

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Yinghe Investment (Canada) Ltd. v. Liu*,  
2026 BCSC 663

Date: 20260415  
Docket: S255824  
Registry: Vancouver

Between:

**Yinghe Investment (Canada) Ltd.**

Petitioner

And

**Xin Liu, Xiao Tong Fan, Dapei Lu, Run Guo Holdings Ltd.,  
Yi Teng Investment Inc., Dasmart International Consulting Inc.,  
and CCM Investment Group Ltd.**

Respondents

- and -

Docket: S254703  
Registry: Vancouver

Between:

**Yinghe Investment (Canada) Ltd. and Jian Sheng Chen  
also known as Jiansheng Chen**

Plaintiffs

And

**Xin Liu, Guo Qiang Liu also known as Guoqiang Liu,  
Xiao Tong Fan, Zhi Yi Fan, Dapei Lu, Run Guo Holdings Ltd.,  
Yi Teng Investment Inc., Dasmart International Consulting Inc.,  
and CCM Investment Group Ltd.**

Respondents

Before: The Honourable Justice G.P. Weatherill

## Reasons for Judgment

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No other appearances

Place and Date of Hearing:

Vancouver, B.C.  
February 26-27, 2026

Place and Date of Judgment:

Vancouver, B.C.  
April 15, 2026

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**Introduction**

[1] The parties are embattled in an ongoing shareholder’s dispute (the “Shareholder Dispute”) respecting a mixed-use commercial and residential strata building located at 5599 Cooney Road, Richmond, BC known as “The Grand at Lansdowne” (the “Building”) owned by the defendant/respondent CCM Investment Group Ltd. (“CCM”).

[2] Until recently, the plaintiff/petitioner Yinghe Investment (Canada) Ltd. (“Yinghe”) was the largest of three shareholders of CCM. Yinghe’s sole shareholder and director is the plaintiff Jian Sheng Chen (“Mr. Chen”). CCM’s other two shareholders are Run Guo Holdings Ltd. (“Run Guo”) and Dasmart International Consulting Inc. Run Guo’s principal is the respondent Xin Liu (“Mr. Liu”).

[3] These two proceedings are the latest commenced by Yinghe and Mr. Chen stemming from the Shareholder Dispute:

- a) On June 23, 2025, Yinghe and Mr. Chen filed a notice of civil claim, Vancouver Registry no. S254703, seeking, *inter alia*, declarations regarding the ownership of certain units in the Building and seeking relief under s. 227 of the *Business Corporations Act*, S.B.C. 2002, c. 57 [Act] for alleged oppressive conduct by CCM and its other shareholders (the “New Action”); and
- b) On August 1, 2025, Yinghe filed a petition, under Vancouver Registry no. S255824, also seeking relief under s. 227 of the *Act* for alleged oppressive conduct by CCM and its other shareholders (the “New Oppression Petition”);

(The two proceedings together, the “New Proceedings”).

[4] There have already been two previous petitions, a prior action (the three proceedings together, the “Prior Proceedings”), an appeal, an appeal that is currently pending, an application for leave to appeal, an arbitration with leave to

appeal dismissed and several chambers' applications within the aforementioned proceedings. All the proceedings relate to the Shareholder Dispute and include issues related to the Building, its ownership, governance issues and corporate affairs.

[5] CCM applies to have the New Proceedings dismissed against it under R. 9-5(d) as an abuse of process on the basis that either they contain allegations that overlap allegations made in the Prior Proceedings which have previously been disposed of and are *res judicata*, or seek relief that ought to have been claimed in the Prior Proceedings and was not.

[6] Run Guo and Mr. Liu support and adopt CCM's position and apply to have the New Oppression Petition dismissed against them for essentially the same reasons. They are not seeking to have the New Action dismissed against them.

[7] While Yinghe and Mr. Chen concede that some of the issues raised in the New Proceedings have previously been determined and are therefore *res judicata*, they maintain that there are other issues that have not yet been litigated, could not have been litigated and ought fairly to be allowed to proceed. They deny the allegations of abuse of process levied against them.

### **Background**

[8] There is not much in dispute about the background facts.

[9] CCM was incorporated in 2007 solely for the purpose of developing the Building. During its construction, which was completed in 2018, and until 2023, Mr. Chen was a director, the chairman of CCM's board, and was largely responsible for the management and oversight of CCM's day-to-day operations. Mr. Chen did not involve the other shareholders or directors much during this period. At all material times leading to the Shareholder Dispute, Yinghe owned 50 percent of CCM's shares. The historical and ongoing governance of CCM and Mr. Chen's role in the company's management formed the basis of the Prior Proceedings and arise again in the New Proceedings.

[10] Of the over 180 strata units in the Building, all but 32 have been sold which remain registered to CCM (the “CCM Strata Units”). Yinghe claims that 18 of the CCM Strata Units, although registered in CCM’s name, are held in trust for it (the “18 Trust Units”). Yinghe has rented the 18 Trust Units to third party tenants and has been collecting rental income from them. The ownership, use and distribution of the CCM Strata Units have been the subject of ongoing disputes and are also referenced in both the Prior Proceedings and the New Proceedings.

[11] Also, and connected to the Shareholder Dispute, Mr. Chen claims to be entitled to a management fee and bonuses in relation to his management of the Building (the “Management Fee Claim”).

[12] The Shareholder Dispute came to a head at CCM’s March 20, 2023 annual general meeting (the “2023 AGM”) when, *in absentia*, Mr. Chen’s directorship and position as board chairman ended abruptly. On June 27, 2023, Yinghe and Mr. Chen filed a petition and successfully challenged the validity of the 2023 AGM based on procedural irregularities. On December 18, 2023, by court order, Mr. Chen was reinstated to CCM’s board as chairman.

[13] In June 2023, CCM’s board (which at that point did not include Mr. Chen) embarked on a plan to make four rounds of large share issuances increasing the number of shares from 20,000 to 1,473,409 which would have the effect of massively diluting the value and voting power of its original shares. The four share issuances took place on August 8, 2023, February 8, 2024, July 17, 2024, and June 27, 2025 (the “Share Issuances”). Yinghe reluctantly subscribed to the first two so that its 50% shareholding was maintained. Yinghe did not subscribe to the third and fourth, reducing Mr. Chen’s current shareholding to approximately 35%. Run Guo is now CCM’s majority shareholder holding approximately 55% of its shares.

[14] At CCM’s annual general meeting held on January 8, 2025, and for the second time, Mr. Chen was not re-elected to its board.

[15] Seeking remedies from the court, the Prior Proceedings were brought by Yinghe and Mr. Chen:

- a) to set aside the 2023 AGM as unlawful and having Mr. Chen restored as director and chairman of CCM's board;
- b) claiming ownership of the 18 Trust Units;
- c) for injunctive relief in relation to CCM disabling key fobs to some of the 18 Trust Units preventing third-party tenants from gaining access to their units;
- d) for declarations related to an agreement Yinghe had with Run Guo that gave Yinghe the ability to vote 1000 of Run Guo's shares to give it 55 percent voting power; and
- e) for declarations that CCM was conducting its affairs in an oppressive and unfair manner and seeking relief pursuant to s. 227 of the *Act*.

[16] As will be discussed in more detail, the New Proceedings raise similar, if not identical claims as are set out in the Prior Proceedings, or raise claims that arise out of much of the same subject matter as the Prior Proceedings.

[17] On November 5, 2025, CCM brought the current applications to strike both the New Action and the New Oppression Petitioner against it. On February 12, 2026, Run Guo and Mr. Liu brought a similar application seeking to have the New Oppression Petition dismissed against them.

### **The Prior Proceedings**

[18] The Prior Proceedings comprise three separate actions/petitions.

- i. **The 2023 AGM Petition – #S234638 (filed June 27, 2023; decided by Justice Stephens on December 18, 2023; appeal dismissed)**

[19] On June 27, 2023, Yinghe and Mr. Chen filed a petition under Vancouver #S234638 (the "2023 AGM Petition") seeking to set aside the 2023 AGM. Within the

2023 AGM Petition, Yinghe also sought an injunction enjoining CCM from raising capital by issuing new shares and restraining CCM's board from proceeding with the Share Issuances.

[20] Mr. Chen claimed that he had no notice of the 2023 AGM and that his removal from CCM's board was oppressive, contrary to CCM's articles and sought to have the 2023 AGM overturned. CCM's notice of its intentions respecting the Share Issuances added to his complaints which were included in the petition.

[21] Yinghe and Mr. Chen relied in part on a June 8, 2012 resolution of CCM's board that they maintained appointed Mr. Chen as CCM's permanent chairman and gave him exclusive and irrevocable authority to manage CCM until creditor's rights and construction debt liabilities were completely settled (the "June 2012 Resolution"). CCM disputed the validity and applicability of the June 2012 Resolution.

[22] The injunction application was argued before Justice Gomery (as he then was) and adjourned generally by consent mid-way through submissions. This was because Yinghe agreed to participate in the first tranche of the Share Issuances such that it would retain its 50% shareholding of CCM.

[23] In July 2023 and for what it claims were valid reasons, CCM arranged to disable key fobs issued to 15 of the 18 Trust Units, denying third-party tenant access. This prompted Yinghe and Mr. Chen to apply in the 2023 AGM Petition on July 5, 2023, and obtain an injunction restraining CCM from disabling the fobs for these units.

[24] The 2023 AGM Petition was finally heard by Justice Stephens on December 18, 2023. In oral reasons delivered the same day and without commenting on either the merits of the Shareholder Dispute or the validity of the June 2012 Resolution, Justice Stephens invalidated Mr. Chen's removal from CCM's board because neither he nor Yinghe had received actual notice of the 2023 AGM, a requirement of CCM's articles. Save for the appointment of the company's auditor, confirming its registered

and records office and confirming the appointment of two other directors, Justice Stephens held that the business conducted at the 2023 AGM was invalid as was the board meeting held the same day. He ordered that Mr. Chen continue to be a director and chairman of CCM's board. He also directed that CCM hold its next annual general meeting by the end of March 2024.

[25] The 2024 annual general meeting ultimately took place on March 28, 2024 (the "2024 AGM").

[26] Appeals of Justice Stephens' orders were taken by all parties and were dismissed by the Court of Appeal on August 7, 2024 (indexed at 2024 BCCA 285).

**ii. The Strata Ownership Action – #S-235510 (filed August 4, 2023; dismissed by Justice Matthews on September 15, 2025; under appeal; order not yet entered due to Yinghe and Mr. Chen's application to adduce new evidence and for the Court to reconsider its ruling)**

[27] On August 4, 2023, while the 2023 AGM Petition was still outstanding, Yinghe filed a notice of civil claim seeking, among other things, enforcement of alleged agreements and/or resolutions related to ownership of the 18 Trust Units and repayment of its shareholder loans (the "Strata Ownership Action"). Yinghe claimed that CCM had agreed to sell the 18 Trust Units on Yinghe's behalf and either apply the sale proceeds to Yinghe's shareholder's loans or pay the proceeds directly to Yinghe. CCM denies that Yinghe is the beneficial owner of the 18 Trust Units.

[28] The same day as it filed the Strata Ownership Action, Yinghe obtained an *ex parte* prejudgment garnishing order against CCM and successfully garnished funds CCM had received from the first tranche of the Share Issuances.

[29] In early September 2023, Justice Douglas heard CCM's application to set aside the garnishing order and in reasons delivered on September 29, 2023, granted the application on the basis that Yinghe had failed to meet its duty of full and frank disclosure to the court. Justice Douglas noted in her reasons (indexed at 2023 BCSC 2295):

[13] Based on these affidavits and the NOCC, it appears that the parties are embroiled in a shareholders' dispute. They apparently contest who is the legal and/or beneficial owner of various strata units in the Building, who is entitled to collect and retain rental income from those units, who is obliged to pay ongoing costs associated with those units, whether CCM is indebted to Yinghe for unpaid shareholder loans, whether CCM waived demand for the repayment of any shareholder loans, and whether Yinghe has accounted to CCM for all credits to which CCM says it is entitled. Both parties assert that the other has come to court with unclean hands.

...

[46] The timing of Yinghe's demand for repayment relative to its application for the Order was not disclosed in either the Chen Affidavit or the NOCC. In my view, this information was relevant and material to the question of whether the amount sought to be garnished is justly due and owing. I conclude that the disclosure of this information might have affected the outcome of Yinghe's application for the Order. Ultimately, I am not persuaded that Yinghe met the high duty of disclosure required on an *ex parte* application for a prejudgment garnishing order.

...

[60] ... I conclude that, at a minimum, Yinghe ought to have disclosed on its application for the Order that CCM asserted it was entitled to receipt of, and a full accounting for, all rental income that Yinghe had received for strata units in the Building.

...

[67] Mr. Chen denies that Yinghe has received any rental income that is owed to CCM. He deposes that CCM has refused to complete the sale of 10 of the units that he alleges CCM holds in trust for Yinghe. He suggests that this failure could result in "huge losses" and that he is concerned the damages to which Yinghe might be entitled in this action will exceed CCM's ability to pay.

...

[70] Even if I had not found that Yinghe failed to meet its duty of full and frank disclosure, I would have set aside the Order pursuant to s. 5(2) of the COEA on the basis that it would be just in all the circumstances of this case to do so. I conclude on the evidence before me that:

- a) CCM has an arguable defence in set-off to Yinghe's claim for payment in the amount of \$1.6 million;
- b) the Order is causing CCM hardship and interfering with its ability to meet its financial obligations as they come due;
- c) Yinghe has security in the form of the CPLs; and
- d) the Order is therefore unnecessary.

[30] On September 15, 2023, CCM filed a counterclaim in the Strata Ownership Action adding Mr. Chen to the proceeding claiming damages for breach of fiduciary

duty, misconduct in his role as director of CCM and misappropriation and misuse of rental income from the 18 Trust Units.

[31] On February 10, 2025, and again for what it contends were valid reasons, CCM arranged to have the key fobs for 14 of the 18 Trust Units disabled prompting Yinghe, on February 12, 2025, to apply for another injunction restraining CCM from interfering with third-party tenant access. That injunction was ultimately heard on June 6, 2025, before Justice Hughes. Midway through submissions, the parties agreed to a consent order requiring Yinghe to pay all rents received from the 18 Trust Units into trust and provide a full accounting of those payments to CCM. Despite agreeing to its terms, Yinghe has not yet complied with the order.

[32] The trial of the Strata Ownership Action was set to commence on September 15, 2025, for 10 days.

[33] On March 14, 2025, CCM filed an application in the Strata Ownership Action seeking to have it dismissed and to permit CCM to proceed with its counterclaim as if no response to the counterclaim was filed. The basis for the application was that Yinghe had repeatedly failed to comply with the rules of court and court orders.

[34] That application was heard by Justice Matthews on August 19, 2025, who reserved her decision until September 15, 2025. In written reasons, Justice Matthews granted CCM's application, struck both the notice of civil claim and Yinghe and Mr. Chen's response to counterclaim and allowed CCM to proceed with its counterclaim as if no response had been filed. At paras. 74–76 of her reasons (indexed at 2025 BCSC 2113), Justice Matthews noted:

[74] ... the conduct that CCM complains of on this application has hindered the interests of CCM having the case heard and decided on its merits. It has also eaten up scarce court time on multiple applications. The persistence of the conduct is egregiousness, and its place in a pattern of conduct that shows an unhealthy disrespect for CCM, the *Supreme Court Civil Rules*, the court, and other users of the court, is such that a proportionate response is to strike the claim and defence to counterclaim.

[75] The conduct of Yinghe and Mr. Chen seen cumulatively and in context is egregious. No affidavit evidence disclosing a lawful explanation has been provided. The conduct has included breaches of court orders as well as

failure to comply with the Supreme Court Civil Rules pertaining to document production. This conduct demonstrates a blatant and shocking attitude that these parties do not feel compelled to comply with the *Supreme Court Civil Rules* or court orders. The parties made representations to the court through their response to this application which were not sincere, and which were not met. The conduct has resulted in an adjournment of the trial, obstructing CCM's desire to have the case determined on its merits.

[76] Given the number of chances and the time that Yinghe and Mr. Chen have had to comply, it is my view that an order short of the orders sought would not be effective. Accordingly, I grant the orders sought by CCM. I dismiss the claim of Yinghe and permit CCM to proceed with the counterclaim, as though no response to it had been filed by Yinghe or Mr. Chen.

[35] Justice Matthew's order dismissing the Strata Ownership Action has not yet been entered because Yinghe has applied to reopen the application, adduce new evidence and have Justice Matthews reconsider her decision. Meanwhile, Yinghe has also launched an appeal of Justice Matthew's decision.

**iii. The Swap Agreement Petition – #S241955 (filed March 22, 2024; dismissed by Justice Warren on August 13, 2024)**

[36] On March 22, 2024, six days before CCM's scheduled annual general meeting and while the Strata Ownership Action was ongoing, Yinghe filed a petition dealing with CCM's overall governance and naming CCM and Run Guo as respondents (the "Swap Agreement Petition").

[37] By 2012, Yinghe had acquired 85% of CCM's shares. In July 2012, Mr. Chen and Mr. Liu agreed that, through a company to be incorporated that ultimately was named Run Guo, Mr. Liu would purchase 35% of CCM's shares from Yinghe (7000 shares) leaving Yinghe with a 50% ownership stake. On July 15, 2012, prior to Run Guo's incorporation and so that Yinghe would maintain control of CCM, Mr. Liu and Yinghe agreed that Yinghe would retain voting control of 1000 of Run Guo's newly purchased shares giving Yinghe 55% voting power (the "Swap Agreement"). After Run Guo was incorporated, Mr. Liu Sr., on behalf of Run Guo, executed a letter referred to as the "Shareholder Voting Authorization Letter" authorizing Yinghe to vote 1000 of Run Guo's shares in accordance with the Swap Agreement and irrevocably bestowing on Yinghe the voting power of those shares (the "Voting

Authorization Letter”). The Swap Agreement and Voting Authorization Letter were ratified by a resolution of CCM’s board on September 20, 2012 (the “September 2012 Resolution”) which included the following details:

- a) the Swap Agreement and Voting Authorization Letter were disclosed to the shareholders and ratified;
- b) the shareholders agreed to Yinghe exercising the five percent voting power on behalf of Run Guo;
- c) Mr. Chen would act as chairman of the board and general manager of CCM; and
- d) any change to the September 2012 Resolution would require unanimous consent of CCM’s directors and shareholders.

[38] Mr. Chen says that, in exchange for the Swap Agreement, he discounted the price of the shares purchased by Run Guo by \$500,000.

[39] In the Swap Agreement Petition, Yinghe sought various orders including that, pursuant to the Swap Agreement and Voting Authorization Letter, it was entitled to vote 1000 Run Guo shares at CCM’s annual general meetings, and specifically at its March 2024 annual general meeting six days hence (the “Proxy Votes”).

[40] Because of the timing, the Swap Agreement Petition could not be heard before the 2024 AGM (held March 28, 2024).

[41] At the 2024 AGM, Yinghe attempted to use the Proxy Votes to take control of CCM. At the same time, Run Guo delivered a revocation of the Swap Agreement and Voting Authorization Letter (the “Revocation”). The 2024 AGM was chaired by Mr. Liu, Run Guo’s representative, who ruled the Revocation was valid and accordingly, Yinghe could not vote the Proxy Votes.

[42] On May 14, 2024, Yinghe amended the Swap Agreement Petition to include a claim under ss. 227 and 228 of the *Act* based on alleged oppressive conduct by

CCM and its other shareholders. In support, Yinghe relied in part on the September 2012 Resolution.

[43] In response, neither CCM, nor Run Guo addressed the oppression remedy in detail but put Yinghe on notice that they considered that the amended petition did not properly plead the necessary factual and legal requirements for an oppression claim. Despite these warnings, Yinghe failed to amend the petition to particularize the foundation of its allegations.

[44] On August 13, 2024, the Swap Agreement Petition came on for hearing before Justice Warren. Yinghe's position was that:

- a) the Swap Agreement was binding on Run Guo and Yinghe was entitled to vote the Proxy Votes at the 2024 AGM;
- b) in both delivering the Revocation and determining its validity, Mr. Liu acted in a manner contrary to CCM's articles and the *Act* and in a manner that was oppressive or unfairly prejudicial to Yinghe;
- c) Yinghe's reasonable expectations that it would be able to use the Proxy Votes in accordance with the Swap Agreement were violated; and
- d) Run Guo and Mr. Liu were in breach of the Swap Agreement.

[45] Run Guo's position was that:

- a) the Voting Authorization Letter expired when CCM's construction debt was paid;
- b) by its conduct Yinghe waived its right to rely on either the Voting Authorization Letter or the Swap Agreement;
- c) Yinghe has not established any breach of the *Act* or CCM's articles such that would entitle it to the relief it sought;

- d) the Proxy Votes were invalid because it did not comply with CCM's articles; and
- e) the Swap Agreement Petition did not raise an oppression claim at law and there was no evidence proffered that could establish oppression.

[46] CCM took no position on the validity of the Swap Agreement or the Proxy Votes, but argued that:

- a) Yinghe had not established any breach of the *Act* or CCM's articles that could give rise to relief under ss. 227 or 228 of the *Act*; and
- b) despite CCM's previous warnings to Yinghe, the petition did not raise any allegations capable of supporting a claim for oppression.

[47] Justice Warren (in reasons indexed at 2024 BCSC 1477) agreed with CCM, Run Guo and Mr. Liu and dismissed the Swap Agreement Petition because it failed to properly raise an oppression claim. He also concluded that the Revocation was valid.

[48] Justice Warren did not determine the validity of the Swap Agreement or the Voting Authorization Letter and did not comment on the merits of Yinghe's claim. Nor did he decide whether Run Guo was in breach of the Swap Agreement. Instead, he dismissed the Swap Agreement Petition on the basis that, contrary to the requirements of the *Act*, it failed to plead material facts and allegations to support an oppression claim. Leave to amend the petition to correct the deficiencies was not granted because Yinghe had been given ample notice that its pleadings were deficient and had failed to take steps to address them.

### **The New Proceedings**

- i. The New Action (filing date: June 23, 2025; amended September 29, 2025; current status: to be adjudicated)**

[49] On June 23, 2025, Yinghe and Mr. Chen filed the New Action against nine defendants including CCM's existing and previous directors and shareholders,

seeking relief under s. 227 of the *Act* for, *inter alia*, oppression and unfair prejudice, declarations regarding the ownership of the 18 Trust Units, an order reinstating Mr. Chen as director and chairman of CCM, a declaration that Run Guo breached the Swap Agreement and raising the Management Fee Claim for the first time.

[50] At the time the New Action was filed, CCM's application to dismiss the Strata Ownership Action had not yet been heard and the action was scheduled to proceed to trial on September 15, 2025.

[51] The New Action refers to the Swap Agreement, the June 2012 Resolution, the Proxy Votes, the Voting Authorization Letter, the September 2012 Resolution, the invalid 2023 AGM and Mr. Chen's removal as director and chairman, the Share Issuances, the 18 Trust Units, the Management Fee Claim and alleged oppression claims. Relief sought includes:

- a) a declaration that CCM's corporate affairs have been conducted in an oppressive manner since March, 2023;
- b) a declaration that the Share Issuances be cancelled;
- c) a declaration that CCM holds the 18 Trust Units in trust for Yinghe;
- d) an order that Mr. Chen be reinstated a director and chairman of CCM;
- e) breach of contract respecting the Swap Agreement and Voting Authorization Letter;
- f) breach of trust and conspiracy respecting the 18 Trust Units; and
- g) breach of contract respecting the Management Fee Claim and related monies owed to Mr. Chen.

[52] On July 4, 2025, and in response to being served with the New Action, CCM's counsel notified Yinghe and Mr. Chen's then counsel by letter that: i) the claims raised in the New Action constituted an abuse of process; ii) the oppression claim

should have been brought by petition instead of a notice of civil claim; and iii) in any event, most of the claims raised in it were *res judicata*. CCM encouraged Yinghe and Mr. Chen to reconsider their position and discontinue the proceedings.

[53] Purporting to address these objections, Yinghe and Mr. Chen filed an amended notice of civil claim on September 29, 2025, limiting their claims in the New Action to:

- a) the Management Fee Claim;
- b) Yinghe’s claim against Run Guo and Mr. Liu, Jr. and Mr. Liu Sr. for damages for breach of the Swap Agreement and Voting Authorization Letter;
- c) Yinghe and Mr. Chen’s claim against Mr. Teng, and Mr. Fan Sr. and Mr. Fan Jr. for damages for beach of an agreement akin to the Swap Agreement;
- d) Yinghe’s claim against Mr. Liu Jr., Mr. Fan Jr. and Mr. Lu for damages for civil conspiracy arising out the collapsed sales of 10 of the 18 Trust Units; and
- e) Yinghe and Mr. Chen’s claims against all defendants, save CCM, for general and punitive damages.

**ii. The New Oppression Petition (filing date: August 1, 2025; current status: to be adjudicated)**

[54] Yinghe’s second response to CCM’s counsel’s July 4, 2025 letter was to file the New Oppression Petition on August 1, 2025, repeating the same allegations as are contained in the New Action but seeking only relief under the *Act* for alleged oppression and unfair prejudice allegations related to:

- a) the Share Issuances since August 8, 2023;
- b) CCM’s refusal to transfer title to the 18 Trust Units to Yinghe;

- c) allegations of procedural unfairness and wrongful CCM corporate governance;

[55] In the New Oppression Petition, Yinghe sought:

- a) a declaration that, since March 2023, CCM has conducted its affairs, and the powers of the directors have been exercised in a manner oppressive and/or unfairly prejudicial to Yinghe;
- b) a declaration that some of CCA's resolutions, are, or threaten to be, unfairly prejudicial to Yinghe;
- c) a declaration that the issued and subscribed 1,453,409 shares be cancelled or alternatively redistributed such that Yinghe remains 50% shareholder of CCM;
- d) that Mr. Chen be reinstated as director and chairman of CCM's board;
- e) that Mr. Liu Jr. and Mr. Lu be removed as directors of CCM;
- f) that Mr. Liu Jr., Mr. Lu, and CCM deliver documents and instruments and do all things necessary to account for CCM's expenses after March 20, 2023;
- g) the appointment of an inspector to investigate CCM;
- h) compensation to be paid to Yinghe and punitive damages be assessed against Mr. Liu Jr., Mr. Fan Jr. and Mr. Lu;
- i) an injunction enjoining CCM from issuing further share offerings; and
- j) that the New Oppression Petition be transferred to the trial list and either consolidated or heard at the same time as the New Action.

## Legal Principles

### i. Rule 9-5(1)

[56] The legal principles respecting when a claim may be struck under Rule 9-5(1) of the *Supreme Court Civil Rules* are not in controversy. That rule states:

(1) At any stage of a proceeding, the court may order to be struck out or amended the whole or any part of a pleading, petition or other document on the ground that

- (a) it discloses no reasonable claim or defence, as the case may be,
- (b) it is unnecessary, scandalous, frivolous or vexatious,
- (c) it may prejudice, embarrass or delay the fair trial or hearing of the proceeding, or
- (d) it is otherwise an abuse of the process of the court,

and the court may pronounce judgment or order the proceeding to be stayed or dismissed and may order the costs of the application to be paid as special costs.

[57] A claim may also be struck out under Rule 9-5(1)(a) on grounds that it is barred by the *Limitation Act*, R.S.B.C. 1996, c. 266: *Clark v. Kasper*, 2024 BCSC 1369 at para. 32.

[58] Likewise, where it is obvious that a claim cannot succeed or where it would serve no useful purpose and would be a waste of the court's time, such a claim can also be struck: *Singh v. Surrey (City)*, 2024 BCSC 980 at paras. 17, 26, 29–30.

### ii. *Res Judicata*, Issue Estoppel and Cause of Action Estoppel

[59] The doctrines of *res judicata* and estoppel are also not in dispute.

[60] The law seeks a finality to litigation and requires litigants to put their best foot forward to establish the truth of their allegations when first called upon to do so. It has been said that a litigant is “only entitled to one bite at the cherry”. Duplicative litigation, potential inconsistent results, undue costs, and inconclusive proceedings are to be avoided: *Danyluk v. Ainsworth Technologies Inc.*, 2001 SCC 44 at para. 18.

[61] To prevent abuse of the court system, the law has developed the principles of *res judicata*, issue estoppel, cause of action estoppel and the rule against collateral attack: *Danyluk* at para. 20.

[62] Simply put, a litigant does not get two kicks at the same can.

[63] The doctrine of abuse of process includes the doctrine of *res judicata* which has two branches: issue estoppel and cause of action estoppel. Issue estoppel prevents a litigant from raising an issue that has already been decided in previous proceedings. Cause of action estoppel prevents a litigant from pursuing a matter that was or should have been the subject of a previous proceeding: *Air Palace Co. Ltd., v. Rotor Maxx Support Ltd.*, 2023 BCCA 393 at para. 22; *Miro Chembiotech Ltd. v. Houle Electric Ltd.*, 2023 BCSC 537 at para. 18, citing *Erschbamer v. Wallster*, 2013 BCCA 76 at para. 12.

[64] Issue estoppel prevents material facts that have been found (or not found) by a court, whether based on evidence or admissions, from being relitigated in subsequent proceedings between the same parties. The doctrine applies not only to the same issues or causes of action but is extended to cover every point that properly belonged to the subject matter of the first litigation which the parties, exercising reasonable diligence, might have brought forward at the time: *Danyluk* at para. 54; *Foreman v. Niven*, 2009 BCSC 1476 at para. 12.

[65] To be successful, an issue estoppel defence requires that:

- a) The same question has been decided;
- b) The decision was final; and
- c) The parties or their privies are the same,

*Masjoody v. Simon Fraser University*, 2025 BCCA 175 at para. 26; *Miro* at para. 19; *Erschbamer* at para. 13.

[66] Cause of action estoppel prevents contradictory findings of fact or law and prevents a litigant from pursuing litigation in installments or “piecemeal”. It applies to issues which the parties had the opportunity to raise in a previous case and, in all the circumstances, should have raised. It can arise where an unsuccessful plaintiff: (i) brings a second action arising out of the same key or material facts, but based on a different legal theory; (ii) seeks to raise an issue in a subsequent proceeding that undermines the integrity of an earlier decision; or (iii) seeks to raise a defence in a subsequent action that could and should have been raised as plaintiff in the first action. It requires litigants to bring forward their whole case and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matters which might have been brought forward in a previous case. Likewise, an unsuccessful plaintiff cannot bring a second action arising out of the same key or material facts but based on a different legal theory: *Air Palace* at paras. 24–28.

[67] To be successful, a cause of action estoppel defence requires that:

- a) A court of competent jurisdiction has made a final decision in the prior action;
- b) The parties in both proceedings, or their privies, are the same;
- c) The cause of action in the prior action is not separate and distinct; and
- d) The basis of the cause of action in the subsequent action was argued or could have been argued in the prior action if the parties had exercised reasonable diligence,

*Masjoody* at para. 27.

[68] In short, these doctrines require parties to litigation to bring their whole case forward at first instance. They apply not only to the same issue or causes of action but cover every point that properly belonged to the subject matter of the first litigation, and which the parties, exercising reasonable diligence, might, ought, or

should have brought forward at that time: *Foreman* at paras. 10, 12; *Erschbamer* at para. 145.

[69] Courts have typically taken a stern view of raising issues in new proceedings that ought reasonably to have been raised in earlier proceedings: *Erschbamer* at paras. 29–30.

**iii. Abuse of Process**

[70] Even when the specific requirements of issue estoppel or cause of action estoppel are not met, the court maintains the discretion to apply the doctrine of abuse of process to prevent the misuse of the court’s process: *William Vince Family Trust v. Vince*, 2025 BCSC 272 at para. 68; *1125003 BC Ltd. v. The Owners, Strata Plan KAS 1886*, 2022 BCSC 1142 at para. 41; *Erschbamer* at paras. 29–30.

[71] The term “abuse of process” captures a wide variety of circumstances where the court’s process is used for an improper purpose. Rule 9-5(1)(d) allows the court to prevent a claim from proceeding where to do so would violate principles of judicial economy, consistency, finality and the integrity of the administration of justice. These include: (i) the creation of a multiplicity of proceedings dealing with the same subject matter; and (ii) re-litigating issues that the court has already determined: *Behn v. Moulton Contracting Ltd.*, 2013 SCC 26 at paras. 39–41; *Willow v. Chong*, 2013 BCSC 1083 at para. 21; *Chernen v. Robertson*, 2014 BCSC 1358 at para. 29.

[72] The administration of justice and fairness are at the heart of the doctrine of abuse of process. Initiating more than one proceeding in the same jurisdiction against the same party in relation to the same dispute has been found to be an abuse of process, even where the plaintiffs are not the same provided there is a sufficient community of interest to establish privity between them: *Woodward & Company Lawyers LLP v. The Tsilhqot’in National Government*, 2021 BCSC 16 at paras. 70–72 [*Woodward*]; *Singh* at paras. 32–33.

[73] Further, it can be vexatious to bring two actions where one will do: *Ari v. Insurance Corporation of British Columbia*, 2021 BCCA 180 at para. 70.

[74] The categories of abuse of process are open. Ultimately, abuse of process is discretionary, flexible and intended to preserve the integrity of the court's process where it is used for an improper purpose. The doctrine engages the court's inherent power to stay or strike proceedings which amount to a misuse of its procedures in a way that would be manifestly unfair to another litigant or would otherwise bring the administration of justice into disrepute: *Miro Chembiotech* at para. 21.

**iv. Limitation Periods and Duty to File Oppression Allegations in a Timely Manner**

[75] Oppression claims are subject to the two-year limitation period under s. 6 of the *Limitation Act*. Ongoing or continuous oppressive conduct does not prevent the running of a limitation period – the limitation clock starts ticking once oppressive conduct is first discovered: *Brockman v. Valmont Industries Holland B.V.*, 2022 BCCA 80 at paras. 22–27.

[76] The *Act* requires that oppression claims be brought “in a timely manner”, per s. 227(4), which states:

(4) The court may make an order under subsection (3) if it is satisfied that the application was brought by the shareholder in a timely manner.

[77] Accordingly, not only are oppression claims subject to limitation periods, but they must also be brought in a timely manner. The criteria for deciding if a claim is timely is a fact-driven analysis that considers the conduct of the parties and reflects a policy that parties should deal with oppression claims expeditiously, and which does not allow them to become stale or fester: *Brockman* at paras. 12, 41.

**The Parties' Positions**

**i. CCM's Position**

[78] CCM argues that the New Proceedings stem from the same Shareholder Dispute, involve the same issues, facts, documents and are between the same parties, or their privies as in the Prior Proceedings. These proceedings, it says, constitute a misuse of the court process, are clear attempts to re-litigate the same grievances that consumed significant time and resources in the Prior Proceedings

and are the exact types of proceedings that should be dismissed under R. 9-5(d) as being an abuse of process.

[79] Referring to the New Action, CCM says that Yinghe and Mr. Chen continue to make various claims arising from the same subject matter as the Prior Proceedings, including:

- a) ownership in and damages arising from the 18 Trust Units and allegations that were made and have been determined in the Strata Ownership Action when that action was dismissed; and
- b) the Revocation, the validity of which was determined in the Swap Agreement Petition.

[80] Referring to the New Oppression Petition, CCM says that Yinghe continues to make claims and seek the same relief that arises out of the same subject matter as the Prior Proceedings or that could and should have been raised in those pleadings and that constitute a collateral attack on the decisions made in those proceedings, including:

- a) Alleging that CCM has engaged in oppressive and prejudicial acts towards Yinghe by, among other things, improperly removing Mr. Chen from its board of directors and management, disputing Yinghe's beneficial interest in the 18 Trust Units, interfering with Yinghe's ability to deal with units it rents to third-party tenants, and the Share Issuances that effectively dilute Yinghe's shareholdings;
- b) Seeking injunctive and other relief related to the Share Issuances, which were the subject of injunction applications brought by Yinghe in both the 2023 AGM Petition and the Strata Ownership Action and later abandoned;
- c) Seeking orders that Mr. Chen be reinstated as director and chairman of CCM and asserting that the June 2012 Resolution and the September 2012 Resolution irrevocably naming him as director and chairman

continue to apply, which were the subject of the 2013 AGM Petition, the Swap Agreement Petition, and arise in the Strata Ownership Action;

- d) Claiming beneficial ownership of the 18 Trust Units on the same basis as asserted in the Strata Ownership Action, which was dismissed by Justice Matthews; and
- e) Asserting CCM's defense and counterclaim in the Strata Ownership Action constitute oppressive conduct.

[81] CCM further argues that Yinghe and Mr. Chen are taking a “piecemeal approach” to litigation which is an abuse of process. Save for the Management Fee Claim, the New Proceedings mostly raise the same issues, allegations and material facts as in the Previous Proceedings which have already been disposed of. As such, they amount to a collateral attack on previous court decisions and an attempt to re-litigate issues that have already been decided. To the extent they may raise new claims (for example, the Management Fee Claim), they could and should have been raised in the Prior Proceedings and to allow them to proceed would be a violation of the principles of judicial economy, consistency, finality and the integrity of the administration of justice. Accordingly, they violate the well-established principle that the commencement of more than one action in the same jurisdiction against the same defendant in relation to the same dispute is manifestly unjust to CCM and an abuse of process: *Woodward* at para. 70.

[82] CCM seeks to have the court exercise its discretion to correct this misuse of the court process by declaring the New Proceedings an abuse of process and dismissing them as against it.

**ii. Run Guo Ltd and Mr. Liu's Position in the New Oppression Petition**

[83] Adopting CCM's submissions, Run Guo and Mr. Liu seek to have the New Oppression Petition struck out as against them: i) pursuant to Rule 9-5 on the basis that it discloses no reasonable claim, is unnecessary, vexatious and/or is an abuse

of process, ii) because it is statute barred, and/or was not brought in a timely manner as required by s. 227 of the *Act*, and iii) because it is otherwise *res judicata*.

[84] They are not seeking any orders in the New Action.

[85] First, on the abuse of process issue, they say that the allegations of oppression raised in the New Oppression Petition were already dismissed in the Swap Agreement Petition and are otherwise barred by the doctrines of cause of action estoppel, issue estoppel and/or *res judicata*, abuse of process and the court's inherent discretion to prevent the misuse of its procedure and prevent bringing the administration of justice into disrepute: *1125003 BC Ltd. v. The Owners, Strata Plan KAS 1886*, 2022 BCSC 1142 at para. 41.

[86] Second, on the timing issue, they point out that oppression claims are subject to the two-year limitation period under s. 6 of the *Limitation Act* and argue that Yinghe is woefully out of time. The limitation period clock begins to run when oppression arises and is discovered. Ongoing or continuous oppressive conduct does not postpone or prevent the running of a limitation period. Further, s. 227(4) of the *Act* requires oppression claims be brought expeditiously and in a timely manner and the New Oppression Petition was not. Mr. Chen's second removal from CCM's board (upon which Yinghe's oppression claim is based in part) occurred in January 2025 and the New Oppression Petition was not filed until August 1, 2025, almost five months after CCM applied to dismiss Yinghe's Strata Ownership Action: *Brockman* at paras. 12, 22–27 and 41.

[87] Third, the same facts and circumstances alleged in the New Oppression Petition arose in the Prior Proceedings and Yinghe has not alleged any special circumstances or other reasons why the oppression allegations sought now were not advanced earlier: *Carr v. Cheng*, 2007 BCSC 1693.

[88] Specifically, they point to the following:

- a) The 2023 AGM Petition raises the same cause of action against the same parties already considered and decided respecting the validity of

Mr. Chen's first removal as director: *Delane Industry Co. Ltd. v. Atkinson*, 2017 BCCA 79 at para. 25;

- b) The oppression remedy being sought could have been raised and argued in the 2023 AGM Petition had Yinghe exercised due diligence. It now seeks to rely on the same facts but based on a different legal theory which is contrary to the doctrine of cause of action estoppel: *Air Palace* at paras. 23, 28;
- c) Yinghe could and should have properly and adequately brought forward Mr. Chen's first removal from CCM's board in the Swap Agreement Petition when the first oppression claim was brought. Justice Warren's decision refers to Mr. Chen's first removal. Cause of action estoppel prohibits Yinghe from pursuing litigation in installments which is what Yinghe seeks to do in the New Oppression Petition: *Air Palace* at para. 25;
- d) Yinghe did not put "its best foot forward" in either the 2023 AGM Petition or the Swap Agreement Petition and it is not now entitled to another "bite of the cherry": *Danyluk* at para. 18.
- e) The New Oppression Petition is another proceeding in the same jurisdiction in relation to essentially the same shareholders in relation to the same Shareholder Dispute, which constitutes an abuse of process. Even though the parties are not identical, there is sufficient community of interest to establish privity between the parties: *Woodward* at para. 70; *Singh* at paras. 32–22;
- f) Yinghe and Mr. Chen applied in the 2023 AGM Petition to enjoin CCM from issuing the first tranche Shares Issuances. Yinghe then abandoned the application when it agreed to participate. Yinghe had the opportunity then, as well as in the Swap Agreement Petition, to pursue its allegations of oppression and chose not to;

- g) The facts alleged in the New Oppression Petition confirm that Yinghe knew that CCM claimed ownership of the 18 Trust Units as of June 29, 2023. The limitation period in respect of Yinghe now claiming ownership expired on June 29, 2025, over one month before the New Oppression Petition was filed and the claim is now statute barred; and
- h) Yinghe could and should have argued these allegations in the Swap Agreement Petition when it alleged oppressive conduct. Cause of action estoppel should prevent Yinghe and Mr. Chen from pursuing its oppression claim in installments which is what it seeks to do in the New Oppression Petition: *Air Palace* at para. 25.

[89] Given these circumstances, Run Guo and Mr. Liu argue that their application should be allowed and the New Oppression Petition dismissed against them.

**iii. Yinghe and Mr. Chen's Position**

[90] Yinghe and Mr. Chen have no dispute that the principles of *res judicata*, issue estoppel, cause of action estoppel and abuse of process apply to prevent re-litigation of issues or abusing the court processes. They say, however, that, save for a couple of examples, those principles do not apply in this case, and the New Proceedings should not be struck in their entirety.

[91] They assert that striking pleadings in general is a draconian remedy to be used sparingly and only in the clearest of cases where there has been egregious conduct. They argue that prior to striking a proceeding, fairness dictates that the court should consider other ways of correcting deficiencies that are not so draconian.

[92] Here, they contend that they are not guilty of abusing the court's process and even if they were, their conduct does not rise to the level of egregiousness that would warrant the claims being struck.

[93] To give context to the matter, they point to the four separate and independent claims being made in the New Action as follows:

a) Yinghe’s claim against Run Guo and Mr. Liu Sr. - the Swap Agreement

Claim - The Swap Agreement started out with a loan by Mr. Liu Sr. to Yinghe. Instead of Yinghe paying the loan back in cash, an agreement was reached that Yinghe would transfer some of its CCM shares to a company to be incorporated by Mr. Liu Sr. – Run Guo. Because Mr. Chen wanted to maintain voting control of CCM, the Swap Agreement was entered into giving Yinghe control over the Proxy Votes. In exchange, Yinghe discounted the value CCM’s shares to be transferred to Run Guo by \$500,000. The Swap Agreement provides that, if Run Guo breached it, Yinghe would be entitled to payment of \$500,000. Yinghe says that, by filing the Revocation, Run Guo is in breach of the Swap Agreement and claims against Run Guo and Mr. Liu for breach of contract. In dismissing the Swap Agreement Petition, Justice Warren found that the Revocation and refusal to consider the Proxy Votes was valid. His ruling did not deal with the validity of the Swap Agreement itself or whether it had been breached but only Yinghe’s failure to make out the evidentiary foundation for an oppression remedy. At paras. 59 and 79 of his reasons, Justice Warren stated that Yinghe had:

[59] ...an alternate route for redress for the claim advanced. Relief under s. 227 is unlikely to be available if the petitioner has another clear remedy, such as in contract, tort or debt.

...

[79] ...The dispute between the parties is fundamentally a question of contract. Yinghe can seek damages and injunctive relief in an action for breach of the Swap Agreement. The Swap Agreement itself provides for liquidated damages of \$500,000 for its breach.

In other words, Yinghe says Justice Warren invited Yinghe to commence an action respecting the Swap Agreement which it did by filing the New Action. Yinghe points out that the Swap Agreement was between Mr. Liu Sr. and Yinghe and did not involve CCM. It also points out that neither

Run Guo nor Mr. Liu have brought an application in the New Action to strike the claim for breach of the Swap Agreement.

- b) Yinghe's claim against other defendants: Like the Swap Agreement claim, Yinghe sues Messrs. Fan, Lu and Yi Teng Investments Inc. for breach of contract relating to their purchase of CCM shares from Yinghe. The allegation is that, similar to the Swap Agreement, Mr. Fan Sr. approached Yinghe wanting to buy shares of CCM which Yinghe agreed to on the condition that Yinghe could vote the shares to maintain control over CCM.
- c) Yinghe's claim against CCM - Yinghe also claims against CCM for breach of trust and tortious conspiracy respecting the 18 Trust Units Yinghe says CCM holds in trust for it. Yinghe maintains that it made shareholders loans to CCM and in exchange CCM was to transfer those units to it which it has failed to do. Relying on this arrangement, Yinghe entered into contracts to sell 10 of the 18 Trust Units to third parties but CCM, as registered owner, refused to sign the transfer documents resulting in the sales being unable to close with Yinghe suffering resultant damages. Yinghe concedes that for it to succeed, there would need to be a finding that CCM holds the units in trust it. Yinghe also concedes that 10 of the 18 Trust Units were referred to in the Strata Ownership Action which claim was effectively dismissed by Justice Matthews.
- d) Mr. Chen's Management Fee Claim against CCM - Mr. Chen claims to be entitled, as manager of CCM, to the Management Fee Claim because, as the *de facto* manager of CCM during the Building's construction, he met certain targets that were set out. He says that CCM is indebted to him for fees and bonuses which remain outstanding. He also claims to be entitled to salary for his services while managing CCM's construction which remain outstanding. Mr. Chen disagrees that these claims could and should have been brought in the Strata Ownership Action and that his failure to do so amounts to an abuse of process. He says that CCM is

attempting to expand the benefit of Justice Matthew's decision of bad behaviour to a global prohibition of all claims against it. Mr. Chen also notes that the New Action is the first time the Management Fee Claim was raised.

[94] Yinghe is currently applying before Justice Matthews to tender new evidence and have her decision to strike the Strata Ownership Action reconsidered. Justice Matthews' decision is also currently under appeal.

[95] Mr. Chen argues that he was not a party to the Strata Ownership Action so it cannot be said that he could and should have pursued the Management Fee Claim in that action. He argues that the principles of *res judicata* do not go so far as to apply to a third party to require him to bring a separate claim in the same proceedings.

[96] Yinghe and Mr. Chen maintain that the timing of the filing of the Prior Proceedings and the New Proceedings is important because it explains why the claims could not have been brought at once. For example:

- a) The breakdown of the relationship between the parties started in late 2022 or early 2023 and boiled over at the 2023 AGM. Yinghe did not attend the 2023 AGM because Mr. Chen was out of the country and he did not receive the required notice. In his absence, the other directors passed resolutions that Mr. Chen did not find out about until afterwards. His distrust of the other directors of CCM is therefore understandable;
- b) In the 2023 AGM Petition, Yinghe argued that the 2023 AGM was improperly called and all business conducted was invalid, including the appointments of directors. It sought to set aside all resolutions passed in his absence. At the heart of the 2023 AGM Petition (decided by Justice Stephens and dismissed on appeal) was Mr. Chen's application that he be reinstated as a director and chairman of CCM's board, which application was successful;

- c) The next move by CCM was on July 10, 2023, when it gave notice that it intended to make the first of the Share Issuances which would have effectively watered down Yinghe's share holdings. On July 17, 2023, some seven days later, Yinghe brought an application in the 2023 AGM Petition, seeking an injunction restraining CCM from issuing those shares. Part of the complaint was that by that time Mr. Chen had been, as it turns out, wrongfully, removed from CCM's board and the board purporting to proceed with the Share Issuances was invalidly constituted. To mitigate its losses and prevent his shares from being watered down, Yinghe agreed to participate in the first of the Share Issuances and abandoned the injunction application. However, the issue of the validity of the Share Issuances has never been litigated or decided and Yinghe should not be prevented from claiming it amounted to oppressive behaviour. At most, as a result of Justice Warren's dismissal of the Swap Agreement Petition, CCM's argument that Yinghe's oppression claim should be struck should be limited to the first share issuance and not the three subsequent ones;
- d) Yinghe's later injunction application to enjoin CCM from issuing the third tranche of shares was abandoned because by the time the matter came before the court, the shares had already been issued. Yinghe decided to proceed in another way. Accordingly, it says there is no abuse over Yinghe's attempt to seek oppression relief over the Share Issuances because nothing has been determined on the merits;
- e) As part of Justice Stephen's ruling on the 2023 AGM Petition, an order was made requiring CCM to convene an annual general meeting by the end of March 2024. At that meeting Mr. Chen sought to use the Proxy Votes which was denied by Mr. Liu, the then board chair, who ruled that the Revocation was valid. Yinghe and Mr. Chen sought relief from oppression by filing the Swap Agreement Petition that was ultimately dismissed by Justice Warren who did not decide the validity of the Swap

Agreement and who invited Yinghe to bring an action for breach of contract;

- f) The Strata Ownership Action is about the shareholder loans owed by CCM to Yinghe and the 18 Trust Units. Justice Matthews dismissed that action, not on substantive grounds, but due to Yinghe and Mr. Chen's failure to comply with the *Rules* and various court orders requiring document production.

[97] Given the different timelines of these events and explanations (the "Timelines"), and while conceding that some of its claims in the New Action should be struck, Yinghe and Mr. Chen deny that they are either guilty of abusing the Court's process or otherwise running afoul of the principles of *res judicata*.

### **Discussion**

[98] Rule 9-5(1)(d) grants the court discretion to strike pleadings that are an abuse of process. This doctrine has been characterized as a very broad and flexible mechanism that permits judges to prevent unfairness and oppressive treatment in the context of civil actions. While the doctrine has been applied in a variety of contexts, it is generally accepted that only egregious conduct by a party will warrant the summary dismissal of an action, and only then in the clearest of cases. The conduct must be unfair to the point of being contrary to the interest of justice and constitute a misuse of its procedure in a way that would bring the administration of justice into disrepute. It is to be used sparingly: *Hare v. Lit*, 2013 BCSC 33 at para. 24.

[99] Where the court identifies deficiencies in a pleading, the appropriate remedy may be to grant leave to amend, provided it is not plain and obvious that the defects are incurable: *D.K.E. v. Hotel Belmont F&B Ltd.*, 2025 BCSC 1467, at paras. 46, 47.

[100] The doctrine of *res judicata* applies to any final decision pronounced by a court, even if the claim did not proceed to trial or the issues were not decided on the merits: *Ahmed v. Canna Clinic Medicinal Society*, 2018 BCCA 319 at para. 13. This

means that *res judicata* applies to the claims made in the Strata Ownership Action that were dismissed by Justice Matthews because of Yinghe's misbehavior.

[101] As earlier noted, Justice Matthew's order dismissing the Strata Ownership Action has not been entered, is under appeal and Yinghe and Mr. Chen have applied to Justice Mathews for reconsideration. It is therefore unclear that her decision can be considered 'final' for the purpose of cause of action estoppel and/or *res judicata*: *Pereira v. UNITE HERE Local 40*, 2024 BCCA 27; *Coyle v. McGuire*, 2026 BCCA 70; *J.R.T. Nurseries Inc. v. 0843374 B.C. Ltd.*, 2016 BCSC 501 [J.R.T.].

[102] In *Pereira*, the Court stated the following at paras. 6 and 7:

[6] At the time the application to strike the claim was heard by the chambers judge, Ms. Pereira was continuing to challenge the decisions of the Labour Relations Board. She had brought judicial review proceedings seeking to quash those decisions. Although the judicial review applications had been dismissed, Ms. Pereira was pursuing appeals. There are authorities suggesting that a matter may be *res judicata* notwithstanding that appeal rights remain (see *Minott v. O'Shanter Development Company Ltd.* (1999), 42 O.R. (3d) 321 (C.A.) at 334–35; *Re Winnipeg Motor Express Inc.*, 2009 MBCA 30 at para. 23) but the matter is complex and cannot be said to be completely free from doubt (see *R. v. Mahalingan*, 2008 SCC 63 per Justice Charron (minority judgment) at para. 134; Donald J. Lange, *The Doctrine of Res Judicata in Canada*, 5th ed. (Toronto: LexisNexis Canada), 2021, at Chapter 2.B.5.B).

[7] In the circumstances, it might be argued that the decision to strike the notice of civil claim was premature, and that it should not have been made until appeal rights were exhausted in respect of challenges to the Labour Relations Board decisions. I accept that it might have been preferable for the judge to stay these proceedings pending the conclusion of the judicial review appeals rather than striking the claim.

[103] And in *Coyle*, the Court had this to say at para. 59:

[59] While the weight of authority supports the idea that a determination qualifies as final even though it may be under appeal, there are cases that adopt a contrary approach. It seems to me that the caution expressed in *Pereira* is salutary. It may have been appropriate for the judge below to have stayed the proceedings on the basis of cause of action estoppel rather than dismissing them.

[104] Lastly, in *J.R.T.* this Court stated at para. 18:

[18] I accept that a trial judgment cannot be considered final for the purposes of *res judicata* if it is under appeal; see, for instance, *Grant McLeod Contracting Ltd v Forestech Industries Ltd*, 2008 BCSC 756 at para 14.

[105] If Justice Matthews allow the reconsideration application and/or the appeal is successful, cause of action estoppel and/or *res judicata* would not apply. Based on the current status of Justice Matthews' decision, I will discuss CCM's application regarding the New Action and CCM and Run Guo's applications regarding the New Oppression Petition.

**i. CCM's Application regarding the New Action**

[106] There is no dispute that in the New Action, Yinghe and Mr. Chen continue to make claims arising from the Shareholder Dispute which was the subject matter of the Prior Proceedings.

[107] Claims of ownership in the 18 Trust Units and damages flowing from CCM's refusal to transfer them to Yinghe were allegations made in the Strata Ownership Action which was dismissed by Justice Matthews. Even though those issues were not decided on the merits, with a final order entered they are *res judicata* and cannot be raised again in the New Action. Indeed, Yinghe and Mr. Chen concede the point.

[108] The Management Fee Claim for remuneration and bonuses allegedly payable to Mr. Chen in his role as director and chairman of CCM is raised for the first time in the New Action. Although the Management Fee Claim was not specifically mentioned in the Prior Proceedings, the validity of the resolutions upon which Mr. Chen bases the claim, and the propriety of his conduct in his role as director of CCM, were in issue in the 2023 AGM Petition and Strata Ownership Claim.

[109] Claims regarding the validity of the Proxy Votes and Revocation were the subject of the Swap Agreement Petition dismissed by Justice Warren on the basis that, as pleaded, it did not properly support a claim for oppression.

[110] Mr. Hicks was not counsel on the Prior Proceedings, nor was he involved in drafting or filing the New Proceedings. To his credit and having only recently been

appointed counsel for Yinghe and Mr. Chen, he conceded that all Yinghe's claims against CCM in the New Action (as amended on September 29, 2025) save for the Management Fee Claim, are *res judicata* and should be struck.

[111] Yinghe makes the concession that *res judicata* applies respecting the 18 Trust Units only because they were dismissed in the Strata Ownership Action for Yinghe's failure to comply with the *Rules* and court orders. It does not concede its claim for ownership of the 18 Trust Units itself.

[112] Because of Yinghe's concession, and subject to its reconsideration application before Justice Matthews and/or its appeal of her decision, the only remaining claim against CCM in the New Action is the Management Fee Claim. While CCM agrees the Management Fee Claim was not pleaded in the Prior Proceedings, it says it could and should have been and by bringing them in the New Action, Mr. Chen is improperly attempting to litigate in installments and is violating the doctrine of cause of action estoppel.

[113] While there is an argument Mr. Chen could and should have "put his best foot forward" in the Strata Ownership Action and made the Management Fee Claim so that all issues between the parties arising out of the Shareholder's Dispute could have been litigated together at the same time, I do not find that the test for cause of action estoppel is met.

[114] First, it is not clear that the Strata Ownership Action is a final decision, as the final order has not been entered and there are both an appeal and an application for reconsideration pending. While that may be decisive, the remaining requirements for cause of action estoppel also do not make it clear that Mr. Chen is estopped from arguing the Management Fee Claim.

[115] While there is a sufficient community of interest between Yinghe and Mr. Chen to establish privity, the fact that Mr. Chen was not initially a party to the Strata Ownership Action speaks to the distinctness of Mr. Chen's personal claims for unpaid salary and bonuses he says are owed to him personally. There is nothing in

the pleadings that suggests that Yinghe had an avenue to make a legal claim to either of Mr. Chen's alleged sale incentives or unpaid salary. CCM's suggestion that the Strata Ownership Action should have included Mr. Chen as an additional plaintiff is, in my view, too large a leap. As the pleadings stand, it is not clear that the Management Fee Claim is something that Yinghe could have argued in the Strata Ownership Action. Mr. Chen was only brought into the Strata Ownership Action by way of counterclaim, and there is no mention of the Management Fee Claim in the response to the counterclaim. While they arise out of the same facts as the Shareholder Dispute, they are a distinct remedy Mr. Chen seeks for work he says he has done under a contract.

[116] But for both Yinghe and Mr. Chen's application to have Justice Matthews reconsider her decision and their appeal of her decision, I would have granted CCM's application and dismissed the New Action as against it, save for Mr. Chen's Management Fee Claim which is allowed to proceed. Instead, I am going to order a stay of the New Action (other than the Management Fee Claim) pending the determination of those matters. Should Justice Matthews decline to reconsider her decision in Yinghe and Mr. Chen's favor, and should the appeal be dismissed, the New Action will then be dismissed as against CCM, save for the Management Fee Claim. Such dismissal would not mean that Yinghe is precluded from advancing any claim at all in the future. For example, as a shareholder of CCM, Yinghe would be entitled to share in the proceeds of the sale of the 18 Trust Units, and if CCM is guilty of misusing its assets to Yinghe's detriment, it would be entitled to make a claim.

**ii. CCM and Run Guo's Applications regarding the New Oppression Petition**

[117] In the New Oppression Petition, relief from oppression and conduct alleged to be oppressive, under s. 227 of the *Act*, is the only claim being made. That conduct is summarized in the New Petition as:

- a) CCM financing operations since August 8, 2023, by way of the Share Issuances which had the effect of diluting Yinghe’s share valuation;
- b) The three share issuances since August 8, 2023, resulted in Yinghe having a decreased interest in CCM’s assets;
- c) CCM’s refusal to transfer title of the 18 Trust Units to Yinghe, which conduct included blocking Yinghe’s attempts to sell the units, changing the FOB’s for the units and interfering with Yinghe’s relationships with its tenants; and
- d) Procedural unfairness related to CCM’s corporate governance, with CCM conducting its affairs contrary to its own rules, including twice removing Mr. Chen as director and chairman and invalidating the Proxy Votes by allowing the Revocation.

[118] All acts of alleged oppression occurring prior to Swap Agreement Petition filed in May 2024 are identified in the New Oppression Petition and arise out of the same facts and circumstances as the allegations referred to in the Prior Proceedings.

[119] CCM and Run Guo argue that, by raising new allegations of oppression along with the same allegations in the Prior Proceedings, Yinghe is wrongfully taking a “piece-meal” and “shotgun” approach to its complaints against them. They say Yinghe should have commenced all proceedings and made all claims at once. This broad assertion does not entirely reflect the reality of what was happening on the ground when the proceedings were brought and ignores the context underlying each proceeding and the Timelines.

[120] As examples that Yinghe points to:

- a) The 2023 AGM Petition was brought because Mr. Chen was removed as a director and chairman of CCM. He ultimately succeeded in being restored to both capacities;

- b) The Swap Agreement Petition was an oppression claim brought by Yinghe because the then CCM board accepted the Revocation as valid and did not allow Yinghe to vote the Proxy Votes. That petition was dismissed because of inadequate pleadings;
- c) The New Oppression Petition was brought in response to CCM correctly taking the position that making an oppression claim under the *Act* can only be brought by petition, not by a notice of civil claim which is what was attempted in the New Action. In the New Oppression Petition, Yinghe claims relief for oppression and orders, including orders that:
  - i. CCM's share issuance on August 8, 2023, was invalid and the issued shares be cancelled;
  - ii. Alternatively, an order that CCM's issued shares be redistributed such that Yinghe maintained 50% ownership;
  - iii. Mr. Chen be reinstated as a director and the chairman of CCM's board and be able to exercise without interference from other directors or shareholders the duties set out in the June 2012 Resolution and the 2012 September Resolution;
  - iv. Messrs. Xin Liu and Dapei Lu be removed as directors of CCM;
  - v. For the appointment of an inspector over CCM; and
  - vi. Damages including punitive damages against Messrs. Liu, Fan and Lu.

[121] Despite Yinghe's explanations for bringing three different petitions at different times, they all arise out of the same Shareholder's Dispute. Save for Mr. Chen's second removal from CCM's board that occurred in January 2025, and allegations respecting CCM's third and fourth share issuances, the background facts set out in the New Oppression Petition are essentially the same, and arise out of the same circumstances, as those alleged as background facts set out in the Prior

Proceedings. The allegations of oppressive conduct are also similar, and refer, for example, to:

- a) alleged violations of the June 2012 Resolution and the September 2012 Resolution;
- b) removing Mr. Chen from CCM's board at the April 2023 AGM;
- c) CCM's first share issuance that would have severely diluted the value of Yinghe's shares had it not participated in it;
- d) CCM's refusal to transfer the 18 Trust Units to Yinghe contrary to various shareholder's resolutions and verbal agreements as a method of repaying shareholder's loans;
- e) allegations that CCM continues to hold the 18 Trust Units in trust for Yinghe; and
- f) CCM causing third-party tenant fobs to be disabled thus denying them access to their units.

[122] New allegations of oppression in the New Oppression Petition include:

- a) that Yinghe did not subscribe to the third and fourth rounds of share issuances resulting in Mr. Chen's underlying shareholding in CCM decreasing from 50% to 34.61% (a reduction of 15.39%);
- b) CCM continuing to own nine units that "have not been distributed", valued at \$2,414,800 which presumably could have been sold to raise capital instead of issuing shares;
- c) CCM blocking Yinghe's March 2023 sale of 10 of the 18 Trust Units to a corporate purchaser;
- d) CCM causing the Building's strata management company to refuse to accept strata fee payment for the 18 Trust Units from Yinghe;

- e) CCM suing Yinghe and Mr. Chen for selling three strata units;
- f) through their conduct, CCM and its current directors depriving Yinghe and Mr. Chen from rental income from the 18 Trust Units; and
- g) through the third and fourth share issuances, CCM's other shareholders assuming control of CCM's board, to Yinghe's detriment.

[123] Again, the issues raised in the New Oppression Petition all stem from the same dispute – the Shareholder Dispute – and rely on virtually the same factual underpinnings and involve the same basic facts. On their face the pleadings in the New Oppression Petition refer almost entirely to the same allegations made in the Prior Proceedings with more recent allegations added. The instances of new allegations that Yinghe now makes are intrinsically linked to the Prior Proceedings, and several examples Yinghe points to as “new allegations” existed at the time the Prior Proceedings were commenced. Yinghe clearly turned its mind to the issues raised in the New Oppression Petition when it commenced the 2023 AGM Petition and the Swap Agreement Petition. Because of this and because Yinghe's claims for oppression in the New Oppression Petition essentially arise out of the same Shareholder Dispute and factual background as was detailed in the Swap Agreement Petition, the New Oppression Petition must be dismissed as against CCM, Run Guo and Mr. Liu as an abuse of process.

[124] The Swap Agreement Petition was dismissed by Justice Warren because it did not properly plead oppression and leave to amend that petition was not granted due to Yinghe's failure to address deficiencies in the pleadings of which it had been given ample notice. Allowing Yinghe to now proceed with the New Oppression Petition, which complains of governance issues that substantially overlap with the Swap Agreement Petition, would provide relief to Yinghe from Warren J.'s decision to which Yinghe is not entitled. Yinghe does not get two kicks at the can.

### iii. Limitation Defence

[125] Given my ruling, it is unnecessary to comment on other defences raised during submissions. For the sake of completeness, however, those submissions were:

- a) Raised for the first time during submissions, CCM argued that, in addition to its position that the Management Fee Claim should be dismissed as offending the doctrine of cause of action estoppel, it should also be dismissed because it is statute barred under the *Limitation Act*. This argument was supported by Run Guo and Mr. Liu; and
- b) In Run Guo and Mr. Liu's application, and in addition to the grounds noted earlier, they seek to have the New Oppression Petition struck on the basis that the oppression claim was not brought in a timely fashion, contrary to the express provisions of the *Act*.

[126] The limitation defence was not part of CCM's notice of application, which was brought solely pursuant to R. 9-5(1)(d). While I agree that a claim may be struck out under R. 9-5(1)(a) on the grounds that it is barred by the *Limitation Act*, it must first be plain and obvious that such things as discoverability or postponement of the commencement of the limitation period are not applicable: *Clark* at para. 32.

[127] It may well be that CCM has a meritorious limitation defence to the Management Fee Claim but given that it was not part of CCM's application before me and given that fulsome arguments were not made, I consider that it would be inappropriate to make a ruling on the point and I decline to do so.

[128] Respecting Run Guo and Mr. Liu's argument that Yinghe failed to bring its oppression claim in a timely manner as required by s. 227(4) of the *Act*, I am not persuaded that such is the case. Considering the timing of events as summarized above, the nature of the Shareholder Dispute that had been ongoing since March 2023 and the fact that Yinghe had put CCM and its shareholders on notice with the Prior Proceedings that it was upset with CCM and how its directors were conducting

its affairs, CCM would have known that Yinghe was claiming oppression. That is, CCM had early warning that Yinghe was looking to the courts for relief from oppression. Had it been necessary, I would have ruled that Yinghe's oppression claim was brought in a timely manner within the meaning of s. 227(4) of the *Act*.

**Decision and Summary**

[129] In the result and for the reasons noted above, I make these orders:

- a) Pending the outcome of Yinghe and Mr. Chen's application to have Justice Matthews reconsider her decision in the Strata Ownership Action, and pending the outcome of the appeal of that decision, the New Action is stayed, save for the Management Fee Claim which Mr. Chen is allowed to continue whatever the result of the application and appeal in the Strata Ownership Action may be. Should both the application and the appeal fail, and save for the Management Fee Claim, the New Action is struck as against CCM as being *res judicata*; and
- b) The New Oppression Petition is struck against CCM, Run Guo and Mr. Liu as being *res judicata* and an abuse of process.

**Costs**

[130] Rule 9-5(1) expressly provides that a party may be awarded special costs of an application to strike an action as an abuse of court process.

[131] CCM seeks an order of special costs against Yinghe and Mr. Chen. Run Guo and Mr. Liu seek special costs against Yinghe.

[132] Special costs are reserved for cases where there has been reprehensible conduct. Even where abuse of process has been found, special costs are not automatic: *Woodward* at paras. 78–79.

[133] On July 3, 2025, CCM's counsel wrote to Yinghe and Mr. Chen's prior counsel putting them on notice that it considered the New Action an abuse of process and that most of the claims being made against CCM were *res judicata* and

to the extent they weren't, they could and should have been raised in the Prior Proceedings. Yinghe and Mr. Chen were urged to reconsider their position and discontinue the New Action, or alternatively, amend the pleadings to properly plead only the claims they considered had not previously been dealt with. CCM warned them that if they failed to do so, it would seek an order of special costs if its application to strike the New Proceedings was successful.

[134] CCM points out that following this letter, Justice Matthews struck the Strata Ownership Action, some of which claims are mirrored in the New Action. It asserts that Yinghe and Mr. Chen waiting until the second day of the hearing of the applications before conceding that *res judicata* applied, was too little too late. Meanwhile CCM was forced to incur substantial costs.

[135] Run Guo and Mr. Liu adopt CCM's submissions and also seek special costs.

[136] Run Guo and Mr. Liu say that with Yinghe's concessions made during the hearing of the applications, roughly half of its claims against them in the New Oppression Petition have been dispensed with under the doctrines of *res judicata*, issue estoppel or cause of action estoppel. They point out that Yinghe now agrees that the issue surrounding the first removal of Mr. Chen as director at the 2023 AGM and the issue surrounding the 18 Trust Units are *res judicata*, which they should have known from the outset. Accordingly, they argue that special costs against Yinghe are warranted.

[137] In response, Yinghe and Mr. Chen argue that since these applications were brought and pending their determination, the New Proceedings were essentially stood down to avoid the parties having to incur unnecessary expense, which is atypical of a party attempting to abuse the system. That conduct, they say, cannot be considered egregious and worthy of rebuke.

[138] As just mentioned, special costs should only be awarded in the clearest of cases. It is noteworthy that both the New Action and the New Oppression Petition

were commenced *before* Justice Matthews dismissed the Strata Ownership Action so cannot be said to have been circumventing her decision.

[139] All things considered, I am not persuaded that Yinghe and Mr. Chen’s conduct in commencing the New Proceedings is egregious enough to attract an order for special costs.

[140] However, I conclude that CCM was the largely successful party and is entitled to its scale B costs, as are Run Guo and Mr. Liu who were successful in their application.

“G.P. Weatherill J.”