

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Eddy Ng Management Services Ltd. v.
Golden Spigot Pub Ltd.*,
2025 BCSC 301

Date: 20250225
Docket: 247395
Registry: Victoria

Between:

**Eddy Ng Management Services Ltd., Ling Zhu Ng on her own behalf,
in her capacity as the administrator of the estate of Eddy Ng, and in her
capacity as the executor of the estate of Wei Ying Lee, Betty Ng,
Vincent Ng and Maria Tapp**

Petitioners

And:

**Golden Spigot Pub Ltd., Six Mile Pub Ltd., David Wong, Fancy Ching,
Prime Concepts Management Inc., Raffles '78 Enterprises Ltd., Marisa
Manzini, Gundyco in trust for Bonnie Jay, Gundyco in trust for Alfred Wong,
Gundyco in trust for Daphne Law, Bonnie Jay and Gillian Graeme**

Respondents

Before: The Honourable Justice A. Saunders

Reasons for Judgment

Counsel for the Petitioners:

J.G. Dives K.C.
J.A. Hall

Counsel for the Respondents:

M. Brown
O. Yazar

Place and Date of Hearing:

Victoria, B.C.
November 18-19, 2024

Place and Date of Judgment:

Victoria, B.C.
February 25, 2025

Introduction

[1] The petitioners are legal or equitable owners of approximately 39% of the outstanding shares of the respondent Golden Spigot Pub Ltd. (“Golden Spigot”), which in turn is the sole shareholder of the respondent Six Mile Pub Ltd. (“Six Mile”), owner of the historic Six Mile Pub in View Royal, British Columbia (the “Pub”). The petitioners seek a declaration, under s. 227 of the *Business Corporations Act*, R.S.B.C. 1996, c. 57 [BCA] that the affairs of both Golden Spigot and Six Mile are being conducted in an oppressive manner, and orders that Golden Spigot be liquidated and dissolved and for the appointment of a liquidator. Alternatively, the petitioners seek liquidation under s. 324 of the *BCA*, on the grounds that it is just and equitable in the circumstances.

[2] The respondents – save “Gundyco in trust for Daphne Law”, which has been improperly named, as Class C non-voting shares held in trust for a “Daphne Aw” were transferred to another shareholder in October 2021 – are the registered owners of all outstanding shares in Golden Spigot.

Background

[3] Golden Spigot was formed in 2002 for the purpose of purchasing Six Mile. The principal investors were Eddy Ng – now deceased – with his shares being held in the name of his company, the petitioner Eddy Ng Management Services Ltd. (“ENMS”); and the respondents David Wong and his wife Fanny Ching, in their personal capacities and through companies they controlled, the respondents Prime Concepts Management Inc. (“Prime”) and Raffles ’78 Enterprises Ltd. (“Raffles”). For the sake of clarity, and meaning no disrespect, I refer to the three principals by their first names, Eddy, David, and Fancy. David and Eddy had worked together at a restaurant in the Greater Victoria area. Minor investments were also made by others, including some members of the staff whom David was managing at another pub.

[4] Initially, Eddy and David agreed to each raise \$550,000 towards the purchase, with the remainder of the purchase price to be refinanced. However, by the end of 2004, when the purchase of Six Mile by Golden Spigot had been finalized,

Eddy had been able to raise only approximately \$380,000. Of that sum, Eddy had raised approximately \$222,450 through mortgaging his family home. He also persuaded his mother Wei Ying Lee (whose estate, through Ms. Ng as administrator, is a petitioner within) to invest \$145,500. Generally, the shortfall in Eddy's contributions was made up by Golden Spigot restructuring the purchase by way of a collateral agreement with the vendor, Red Line Enterprises Ltd. ("Red Line"), and modifying its business plan to allow for Red Line to continue to operate a liquor store on the premises; and through David and Fancy investing further funds, some of which David borrowed personally, and persuading others to invest. This led to David and Fancy owning or controlling a majority of the voting shares.

[5] From the Golden Spigot share register, it can be seen that by the end of 2004, David and Fancy, and the two companies controlled by them, had together been allotted 859,756 of the 1,576,993 Class A and B voting shares (approx. 54.5%). Eddy, through ENMS, had been allotted 556,125 Class A voting shares (approx. 35.3% of the voting shares). In addition, ENMS had been allotted a further 11,111 Class A voting shares, and Eddy's mother Ms. Lee 161,666, of the 515,577 non-voting Class C shares.

[6] (David asserts that the 11,111 Class C shares allotted ENMS actually belong to Eric Poon, a realtor who assisted him and Eddy with the purchase of the Pub in 2002, and who took the shares in lieu of commission. Why those shares were issued to ENMS is not explained. The respondents appear not to have taken any steps to have Mr. Poon added as a party, or served with the petition as a party of interest. For the purposes of this petition, I treat those shares as legally belonging to ENMS, as reflected in the Golden Spigot share register.)

[7] Following the purchase of the Pub, David assumed responsibility for managing day-to-day operations, while Eddy was responsible for managing the kitchen. However, Eddy became less involved with the Pub's operations after approximately two years. The parties have different perspectives on how and why this occurred.

[8] Ms. Ng says that within a few years of the Pub being purchased, Eddy developed a frozen shoulder and could not work. His disability lasted for about a year, and led to a breakdown in his relationship with David. She was told by Eddy that when he attempted to return to the Pub, David told him not to show up for work. Eddy then decided to stay home and look after his mother, and an aunt and uncle.

[9] Ms. Ng says the family survived financially with assistance from Eddy's mother and uncle, and by cashing in RRSPs. In 2014, Ms. Ng went to work as a cafeteria worker.

[10] Eddy passed away in May 2016.

[11] David however says, in his affidavit sworn August 30, 2024, that Eddy in fact suffered from substance abuse, that he hid from his family. His evidence is that in 2003, staff and patrons of the Pub began complaining of Eddy's erratic behaviour, and in the spring and summer of 2004 he developed a suspicion that Eddy was using illegal drugs. In August 2004, David together with the three other working shareholders of Golden Spigot confronted Eddy, demanding that he either produce a doctor's note confirming that he was drug-free, or that he leave his employment with the Pub. David says that Eddy walked out, and did not return for years. Shortly afterwards, David enlisted the help of an aunt and uncle of Eddy, to confront him and encourage him to seek treatment. Eddy, he says, promised he would, if they kept his drug use secret from his family. David says he kept that promise; he did not reveal David's drug use in his communications with the petitioners following Eddy's death (summarized below), until he felt forced to do so by the allegations raised in this petition concerning his relationship with Eddy

[12] David says neither he nor the other working shareholders had any contact with Eddy from 2004 to 2008. He assumed Eddy had sought treatment. He did not take steps to remove Eddy as a director of Golden Spigot or Six Mile, as he hoped Eddy's rehabilitation would be successful and he would return to work.

[13] In or around May 2008, David says, Eddy told the shareholders that he had overcome his drug addiction, and wanted to return to work. David sent Eddy an email on July 2, 2008, setting out conditions for his return including a summary description of his duties and rate of pay. Eddy would have no access to cash or bank accounts, was required to continue with drug rehabilitation, would have to undergo drug tests on demand, and would have to abstain from alcohol at the Pub. David said that as an added incentive, if Eddy were to backslide or cause the Pub to suffer damage as a consequence of his conduct, the Pub would have the option to buy back his shares at the original acquisition price. He said that as Eddy had been away for four years, these conditions would remain in place for that same length of time, at a minimum.

[14] David states in his affidavit that Eddy accepted these terms and “started working on a permanent basis as the Pub’s operations manager”. (This cannot be entirely true. The email stated that Eddy’s family would have to agree to the terms set out in the email “so we know they are part of your rehabilitation process”, and that if Eddy accepted the terms there would be paperwork drawn up “so you can have your family and an independent lawyer look them over”; the proposition that Eddy accepted this term is contradicted by David continuing to act as if knowledge of Eddy’s addiction issues was to be kept from the family.)

[15] Further, David says that though Eddy did return to work in 2009, he neglected his responsibilities, and missed work often. He never complied with requests that he submit to drug tests. As a consequence, his responsibilities were reduced to working two days a week. David says that Eddy was removed as a director of Six Mile in 2014 due to licensing concerns arising out of Eddy having been charged with a crime; he provides no further detail. He says that though Eddy kept his two-day-a-week position until his death in 2016, he continued to neglect his duties as a director and as an employee, failing to show up for work most days.

[16] Ms. Ng denies any knowledge of Eddy consuming drugs or having issues with drug addiction. For the purpose of this petition, I proceed on the assumption that

David's evidence as to Eddy's substance abuse and Eddy's neglect of his duties is true.

Communications as to Sale of the Petitioners' Shares

[17] David became sole director of Golden Spigot upon Eddy's death.

[18] Following Eddy's death, the petitioners began discussions with David regarding sale of their shares, and from time to time requested copies of the companies' documents:

- a) On September 1, 2016, Ms. Ng and Ms. Lee met with David personally, and asked that he and the other shareholders buy them out. David followed up with an email sent the following day, proposing that their shares be repurchased at an 11% premium over their original cost, i.e. \$258,278 to ENMS, and \$161,667 to Ms. Lee, the same terms on which other shareholders were bought out.
- b) In or around March 2017, David provided the petitioners with copies of Six Miles' financial statements for the years ending 2007-2016 (with those from the years 2011-2013 only being audited). Copies of further corporate records were provided to the petitioners' lawyers in July 2017.
- c) In October 2018, new counsel acting for ENMS and Ms. Ng in her capacity as administrator of Ms. Lee's estate wrote to counsel for Golden Spigot, stating that neither of his clients had any continuing desire to hold their respective shares, and wished to liquidate their shareholdings as soon as practically possible. The letter made demand for copies of financial statements of Golden Spigot and other corporate and financial documents. The unaudited financial statements of Golden Spigot for the year ending 2017, and its corporate tax return, were provided.
- d) In June 2019, counsel for ENMS and Ms. Lee requested copies of current corporate and financial records and tax returns of Six Mile. The requested

information was provided promptly. The June 24, 2019 cover letter from Golden Spigot / Six Mile's counsel reiterated David's advice of September 2016, that other shareholders had over the previous several years sold their shares either to Golden Spigot or to other shareholders, at an average premium of 11% over the original share price. Counsel invited ENMS and Ms. Ng to submit a proposal based on a purchase price of \$0.444 per share for ENMS's shares, and \$1.00 per share for Ms. Lee's shares.

- e) In September 2019, the petitioners' counsel delivered to Golden Spigot a Transfer Notice, pursuant to the company's Articles, offering to sell their shares at a price of \$2.63 per share. That offer was not accepted.
- f) David wrote an email to Ms. Ng in October 2020, offering to purchase the 717,791 shares controlled by her, for a total of \$421,921, subject to financing.

[19] This petition was filed July 11, 2024.

Current Status

[20] By way of a verbal agreement amongst the original shareholders, none of the shareholders had been able to sell their shares for the first seven years of Golden Spigot's ownership of the Pub. Since then, shares have been redeemed by Golden Spigot, and some shares have been purchased by David's company, Prime. In 2011, and again in 2019, Prime was able to purchase the shares of two owners of Class B voting shares. The 2011 sale involved a Ms. Kynaston, who, pursuant to Golden Spigot's Articles, offered by way of a transfer notice to sell her 27,778 shares at \$1.00 each. Prime was able to purchase her shares at \$0.92 each. Contrary to the Articles, no other shareholders were given the opportunity to purchase her shares at that price. Similarly, in 2019 a Ms. Mace gave notice of her wish to dispose of her 77,778 shares at a price of \$1.00 each. Prime agreed to that price, but the deal was structured as an immediate sale of one-half her shares, with the other half sold one year later at the same price. Again, despite the agreed-to terms of the sale to Prime

being more favourable than the terms set out in the transfer notice, other shareholders were not given equal opportunity to purchase on those terms.

[21] As a result of those transfers, David, Fancy, Prime, and Raffles' ownership of the voting stock has increased from approximately 54.5% to 61.2%.

[22] In 2015, two minority shareholders sold their Class C non-voting shares back to Golden Spigot. Again, the vendors provided transfer notices as required under the Articles, but contrary to the Articles the sales were concluded on more favourable terms than those the other shareholders had been given notice of. Those redemptions reduced the number of outstanding Class C shares from 515,597 to 300,552, of which the petitioners continue to control 172,777.

[23] There is some evidence as to the value of Six Mile and how its value has increased in the 22 years since it was purchased. David states in his affidavit that the Pub was purchased in 2002 for more than \$3 million. The most recent financial statement of Six Mile in evidence, for the year ending June 13, 2021, put the value of the company's assets at just over \$4 million; but that appears to be based on the land being valued at its acquisition cost, approximately \$1.46 million. Notably, there was more than \$525,000 cash on hand. Records from BC Assessment Authority put the assessed value of the Pub property as of July 2002 at \$1,399,000 (\$956,000 Land, and \$443,000 Buildings); and as of July 2023, at \$4,720,700 (\$4,641,000 Land, and \$79,700 Buildings), i.e. an increase of some 237%. Further, Ms. Ng had the property appraised as of May 2019; the appraiser put the market value of the fee simple interest in the property at an estimated \$5,015,000. An updated opinion from the same appraiser put the value at \$7,065,000 as of December 2021.

[24] Neither Golden Spigot nor Six Mile has ever paid a dividend to its shareholders.

[25] Ms. Ng is now the sole shareholder of ENMS, and is administrator of the estate of Ms. Lee.

[26] Ms. Ng and her son Vincent have continued to service the mortgage loan on the family home that was made for the purpose of Eddy's initial capital contribution.

[27] There is no shareholders agreement in place for Golden Spigot, and there is no provision in the company's Articles for a shotgun sale or sale on valuation. Short of the relief sought herein, the only possible means available to the petitioners to realize on their investment, would be sale to the company or its other shareholders, or to third parties, for such amount as might be offered.

Oppression Remedy Claim – *BCA* s. 227

[28] Section 227 of the *BCA* provides remedies where the reasonable expectations of a shareholder or group of shareholders have been defeated by the oppressive or unfairly prejudicial conduct of the affairs of the company. The standard of corporate conduct that will invite imposition of the oppression remedy was described by Viscount Simonds in *Scottish Co-op. Wholesale Soc. Ltd. v. Meyer*, [1958] 3 All E.R. 66 (H.L.), at 71, [1959] A.C. 324, as “burdensome, harsh, and wrongful”, and by Lord Keith of Avonholm, in the same judgment, at 86, as showing “a lack of probity and fair dealing”; see the decision of Chief Justice McEachern in *Nystad v. Harcrest Apt. Ltd.* (1986), 3 B.C.L.R. (2d) 39, at 43–45, 1986 CanLII 1057 (SC). Determination of what expectations are reasonable, and when conduct has crossed the line into becoming oppressive or prejudicial, may be judged on the basis of past conduct.

[29] The petitioners say that Eddy, through his company, the shareholder petitioner ENMS, would have had a reasonable expectation that he would participate in the operation and management of the Pub, as a co-founder of the business, and that as a corollary to that expectation he would be entitled to reasonably expect financial transparency and participation in decision making. Further, Ms. Ng, it is submitted, would have had a reasonable expectation that the capital and sweat equity that Eddy put into the business would accrue to her benefit in a timely way following his death. Ms. Ng submits that she, being the owner of, or having authority

over shares in Golden Spigot, has been oppressed through the failure of Golden Spigot or David, who has now become its directing mind:

- a) To pay dividends to ENMS or to Ms. Lee or her estate, even though dividends have been paid to other shareholders;
- b) To provide her with notice of shareholder meetings;
- c) To provide her the opportunity to waive the requirement that Golden Spigot produce audited financial statements;
- d) To invite her to serve as a director of either Golden Spigot or Six Mile; and
- e) Generally, to provide her with any opportunity to participate in the affairs of Golden Spigot or Six Mile.

[30] Ms. Ng, however, has given no evidence that she has actually held any expectations in these regards. She has made it clear since Eddy's death that her only interest has been in selling her shares.

[31] With respect to shareholder meetings, David's evidence is that formal shareholder meetings have never been held; corporate affairs were dealt with informally, which no shareholder ever complained about. Neither Ms. Ng nor Ms. Lee ever exercised their power, under s. 167 of the *BCA*, to request a shareholders meeting, and there is no evidence of the respondents ever having refused a request that an annual general meeting be held. Ms. Ng has never expressed any interest in serving as a director of either company, and there is no statutory requirement that she be afforded such opportunity. Eddy was a director of Golden Spigot until his death, and appears to have acquiesced in David's approach to corporate affairs; in the face of that history, it cannot be contended that ENMS has held a reasonable expectation of shareholder meetings being held annually or otherwise. Neither is there any evidence of Ms. Lee having expressed any interest in corporate affairs, during her lifetime; her actual expectations with regard to corporate governance, if she in fact had any, cannot be inferred.

[32] Likewise, Eddy appears to have acquiesced in the company's failure to obtain shareholder approval to waive audited financial statements. David's evidence is that audited financial statements would be a significant expense for the company, which is not highly profitable. The respondents concede that the company's failure in this regard is a breach of the *BCA*. Given the corporate history, I do not find that this breach rose to the level of unfair prejudice or unfair disregard of the petitioners' rights: *Alleluia v. Wilson*, 2011 BCSC 666 at paras. 68-72. All of the petitioners' requests for copies of financial statements have been responded to.

[33] The sale of shares by other shareholders to Prime, on better terms than provided for in the vendor's transfer notice, was also contrary to the Articles, and potentially prejudicial to the interests of others including Ms. Ng and Ms. Lee. However, to engage the oppression remedy, "the complainant must prove some kind of harm or loss": *1168556 B.C. Ltd. v. 1164429 B.C. Ltd.*, 2024 BCSC 1727 at paras. 113–114, citing *BCE Inc. v. 1976 Debentureholders*, 2008 SCC 69 at para. 90. The petitioners do not say that they or Eddy would have purchased the shares of Ms. Kynaston and Ms. Mace on the terms agreed to by Prime, had they been given the opportunity, and indeed given their history of involvement with the company it is unlikely they would have done so. These incidents did not actually prejudice the petitioners.

[34] With regard to dividends, Golden Spigot issued deemed dividends to finance the above-described repurchase of shares in 2015 and 2018. There has been no failure to pay dividends to the prejudice of the petitioners.

[35] I find no grounds for applying the oppression remedy.

Liquidation Claim – *BCA* s. 324

[36] Nevertheless, the Court may order liquidation and dissolution of a company under s. 324(1)(b) of the *BCA*, if the Court considers it just and equitable to do so.

[37] In situations where the circumstances of the undertaking – in particular, the mutual trust and confidence between its principals – make it analogous to a

partnership, the court may apply the principles of equity that have developed in relation to the dissolution of partnerships. The bases on which the Court may exercise its discretion to do so were neatly summarized by Justice G. C. Weatherill in *Ten Hoeve v. Beukens*, 2020 BCSC 1194:

[44] Section 324(b) of the BCA provides that a court can order a company liquidated and dissolved if it considers it just and equitable to do so. The words “just and equitable” are of the widest significance and confer a broad discretion on the court: *Kidner Investments Ltd. v. Totem Mercury Holdings Ltd.*, 2017 BCSC 205 at para. 69. Each case depends to a large extent on its own facts: *King City Holdings Ltd. v. Preston Springs Gardens Inc.* (2001), 14 B.L.R. (3d) 277 (O.N.S.C.) at para. 10.

[45] The just and equitable test set out in s. 324 represents a lower threshold than that under the oppression remedy set out in s. 227. Under s. 324, there is no requirement of a finding of oppression, or unfairly prejudicial conduct, or other wrongdoing by either party. Nor is it necessary that there be a finding that the conduct of the company’s affairs are being impeded: *Safarik v. Ocean Fisheries Ltd.*, (1995), 12 B.C.L.R. (3d) 342 (C.A.) at para. 84; *Callahan v. Shasta Properties Ltd.*, 2015 BCSC 663 at para. 81.

[46] Where, as here, a private company “can fairly be called a partnership in the clothes or under the guise of a private company”, the principles of equity developed in relation to partnerships may be applied to it: *Vivian v. Firth*, 2012 BCSC 517 at paras. 72–80. As was stated in *Vivian*, at para. 78, companies which are, in substance, partnerships may be wound up on equitable grounds in circumstances where:

- a) a breakdown of the mutual trust and confidence upon which the original undertaking was founded;
- b) a “destruction of mutual confidence”; and
- c) a refusal to meet on matters of business, continued quarreling and such a state of animosity as precludes all reasonable hope of reconciliation and friendly cooperation.

[38] Was this in substance a partnership undertaking? The respondents seek to portray Eddy not as a partner but as merely one of a number of the original investors, all of whom were treated equally, regardless of their contribution to the business. I find this disingenuous, on the basis of the following evidence:

- a) Ms. Ng states in her affidavit that during the period of time prior to the Six Mile purchase, when Eddy and David were working in different restaurants, they remained friends, and she was “often told by them that

they had a dream to partner together to purchase a restaurant”. This is not denied by David.

- b) Eddy, as noted above, was a director and officer of both Golden Spigot and Six Mile.
- c) David and Eddy were in their personal capacities parties to the June 2002 collateral agreement with Red Line, being described therein as “the Managers”. The collateral agreement called for Red Line to be paid management fees in respect of operation of the liquor store, and provided that Red Line and its principal be “entitled to receive the same benefits paid to the Managers under the Management Agreement”. I infer this to have been reference to an agreement under which David and Eddy were to be compensated for the management of the Pub. No such agreement has been produced, and David’s affidavit is silent as to the compensation and benefits Eddy was entitled to. There is however no evidence of other shareholders benefiting from any Management Agreement, or of such treatment of the other shareholders ever having been contemplated.
- d) Exhibited to Ms. Ng’s affidavit are a draft Golden Spigot Business Plan, which described each of David and Eddy as “Managing Partner”; and a draft November 2002 letter to prospective investors, with an attached “Executive Summary” which described the Pub as having been purchased “by a group led by Dave Wong and Ed Ng”, and indicated that participation of new investors would be at their discretion.

(Ms. Ng has no personal knowledge of the provenance of those two documents. However, David provides no evidence challenging their authenticity or casting any doubt on inferences that can be drawn from their content, and I draw an adverse inference that these documents evidence a business relationship between David and Eddy which was a partnership in substance.)

- e) Under a June 26, 2003 commitment letter issued to Six Mile by Coast Capital Savings, purportedly bearing their signatures, both David and Eddy agreed to act as guarantors of a \$2,000,000 mortgage and \$100,000 line of credit.

[39] Further evidence of this undertaking being a partnership between David and Eddy is found in the July 2008 email in which David set out the conditions for Eddy's return to work:

- i. David summarized sentiments Eddy had expressed, to the effect that Eddy, though an owner, felt awkward as he was "not in a real position of power, a decision making position". David stated his agreement, and that this would continue to be the case until he and the Pub's bookkeeper Ms. Graeme – also a shareholder – developed what he referred to as a sense of security;
- ii. David distinguished between Eddy's role as an owner, and his day-to-day employment as Operations Manager; and
- iii. David stated that the restrictions set out in the email would be in place "for at least the same length of time you have been away, and in some cases, for the duration of our partnership" [emphasis added].

The respondents submit that as David is a lay person, his use of the term "partnership" in that email should not be taken in its literal or technical sense. Yet David in his affidavit neither explains what he meant by referring to his relationship with Eddy as such, nor provides evidence that he considered it to be anything other than a partnership.

[40] David does describe in his affidavit how Eddy did not, in some respects, do what was expected of him in terms of financing the venture, and further, over time, fell short in the discharge of his duties as a manager. On the basis of this evidence the respondents submit, in the alternative, that if there had initially been a

partnership between Eddy and David, Eddy's conduct – his leaving the business for four years, and then on his return only working part-time – was not that of a partner.

[41] I find that while it may have been open to David to wind up their partnership on the basis of Eddy's circumstances, he took no steps to do so. Rather, David's conduct, and his July 2008 email, are consistent with David having affirmed their partnership and offering Eddy accommodations in light of his difficulties with addiction. He did not buy out Eddy's interest. He was content to have Golden Spigot continue to enjoy the benefit of the substantial capital contribution made by Eddy and Eddy's mother, without them being compensated, and with the cost of servicing the debt incurred by Eddy being borne by Eddy and his family.

[42] I find the relationship between Eddy and David was, and was initially intended by them to be, in substance, a partnership undertaking.

[43] Was there a breakdown in that relationship, such that s. 324 may be invoked? I find that notwithstanding David's expressed desire that the partnership undertaking continue, the entirety of the circumstances – the perceived need to impose terms on Eddy's continuing employment in 2008; Eddy's subsequent neglect of his duties, and his frequent absences from work; his failure to submit to a drug test; the reduction in his working hours; and, his removal as a director of Six Mile – points to there having been "a breakdown of the mutual trust and confidence upon which the original undertaking was founded", so meeting the test for the availability of a winding-up, as set out in *Vivian*.

[44] Is it too late for the petitioners to seek this remedy? The respondents say that if there was a partnership, it ended with the passing of Eddy in 2016, and that the petitioners are now barred from bringing this claim by the effluxion of time, under the *Limitation Act*, S.B.C. 2012, c. 13. The *Limitation Act* however only applies to bar "claims". A "claim" is defined in s. 1 as meaning, "a claim to remedy an injury, loss or damage that occurred as a result of an act or omission". The remedy sought by the petitioners under s. 324 is not for an injury, loss, or damage; they are seeking liquidation of the company in order to realize the value of their investment. In

addition, their right to claim this remedy does not arise out of an act or omission; it arises out of the parties' circumstances.

[45] Oppression remedy claims are subject to the *Limitation Act: Brockman v. Valmont Industries Holland B.V.*, 2022 BCCA 80. There is however no time bar to this Court's exercise of its jurisdiction to grant a remedy under s. 324, save that which might arise out of the equitable defence of laches. That defence is described in the majority judgment of Justice La Forest in *M(K) v. M(H)*, [1992] 3 S.C.R. 6 at 77–78:

The rule developed in *Lindsay [Petroleum Co. v. Hurd (1874), L.R. 5 P.C. 221]* is certainly amorphous, perhaps admirably so. However, some structure can be derived from the cases. A good discussion of the rule and of laches in general is found in Meagher, Gummow and Lehane, [*Equity Doctrines and Remedies*. Sydney: Butterworths, 1984], at pp. 755-65, where the authors distill the doctrine in this manner, at p. 755:

It is a defence which requires that a defendant can successfully resist an equitable (although not a legal) claim made against him if he can demonstrate that the plaintiff, by delaying the institution or prosecution of his case, has either (a) acquiesced in the defendant's conduct or (b) caused the defendant to alter his position in reasonable reliance on the plaintiff's acceptance of the status quo, or otherwise permitted a situation to arise which it would be unjust to disturb. . . .

Thus there are two distinct branches to the laches doctrine, and either will suffice as a defence to a claim in equity. What is immediately obvious from all of the authorities is that mere delay is insufficient to trigger laches under either of its two branches. Rather, the doctrine considers whether the delay of the plaintiff constitutes acquiescence or results in circumstances that make the prosecution of the action unreasonable. Ultimately, laches must be resolved as a matter of justice as between the parties, as is the case with any equitable doctrine.

[Emphasis added.]

[46] I find neither branch of the laches doctrine applies in this case. Any failure on the part of Eddy to assert his right to seek dissolution of the company would appear, on the evidence, to be a result of his addiction and his desire to conceal his addiction from his family, as opposed to acquiescence. The petitioners' delay following Eddy's death cannot reasonably have been interpreted, given their communications with David, as acquiescence in their capital being effectively

marooned. The respondents are not shown to have altered their position since Eddy's death such that the bringing of this petition is unreasonable.

[47] The respondents further submit that the petitioners should not be able to invoke the draconian remedy of liquidation without first exercising their right to sell the shares as provided for in the Articles. Yet the respondents provide no evidence as to a market for same. It is difficult to imagine any market existing, given there is no history of Golden Spigot paying dividends, outside of a sale at such price as David and Fancy might be willing to offer; as was so neatly stated by Madam Justice Southin in *Safarik v. Ocean Fisheries Ltd.* (1995), 12 B.C.L.R. (3d) 342 (C.A.) at para. 99, "...in a company with no history of paying dividends shares are in reality worthless unless they can be realized".

[48] I find it would be unjust and inequitable to allow the company to continue to benefit from the substantial capital Eddy was initially responsible for contributing. Liquidation and sale, while a remedy of last resort, is the best means available, short of any negotiated outcome, of allowing the petitioners to realize their proportionate share of the growth in value of the company's assets. It appears to be the case that David contributed considerably more in the way of "sweat equity" than Eddy ever did, but it is a reasonable inference that David will have been reasonably compensated through salary and / or management fees. Now that Eddy has passed, it is proper that Eddy's heirs have the opportunity to reap the value of his investment.

[49] I find it just and equitable in the circumstances to grant the relief sought under s. 324.

[50] Accordingly, I order that Golden Spigot Pub Ltd. be liquidated and dissolved; and, that C.E. Craig & Associates be appointed as liquidators.

[51] However, in recognition of the draconian nature of a liquidation order, it is appropriate that this order be suspended for a time in order that the parties may, should they so choose, obtain their own valuations and negotiate a mutually

agreeable purchase price. This order will therefore be suspended for a period of 90 days beginning the date of its pronouncement.

“A. Saunders J.”