granted the Pyramid Group's summary judgment application in part. He concluded that the term of the Canadian LP Agreement had not been, and could not be, extended but dismissed the Pyramid Group's request for the return of the PTW shares and directed that the issue of remedy go to trial.

[22] The Pyramid Group appealed the decision to deny summary judgment on the remedy issue. The Canadian GP, Metalmark and PTW appealed the decision to grant summary judgment on the issue of whether the term of the Canadian LP Agreement had been extended.

The Chambers Judge's Decision

[23] The chambers judge affirmed the applications judge's decision that the initial term of the Canadian LP Agreement had passed without an extension under section 3.3. She agreed the Canadian LP limited partners could not be forced to extend the initial term.

[24] The chambers judge disagreed with the applications judge about what this meant for the Pyramid Group's claim for the return of the PTW shares. While the applications judge found he could go no further than to declare the Canadian LP Agreement terminated, the chambers judge determined that because the "Canadian LP must be dissolved", there was no remedy issue to be tried: *Chambers Judge's Decision* at paras 4-5. She dispensed with Metalmark's rights under the USA by reasoning that the "control that Metalmark negotiated under ... the [USA] over the transfer of shares by the Canadian GP to the Pyramid Group could only be exercised prior to the termination of the Canadian LP": *Chambers Judge's Decision* at para 78. On this basis she ordered the Canadian GP to return what she called the "Pyramid Shares" to the Pyramid Group, notwithstanding the objections of Metalmark and the other appellants.

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Grounds of Appeal

[25] The appellants argue the chambers judge erred in granting the Pyramid Group the summary relief sought. The appellants contend that the chambers judge failed to interpret the transaction agreements as a whole and focused only on the Canadian LP Agreement at the exclusion of the Cooperation Agreement and the USA. In doing so, they say the chambers judge erred in declaring the Canadian LP expired. The appellants further argue that in granting the remedy she did, the chambers judge failed to give effect to the USA as a constating document of the corporation governing share ownership and she erred by interpreting the Canadian LP Agreement, the *Partnership Act*, and the status of the Canadian LP as indisputably requiring the Canadian GP to transfer PTW shares, in kind, to the limited partners of the Canadian LP.

Standard of Review

[26] Deference is owed to the chambers judge's assessment of the facts, the application of the law to those facts, and the ultimate determination on whether summary resolution is appropriate: *Weir-Jones Technical Services Incorporated v Purolator Courier Ltd*, 2019 ABCA 49 at para 10, citing *Hryniak v Mauldin*, 2014 SCC 7 at paras 81-84 and *Amack v AW Holdings Corp*, 2015 ABCA 147 at para 27. Whether there is a genuine issue requiring a trial is a question of mixed fact and law that is reviewed for palpable and overriding error, absent an extricable error in principle: *Geophysical Service Incorporated v Encana Corporation*, 2018 ABCA 384 at para 15, leave to appeal to SCC dismissed, 38486 (23 May 2019), citing *Hryniak* at para 81.

[27] The standard of review in cases involving contractual interpretation is well settled. "Contractual interpretation involves issues of mixed fact and law as it is an exercise in which the principles of contractual interpretation are applied to the words of the written contract, considered in light of the factual matrix": *Sattva Capital Corp v Creston Moly Corp*, 2014 SCC 53 at para 50. Such questions are generally afforded deference on appeal and are reviewed for palpable and overriding error: *Earthco Soil Mixtures Inc v Pine Valley Enterprises Inc*, 2024 SCC 20 at paras 27-28. It is only in "rare" cases that an extricable question of law arises in contractual interpretation to which the correctness standard of review applies: *Sattva* at paras 54-55; *Earthco* at paras 27-28.

Discussion

The Cooperation Agreement Does Not Mandate an Extension of the Canadian LP

[28] Under section 3.3 of the Canadian LP Agreement, the Canadian LP's initial term continued until February 20, 2020. The Canadian GP was entitled to deliver notice in writing to the limited partners of the Canadian LP not less than 30 days before the end of the initial term to extend the term for a maximum additional one-year period. A further extension could be approved by an extraordinary resolution of the limited partners. Neither of these things occurred. Thus, the

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Canadian LP terminated on February 20, 2020, due to the passage of time and inaction on the part of the Canadian GP.

[29] The Canadian GP and Metalmark argue that the Canadian LP Agreement must nonetheless be extended because the US LP Agreement was extended by extraordinary resolution after it too had expired in February 2020, and the two agreements must match in all material respects. They point to the Cooperation Agreement, and in particular section 5.2, in support of this contention:

> 5.2 Conduct
>
> Each of the Partnerships hereby covenant and agree as follows:
>
> (a) that each Partnership will undertake amendments to its respective Limited Partnership Agreement to match in all material respects amendments undertaken in respect of the other's Limited Partnership Agreement, except to the extent not permitted by the laws to which a Partnership is subject, or if such amendment: (i) would have an adverse regulatory or tax effect on a Partnership; or (ii) such amendment is required or desirable solely as a result of the jurisdiction of organization of such Partnership and is not applicable to the other Partnership; …
>
> and the General Partners hereby agree to do all things necessary to facilitate such agreement.

[30] While the Canadian GP and Metalmark are correct that this provision means the US LP and Canadian LP are to keep their respective agreements aligned, it does not go so far as to mandate the limited partners of the Canadian LP to pass an extraordinary resolution - after the expiry of the initial term - to extend the Canadian LP, nor does it prevent the dissolution of the Canadian LP when the term has expired based on the clear and unambiguous provisions of the Canadian LP Agreement.

[31] The chambers judge made no reviewable error in summarily concluding that the agreements allow for the Canadian LP limited partners to opt for the dissolution of the Canadian LP in the circumstances.

[32] There are, however, triable issues about what must happen next.

The Pyramid Group Does Not Own the PTW Shares in Issue

[33] The chambers judge made a fundamental legal error in failing to recognize that what the Pyramid Group subscribed for, and owns, is units in the Canadian LP. The evidence confirms that the Canadian GP, not any of the limited partners, is the registered holder of the PTW shares. This is consistent with the nature of limited partnerships. As the general partner, the Canadian GP has

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"sole control over the property and business of the limited partnership", with "all the rights and powers and ... all the restrictions and liabilities of a partner in a partnership", subject to certain statutory and contractual limitations: *Binscarth Holdings LP v Grant Anthony*, 2024 ONCA 522 at para 47; *Harrison Hydro Project Inc v British Columbia (Environmental Appeal Board)*, 2018 BCCA 44 at para 55, leave to appeal to SCC dismissed, 38047 (2 August 2018); *Partnership Act*, section 56; Canadian LP Agreement, sections 11.1, 11.9 and 11.10.

[34] Among other powers vested in the Canadian GP under the Canadian LP Agreement, section 11.1(j) authorizes the Canadian GP to "exercise all rights with respect to the PTW Shares." However, it must do so "pursuant to the terms of the [USA] and applicable law ...". There is no language in the Canadian LP Agreement or the USA that absolves the Canadian GP (or the other shareholders) from complying with these obligations. Therefore, the share transfer provisions of the USA are particularly relevant in determining whether the Pyramid Group was entitled to the return of the PTW shares following the termination of the Canadian LP's initial term.

The USA Prohibits the Requested Transfer of Shares in Kind Without Metalmark Approval

[35] We agree with the appellants that the chambers judge also failed to meaningfully address the legal nature of the USA. She considered only whether the USA could change the interpretation of section 3.3 of the Canadian LP Agreement or "override the clear provisions of [that agreement] and prevent it from terminating": *Chambers Judge's Decision* at para 67.

[36] Unanimous shareholder agreements may provide for the rights of shareholders, the election of directors, and the management of the business and affairs of the corporation: *Business Corporations Act*, RSA 2000, c B-9, section 146(1). They have been described as having a constitutional status equivalent to the corporation's constating documents. In *Duha Printers (Western) Ltd v Canada*, [1998] 1 SCR 795, 1998 CanLII 827 at paras 66-68, Iacobucci J explained that they are "a corporate law hybrid, part contractual and part constitutional in nature". That unanimous shareholder agreements have a constitutional element is reflected in several provisions of the *Business Corporations Act* that are expressly made subject to such agreements: see, for e.g., sections 6(3), 27(1), and 101(1). Additionally, section 21(1) requires a corporation to prepare and maintain at its records office records containing not only the articles and bylaws but also unanimous shareholder agreements. Further, section 248 provides that the court can issue a compliance or restraining order if a unanimous shareholder agreement has been contravened.

[37] In directing the return of the PTW shares to the Pyramid Group, the chambers judge overlooked the significance of the USA and the restrictions it places on the transfer of PTW shares, including the need for Metalmark approval in certain situations: see, for e.g., USA, sections 4.10(o), 4.11. While there are circumstances in which a transfer of shares can take place without the approval of Metalmark and/or the Pyramid Group, including by a defined "Permitted Transfer"

under section 1.1, none of the enumerated circumstances for a Permitted Transfer apply in this case.

[38] Most relevant to this appeal is Article 7 of the USA. It sets out the provisions specifically dealing with the "Transfer" of PTW shares – defined to mean "any direct or indirect sale, assignment, Pledge or other disposition of Shares": USA, section 1.1. In terms of enforcement, section 7.8(a) of the USA provides:

> No Shares shall be transferred on the books of [PTW], nor shall any Transfer thereof be effective, unless and until the terms and provisions of this [USA] are first complied with and, in case of violation of this [USA] by the attempted Transfer of Shares without compliance with the terms and provisions hereof, such Transfer shall be invalid and of no effect.

Section 7.1(b) states: "All Transfers of Shares shall require the prior written approval of both the Pyramid Group and Metalmark until the Return of Capital has been realized by the holders of Class A Preferred Shares...". Section 7.1(c) then expressly restricts the ability of the Canadian GP, as the shareholder on behalf of the Canadian LP, from transferring PTW shares or making any distributions in kind without Metalmark approval:

> The NCA Partnerships, their Permitted Transferees and their respective successors or assigns shall not shall [*sic*] make any distributions in kind, or otherwise Transfer any Shares, to any limited partner or other equity holder thereof without the prior written approval of the Pyramid Group and Metalmark, which shall not be unreasonably withheld.

[39] What is reasonable in all the circumstances for the purposes of section 7.1(c) cannot be determined on this record, including because the Canadian GP has not yet completed the dissolution process in accordance with the Canadian LP Agreement, discussed below.

Compliance with Canadian LP Agreement Dissolution Provisions is Required

[40] Article 14 sets out the dissolution provisions of the Canadian LP. Section 14.2 specifically addresses the procedure for the dissolution of the Canadian LP as follows:

> Not less than fifteen (15) days prior to the dissolution of the Partnership, the General Partner ... shall sell or otherwise dispose of all or such part of the Partnership's assets as may be sold or otherwise disposed of on commercially reasonable terms (to the extent that the General Partner determines that such sale or other disposition is commercially desirable), as determined by the General Partner in its sole discretion, and thereafter:

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> (a) pay or provide for the payment of the debts and liabilities of the Partnership and liquidation expenses;
>
> (b) distribute the net proceeds of any such sale or other disposition, together with each remaining asset of the Partnership, to the Partners on the basis of 0.001% to the General Partner in respect of its Interest held in its capacity as the general partner of the Partnership and 99.999% to the Limited Partners of record on the date of dissolution, such amount to be further distributed among the Partners according to the distribution provisions set out in Article 9; and
>
> (c) satisfy all applicable formalities in such circumstances as may be prescribed by applicable 1aw.
>
> The General Partner shall give notice of the proposed date of dissolution of the Partnership not less than fifteen (15) days prior to such date, or as soon as practicable thereafter. The Partners shall not be required to restore any deficit in their capital account balances.

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[41] Section 14.3 then provides that "[n]o Limited Partner is entitled to any reimbursement of its contribution to the capital of the [Canadian LP] except as funds or other property are available for distribution pursuant to Article 9."

[42] Article 9 of the Canadian LP Agreement sets out the procedure and priorities for distribution. Section 9.1(a) states that the Canadian GP:

> ...shall distribute to the Limited Partners, as soon as practicable, an amount equal to the disposition proceeds realized therefrom together with any dividend and interest income generated from the Investment (to the extent not previously distributed) net of all costs and expenses of the Partnership relating to such disposition, any tax withholdings by the Partnership required by law and any amounts which, in the opinion of the General Partner, are required to meet the ongoing obligations and Operating Expenses (whether certain or contingent) of the Partnership…

[43] Section 9.2 provides a priority scheme for "[a]ll distributions to the Partners pursuant to Section 9.1". The first priority is "100% to the Class A Limited Partners and the General Partner *pro rata* in relation to their Capital Contributions until the Class A Limited Partners have received cumulative Distributions equal to the amount of their Capital Contributions". In the case of the Pyramid Group, its Capital Contribution for the purposes of section 9.2 is defined as "the cash amount originally invested… being an aggregate of $10,575,000 (and, for greater certainty, not

the fair market value of such shares on the date of their contribution to the Partnership)”: Canadian LP Agreement, section 1.1.

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[44] Under section 9.3, upon termination and dissolution of the Canadian LP pursuant to Article 14, distributions “may also include restricted securities or other assets of the Partnership”. However, this requires the Canadian GP to “obtain a valuation from an independent investment banking firm or other appropriate independent expert”, which has not yet been done.

[45] The chambers judge failed to grapple with these provisions of the Canadian LP Agreement that impact upon the dissolution of the Canadian LP and the distribution process. To interpret the contract correctly, she needed to do so: *IFP Technologies (Canada) Inc v EnCana Midstream and Marketing*, 2017 ABCA 157 at para 79, leave to appeal to SCC dismissed, 37712 (5 April 2018), citing *Tercon Contractors Ltd v British Columbia (Transportation and Highways)*, 2010 SCC 4 at para 64; see also, *Earthco* at para 63, citing *Sattva* at para 47. Instead, she erroneously determined on a summary basis that by virtue of the Canadian LP terminating and the parties’ agreement that the Canadian LP assets could not currently be sold on commercially reasonable terms, it was inevitable that the PTW shares would be returned to the Pyramid Group.

[46] The chambers judge’s reliance on section 62 of the *Partnership Act* was also misguided. While she was correct in noting that section 62(2) entitles a limited partner to demand the return of its contribution on the dissolution of the limited partnership, this right is qualified by section 62(3), which she did not consider:

> A limited partner has, irrespective of the nature of the limited partner’s contribution, only the right to demand and receive cash in return for the limited partner’s contribution, unless
>
> (a) there is a statement to the contrary in the partnership agreement, or
>
> (b) all the partners consent to some other manner of returning the contribution.

[47] The chambers judge also referred to section 62(4) of the *Partnership Act*, which allows a limited partner “to have the limited partnership dissolved and its affairs wound up when ... the limited partner rightfully but unsuccessfully demands the return of the limited partner’s contribution”. Again, the chambers judge failed to consider that the Pyramid Group’s entitlement to the return of its contribution on dissolution of the Canadian LP does not inevitably result in the transfer of PTW shares in kind from the Canadian GP to the Pyramid Group.

Conclusion

[48] The appeal is allowed, in part. The order requiring the Canadian GP to transfer the PTW shares to the Pyramid Group is set aside. Whether the return of the PTW shares, in kind, to the Pyramid Group is appropriate in the circumstances cannot be determined on this record.

Appeal heard on November 14, 2025

Memorandum filed at Calgary, Alberta
this 16th day of April, 2026

Crighton J.A.

Kirker J.A.

Authorized to sign for: Hawkes J.A.

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