IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Casa Margarita Enterprises Ltd. v. Huntly Investments Limited,* 2025 BCSC 138

Date: 20250129
Docket: S190278
Registry: Vancouver

Between:

Casa Margarita Enterprises Ltd.

Plaintiff

And

Huntly Investments Limited, The Pacific Investment Corporation Limited, Brent Newton Wolverton, Mark Frank Wolverton, Lisa Marie Wolverton, Kathleen May Wolverton, Anne Louise Wolverton, The DM Wolverton Trust, and The Wolverton Alter Ego Trust

Defendants

Before: The Honourable Madam Justice W.A. Baker

Reasons for Judgment

Counsel for Plaintiff:	R. Josephson
Counsel for the Defendants Huntly Investments Limited, The Pacific Investment Corporation Limited, Brent Newton Wolverton, Mark Frank Wolverton, Lisa Marie Wolverton, Kathleen May Wolverton, The DM Wolverton Trust, and The Wolverton Alter Ego Trust:	R.S. Anderson, K.C. M.K. Shergill
Place and Date of Hearing:	Vancouver, B.C. January 22, 2025
Place and Date of Judgment:	Vancouver, B.C. January 29, 2025

[1] This application is brought by the defendants, except for Anne Louise Wolverton, (the "Huntly Defendants") seeking an order that I recuse myself from continuing as the trial judge in this matter.

[2] On April 19, 2022, the Huntly Defendants obtained an order bifurcating the trial of this matter, severing the issue of liability from a determination of the value of the shares in Huntly Investments Limited held by the respondent and plaintiff ("Casa Margarita").

[3] On July 18, 2022, the trial commenced on the question of liability. I rendered my decision on liability on May 30, 2023. An appeal was taken, and was dismissed on January 26, 2024. Leave to the Supreme Court of Canada was sought, and the Huntly Defendants' leave application was dismissed on September 19, 2024.

[4] The Huntly Defendants submit on this application that my reasons, taken in the context of the case as a whole, including the positions of counsel before the courts, give rise to a reasonable apprehension of bias. The Huntly Defendants emphasize that this is not a case of actual bias, but a case of a reasonable apprehension of bias. Casa Margarita submits that no reasonable apprehension of bias could possibly arise in the context of this case. Casa Margarita also submits that this application is an abuse of process brought by the Huntly Defendants to delay a resolution of this case.

Issues

[5] This application gives rise to the following issues:

a) Does a reasonable apprehension of bias arise on the facts of this case, taken as a whole?

b) Is this application an abuse of process?

Does a reasonable apprehension of bias arise on the facts of this case, taken as a whole?

[6] The position of the Huntly Defendants is best summarized in their submissions as follows:

> A reasonable, fully informed person, in the context of Justice Baker having formed an unfavorable view of Mr. Wolverton and of his credibility and in the context of counsel for the petitioner deciding to flatter Justice Baker would likely conclude that regarding key aspects of the two central issues to be determined at the valuation trial, in the absence of any evidence by the parties, Madam Justice Baker has indicated a predisposition towards a particular result in relation to the issue of valuation:
>
> (a) First, that the underlying value of Huntly's assets is greater than the assessed value.
>
> (b) Second, that share valuation should be based on fair value rather than fair market value, such that there should be no minority discount; and
>
> (c) Third, that the fair value of Casa's shares in Huntly exceeds $16,302.70 per share.

[7] The law in relation to a reasonable apprehension of bias is well settled. The test, established in 1978 by the Supreme Court of Canada, has been upheld countless times by that court and appellate courts across Canada. A recent confirmation of the test is found in *Yukon Francophone School Board, Education Area #23 v. Yukon (Attorney General)*, 2015 SCC 25 [*Yukon*]:

> [20] The test for a reasonable apprehension of bias is undisputed and was first articulated by this Court as follows:
>
> > . . . what would an informed person, viewing the matter realistically and practically — and having thought the matter through — conclude. Would he think that it is more likely than not that [the decision-maker], whether consciously or unconsciously, would not decide fairly. [Citation omitted.]
> >
> > (*Committee for Justice and Liberty v. National Energy Board*, 1976 CanLII 2 (SCC), [1978] 1 S.C.R. 369, at p. 394, per de Grandpré J. (dissenting))
>
> [21] This test — what would a reasonable, informed person think — has consistently been endorsed and clarified by this Court: e.g., *Wewaykum Indian Band v. Canada*, 2003 SCC 45 (CanLII), [2003] 2 S.C.R. 259, at para. 60; *C.U.P.E. v. Ontario (Minister of Labour)*, 2003 SCC 29 (CanLII), [2003] 1 S.C.R. 539, at para. 199; *Miglin v. Miglin*, 2003 SCC 24 (CanLII), [2003] 1 S.C.R. 303, at para. 26; *Baker v. Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC), [1999] 2 S.C.R. 817, at para. 46; *R. v.*

S. (R.D.), 1997 CanLII 324 (SCC), [1997] 3 S.C.R. 484, at para. 11, per Major J., at para. 31, per L'Heureux-Dubé and McLachlin JJ., at para. 111, per Cory J.; *Ruffo v. Conseil de la magistrature*, 1995 CanLII 49 (SCC), [1995] 4 S.C.R. 267, at para. 45; *R. v. Lippé*, 1990 CanLII 18 (SCC), [1991] 2 S.C.R. 114, at p. 143; *Valente v. The Queen*, 1985 CanLII 25 (SCC), [1985] 2 S.C.R. 673, at p. 684.

[22] The objective of the test is to ensure not only the reality, but the *appearance* of a fair adjudicative process. The issue of bias is thus inextricably linked to the need for impartiality. In *Valente*, Le Dain J. connected the dots from an absence of bias to impartiality, concluding "[i]mpartiality refers to a state of mind or attitude of the tribunal in relation to the issues and the parties in a particular case" and "connotes absence of bias, actual or perceived": p. 685. Impartiality and the absence of the bias have developed as both legal and ethical requirements. Judges are required — and expected — to approach every case with impartiality and an open mind: see *S. (R.D.)*, at para. 49, per L'Heureux-Dubé and McLachlin JJ.

[23] In *Wewaykum*, this Court confirmed the requirement of impartial adjudication for maintaining public confidence in the ability of a judge to be genuinely open:

> . . . public confidence in our legal system is rooted in the fundamental belief that those who adjudicate in law must always do so without bias or prejudice and must be perceived to do so.
>
> The essence of impartiality lies in the requirement of the judge to approach the case to be adjudicated with an open mind. [Emphasis added; paras. 57-58.]

[24] Or, as Jeremy Webber observed, "impartiality is a cardinal virtue in a judge. For adjudication to be accepted, litigants must have confidence that the judge is not influenced by irrelevant considerations to favour one side or the other": "The Limits to Judges' Free Speech: A Comment on the Report of the Committee of Investigation into the Conduct of the Hon. Mr Justice Berger" (1984), 29 *McGill L.J.* 369, at p. 389.

[25] Because there is a strong presumption of judicial impartiality that is not easily displaced (*Cojocaru v. British Columbia Women's Hospital and Health Centre*, 2013 SCC 30 (CanLII), [2013] 2 S.C.R. 357, at para. 22), the test for a reasonable apprehension of bias requires a "real likelihood or probability of bias" and that a judge's individual comments during a trial not be seen in isolation: see *Arsenault-Cameron v. Prince Edward Island*, 1999 CanLII 641 (SCC), [1999] 3 S.C.R. 851, at para. 2; *S. (R.D.)*, at para. 134, per Cory J.

[26] The inquiry into whether a decision-maker's conduct creates a reasonable apprehension of bias, as a result, is inherently contextual and fact-specific, and there is a correspondingly high burden of proving the claim on the party alleging bias: see *Wewaykum*, at para. 77; *S. (R.D.)*, at para. 114, per Cory J. As Cory J. observed in *S. (R.D.)*:

> . . . allegations of perceived judicial bias will generally not succeed unless the impugned conduct, taken in context, truly demonstrates a sound basis for perceiving that a particular determination has been

> made on the basis of prejudice or generalizations. One overriding principle that arises from these cases is that the impugned comments or other conduct must not be looked at in isolation. Rather it must be considered in the context of the circumstances, and in light of the whole proceeding. [Emphasis added; para. 141.]

[8] The context which the Huntly Defendants suggest I must consider includes the fact that I have already rendered a decision in the liability portion of the trial and, in that decision, I reflected unfavorably upon the evidence of Mr. Brent Wolverton, the primary witness for the Huntly Defendants. Counsel for the Huntly Defendants also suggests that counsel for Casa Margarita made flattering remarks about me in his submissions to me, and these comments must be taken into account when considering the overall context of this case.

[9] Finally, the Huntly Defendants submit that my use of terms relevant to the value of the shares at issue, in my liability decision, suggest a predetermination of issues which have not yet been argued and which will be the subject of the valuation trial. Again, counsel for the Huntly Defendants reiterated that he is not alleging I have an actual bias against the Huntly Defendants, but simply that a reasonable apprehension of bias arises from the context of this case.

[10] I will deal first with the submission that I have formed an unfavorable view of Mr. Wolverton and his credibility. At the outset, I note that at no point before me, or before the court of appeal, did the Huntly Defendants suggest that my findings in relation to Mr. Wolverton were animated by actual bias. The submission is that a reasonable apprehension of bias could arise because I made unfavourable findings in my earlier decision.

[11] I do not accept that unfavourable comments in written reasons, on the evidence of a witness who testified in the first part of a bifurcated trial, can, alone, sustain a finding of a reasonable apprehension of bias. Central to the understanding of bias is an acknowledgement that bias arises where a judge is influenced by "'irrelevant considerations to favour one side or the other'": *Yukon* at para. 24. The

assessment of the credibility and reliability of a witness' testimony at trial is a central obligation of a trial judge. It is not an irrelevant consideration.

[12] If the Huntly Defendants had been unsuccessful in their application to bifurcate the trial, my assessment of the credibility and reliability of Mr. Wolverton's evidence would form part and parcel of the decision on all issues – both liability and damages. I find that my earlier conclusions in relation to Mr. Wolverton's evidence cannot properly found a reasonable apprehension of bias in relation to the next stage of this trial.

[13] Dealing next with the suggestion that the comments of counsel could result in a reasonable apprehension of bias on the part of the trial judge, I reject this submission in its entirety. While there are instances in which the interactions between counsel and the adjudicator gave rise to a reasonable apprehension of bias, these arise as a result of actions taken by the adjudicator, not actions of counsel or a party. For example, if the adjudicator and one counsel appeared to be too close, or where the adjudicator appeared to unfairly favour one side or the other, a reasonable apprehension of bias may be found in certain cases. But the focus is always on the actions of the adjudicator.

[14] In the case before me, the Huntly Defendants have not alleged that I improperly succumbed to flattery from counsel for Casa Margarita, or that I treated counsel for Casa Margarita in a manner which suggests I improperly favoured him and was unwilling to listen to counsel for Huntly Defendants with an open mind. Rather, the focus is all upon the actions of the counsel.

[15] The test for reasonable apprehension of bias requires the facts to be assessed through the lens of a reasonable, informed, right-minded person, viewing the matter realistically and practically. An informed person would understand that in our legal system, judges are sturdy enough to withstand the flattery and insults of the counsel and parties who appear before them. Judges are trained to assess the evidence and the law impartially, and their impartiality is presumed. To displace this

presumption, a party must demonstrate serious grounds – grounds that establish a real likelihood or probability of bias: *Yukon* at para. 25.

[16] In *Pereira v Dexterra Group Inc.*, 2023 BCCA 201, the court explained why the criteria for establishing a reasonable apprehension of bias is so strict:

> [17] The strictness of the criteria required to show a reasonable apprehension of bias reveals that judges must necessarily not habitually yield to parties who want them to step down. Doing so would erode the administration of justice and damage the reputation of the judiciary. Judges have a duty to hear the cases assigned to them, which cannot be displaced by a party selecting one judge over another preferentially and without good reason. An additional danger of frequent recusals is that parties could use such motions strategically, which includes attempting to judge-shop or delay the proceedings: *De Cotiis v. De Cotiis*, 2004 BCSC 117 at paras. 10–11; *Anderson* at para. 16; *Liszkay v. Robinson*, 2003 BCCA 506 at para. 53.

[17] I find that the actions of counsel, alone, cannot found a reasonable apprehension of bias on the part of the adjudicator. Were this not so, a party could behave abusively towards a judge and then argue they cannot get a fair hearing as the judge could no longer be impartial towards them. I find that a reasonable apprehension of bias must be founded on the actions of the adjudicator, and not on the actions of the parties and counsel who appear before them. The suggestion that I would find in favour of Casa Margarita based on flattery by its counsel, absent any serious allegation that I acted on such flattery in favour of Casa Margarita, is not a serious ground that could establish a real likelihood of a reasonable apprehension of bias.

[18] The final issue raised by the Huntly Defendants relates to the use of the term “fair value” in my reasons on the liability trial, and my comments on the assessed and market values of the underlying real estate assets.

[19] The reasons for judgment at trial and on appeal more fully set out the claims before the court and I do not intend to repeat the claims or the evidence in any detail. In brief, this was an oppression proceeding where Casa Margarita is a minority shareholder in Huntly Investments. Casa Margarita holds 1.82% of the common shares in Huntly. The shares in Casa Margarita are held by the estate of

Margaret Cowan, and her executor sought to sell the Huntly shares so that he could complete his distribution of Ms. Cowan's estate to her beneficiaries, most of whom are quite elderly. As explained in the reasons, Casa Margarita was unable to assess the value of the shares or convert the shares to cash. Casa Margarita raised several bases upon which it argued it was treated oppressively. Not all of these bases were successful. However, I found that on certain bases Casa Margarita did establish it had been treated oppressively by the Huntly Defendants. This was summarized by the court of appeal as follows:

> [18] Having found, then, that Huntly had not met Casa's reasonable expectations in relation to the facilitation of a share purchase, the provision of information permitting Casa to value its shares, and an equal distribution of the benefit of the tax-free dividend, the judge concluded that the affairs of Huntly had been conducted in a manner oppressive and unfairly prejudicial to Casa under s. 227 [of the *Business Corporations Act*, S.B.C. 2002, c. 57]

[20] It is readily apparent that a live issue on the liability trial was whether Casa Margarita was impeded in its ability to assess the value of its shares. Casa Margarita wanted to obtain an appraisal of the assets and was impeded by the Huntly Defendants. The evidence at trial from the Huntly Defendants was replete with comments on the value and the valuations of the shares at different points in time.

[21] Before me, the Huntly Defendants point to paragraphs where I referred to the assessed value of the real estate properties as being less than the market value. A fair reading of these paragraphs cannot reasonably be understood as anything other than a reflection of the unreasonableness of the evidence at trial given by Mr. Wolverton. Mr. Wolverton agreed that the assessed value in 2009 was $17,000,000 and in the same year he testified in a tax case that the market value was $50,000,000; yet at trial he refused to agree that the assessed value was not close to the market value. He also refused to agree that the property had increased in value, notwithstanding the evidence at trial that the assessed value in 2009 was $17,000,000 and in 2019 the assessed value was close to $60,000,000:

> [77] Brent was cross-examined on whether the BC Assessment values represented a market value for the properties. Brent agreed that the 2009 BC Assessment value of the Stadacona property was $17,000,000, and agreed that in *Huntly Investments Limited v. The Queen*, 2017 TCC 255, he testified

> the market value of the Stadacona in 2009 was approximately $50,000,000. Notwithstanding the obvious discrepancy between the assessed value and his view of the market value, Brent was unwilling to concede at trial that the BC Assessment value was "not even close to the actual value as he perceived it." He was also not willing to concede that the value of the Stadacona property had increased from 2009 to 2020.
>
> [78] I do not accept Brent's evidence. I find that the BC assessment value of the properties is less than the market value. I also find that the value of the properties has increased since 2009, as the assessed values increased substantially over that period of time.
>
> …
>
> [84] Brent testified that he created the offer using the 2019 BC Assessment values of the properties, and applying a 50% shareholder discount. The BC Assessment values for the combined properties was $59,332,800.

[22] I find that the comments referenced by the Huntly Defendants on this application relating to the comparison between fair market value and assessed value of the underlying assets, when read fairly and reasonably, do not give rise to a reasonable apprehension of bias. The comments are clearly made in the context of an assessment of the reliability of Mr. Wolverton's evidence and are not a considered finding on the appropriate valuation method to be employed in the valuation trial. They are not comments which are based on irrelevant considerations, and do not suggest any prejudgment of the valuation of Casa Margarita's shares in this matter.

[23] The Huntly Defendants submit that in my reasons I made a determination that the value of Casa Margarita's shares should be based on fair value and not fair market value, and that there should be no minority discount. In making these submissions, the Huntly Defendants rely on the terms "fair value" and "fair market value" as terms of art in a valuation process. To argue that I made a determination that a minority discount was not appropriate in valuing Casa Margarita's shares, the Huntly Defendants must rely on these terms of art and the implications which flow from these terms of art. I say this because nowhere in my reasons did I make any determinations on the appropriateness of a minority discount in this case.

[24] The only mention of a discount in my reasons arises in a paragraph in which I set out Mr. Wolverton's testimony at trial where he explained his rationale in setting

a price for the purchase of the share capital in Casa Margarita itself. This offer was rejected by Mr. Killen, on behalf of Casa Margarita, because Casa Margarita did not have the information it needed to assess the value of the shares:

> [84] Brent testified that he created the offer using the 2019 BC Assessment values of the properties, and applying a 50% shareholder discount. The BC Assessment values for the combined properties was $59,332,800.
>
> [85] The May 13, 2020 offer was clearly stated to be non-negotiable. In fact, Brent reiterated that if the offer was not accepted, the Huntly Defendants would seek judgment without further negotiation.
>
> [86] Casa did not accept the offer from Brent. Mr. Killen testified that he could not assess the offer without obtaining a valuation of the company, which required an appraisal of the underlying properties.

[25] The value of the Huntly shares at different points in time was certainly discussed in evidence at the liability trial. However, these comments were generally made in the context of a discussion around Casa Margarita's inability to form its own independent assessment of the share value. The evidence at trial was entirely contradictory on the value of the shares, with the value attributed to the shares by Mr. Wolverton and Huntly varying depending on who wanted their shares purchased. It is clear from the reasons that all these facts were taken into account in determining that Casa Margarita was treated oppressively.

[26] What was not before the court was evidence on the actual value of the shares which the court could rely on in determining a fair price to be paid to Casa Margarita. The Huntly Defendants sought a bifurcation of the trial because they did not want to have to undertake the process of valuation unless liability was found against them.

[27] In the context of the issues on this liability trial, an informed, reasonable, right-minded person would know that the actual value of the shares held by Casa Margarita, which must be purchased by one of the Huntly Defendants pursuant to court order, was not before the court. There was no evidence before the court on the meanings of "fair value" or "fair market value", and the reasons cannot reasonably be read as making any determinations in that respect.

[28] The reasons state that Casa Margarita's shares in Huntly must be purchased at fair value. However, in the context of this decision on liability, I find that the only reasonable meaning that can be attributed to these words is that the shares must be purchased for a price determined to be fair by the court on the valuation trial.

[29] This was clearly understood by the parties when drafting the formal order after trial. Counsel for the Huntly Defendants wrote to counsel for Casa Margarita stating:

> Having found that oppression was made out, given the order of Master Vos and that Justice Baker was only dealing with the Liability Action, the result of the order is that the parties are to proceed to the Valuation Action and determine the price at which the shares are to be sold. Potentially "loaded" expressions such as "fair market price" and "fair price" or "fair value" are to await the Valuation Action and to the extent they could be construed as relevant to what is to be decided in that hearing they are of course obiter in the Liability Action.

[30] The formal entered order reflects the understanding of the parties, which is clearly aligned with the intention of my reasons:

> 1. The Class A Common Shares in Huntly Investments Limited that are owned by the Plaintiff shall be purchased by one of Huntly Investments Limited, The Pacific Investment Corporation Limited, Brent Newton Wolverton or Mark Frank Wolverton at a price to be determined at the Valuation Action.

[31] When my reasons were so clearly understood by the parties, I find it somewhat disingenuous for the Huntly Defendants on this application to suggest that an informed, reasonable, right-minded person would be somehow confused by my reasons and form a view that I would not be able to determine a price for the shares in an unbiased way, with a mind open to all valuation issues raised by the parties at the valuation trial.

[32] Finally, the Huntly Defendants submit that I made a finding that the fair value of Casa Margarita's shares exceeds $16,302.70 per share. There is no such conclusion found in any paragraph of my reasons. However, the Huntly Defendants submit that my conclusion that "the refusal to entertain and facilitate a fair and informed process whereby Casa could sell its minority position" was oppressive and unfairly prejudicial, necessarily leads to the conclusion that the $16,302.70 per share

offer made by Mr. Wolverton to Casa Margarita in May 2020 was less than the fair value. In making this submission, the Huntly Defendants pull words from paragraphs separated by 100 paragraphs to draw a conclusion that an informed, reasonable and right-minded person would not draw.

[33] Huntly's refusal to allow Casa Margarita to obtain the information it needed to satisfy itself as to the value of the shares was the oppressive conduct referred to in paragraph 187 of my reasons. The value of $16,302.70 per share was referenced in paragraph 83 of my reasons, where I quoted a letter from Mr. Wolverton dated May 13, 2020, in which he offered to purchase the share capital in Casa Margarita. The representative of Casa Margarita testified he could not accept Mr. Wolverton's offer because he needed an appraisal of the real estate assets to allow him to assess the offer. The context of the reasons in which these statements are made clearly go to the oppressive conduct in obstructing Casa Margarita's ability to assess the value of the shares, and not to a conclusion with respect to the value stated by Mr. Wolverton in an offer to purchase the share capital in Casa Margarita in 2020.

[34] I cannot agree that references to share value, fair value or fair market value in the liability decision demonstrate a sound basis for perceiving that a particular determination was made on the live issue on the valuation trial, whether on the basis of prejudice or generalizations, or otherwise, such that a reasonable apprehension of bias can be established. Further, these comments in my reasons, along with the allegations of counsel's conduct and my assessment of the evidence of Mr. Wolverton, all taken together, do not establish a reasonable apprehension of bias in accordance with the principles of law established by the Supreme Court of Canada.

[35] The application of the Huntly Defendants is dismissed.

Is this application an abuse of process?

[36] Casa Margarita submits that the Huntly Defendants are misusing court procedures in a manner that results in unfairness and brings the administration of

justice into disrepute, relying on *Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63, *Babavic v. Babowech*, 1993 Carswell BC 2950, and *Tsuji v. Tsuji*, 2024 BCSC 370.

[37] Casa Margarita relies on the time it has taken since the liability trial to bring the valuation trial on for hearing, referring to several pre-trial applications, the Huntly Defendants' appeal, application for leave to appeal to the Supreme Court of Canada, and this application for a recusal. Casa Margarita submits that the Huntly Defendants have engaged in unreasonable delay, causing serious prejudice to the elderly beneficiaries who have not received the benefit of Ms. Cowan's estate, now eight years after her death. Casa Margarita submits that the objective of Mr. Wolverton is to delay the purchase of Casa Margarita's shares, and to exercise economic leverage over Casa Margarita by forcing it to incur unnecessary legal expense.

[38] I cannot agree that the Huntly Defendants acted improperly in appealing, or in seeking leave to appeal to the Supreme Court of Canada. Further, the pre-trial applications were not abusive or delaying. The Huntly Defendants have the right to take these steps, and there is no evidence that they delayed prosecuting any of these processes. The Huntly Defendants did not bring numerous ill-founded pre-trial applications, and did not file misleading materials on the applications, as was the case in several of the decisions relied on by Casa Margarita.

[39] The within application for recusal, while I have found it has no merit, did not itself significantly delay the valuation trial. The decision from the Supreme Court of Canada was issued in the fall of 2024. Due to my trial commitments on other matters, I would not have been in a position to address the valuation trial before this spring. This application was heard during my reserve week, which is not ordinarily available to schedule matters. As such, I find that the Huntly Defendants have not improperly delayed the resolution of this matter.

[40] While there has been a significant delay in the resolution of Ms. Cowan's estate, I am not satisfied that the Huntly Defendants have acted in an abusive manner, consistent with the cases relied on by Casa Margarita.

Costs

[41] I find that Casa Margarita is entitled to its costs of this application. I find that the likelihood of success on this application by the Huntly Defendants was extremely remote, such that it should not have been brought and did result in unwarranted expense for Casa Margarita. As such, I order that Casa Margarita's costs of this application will be payable in any event of the cause.

"W.A. Baker J."