IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Casa Margarita Enterprises Ltd. v. Huntly Investments Limited,* 2025 BCSC 299

Date: 20250225
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/Respondent:	R. Josephson
Counsel for the Defendants/Applicants, The Pacific Investment Corporation Limited, Brent Newton Wolverton and Mark Frank Wolverton:	R.S. Anderson, K.C. M.K. Shergill
Place and Date of Hearing:	Vancouver, B.C. February 14, 2025
Place and Date of Judgment:	Vancouver, B.C. February 25, 2025

[1] On this application, the defendants The Pacific Investment Corporation Limited ("PIC"), Brent Newton Wolverton and Mark Frank Wolverton, seek orders respecting the scope and date of the valuation of shares to be determined by the court.

[2] In the underlying action, the plaintiff, Casa Margarita Enterprises Ltd. ("Casa"), claimed that the affairs of the defendant, Huntly Investments Limited ("Huntly"), were conducted in an oppressive manner. On April 19, 2022, the court ordered a bifurcation of the trial. The liability portion of the trial was heard in 2022, and my decision was rendered on May 30, 2023: *Casa Margarita Enterprises Ltd. v. Huntly Investments Limited*, 2023 BCSC 907. I found that the affairs of Huntly were conducted in a manner both oppressive and unfairly prejudicial to Casa, and that Casa was entitled to relief by way of a sale of its shares. On January 26, 2024, the court of appeal rendered its decision in the defendant's appeal from my liability decision: *Huntly Investments Limited v. Casa Margarita Enterprises Ltd.*, 2024 BCCA 31. The valuation portion of the trial is now scheduled in April 2025.

[3] The applicants seek the following orders:

a) The value of Casa's Class A shares in Huntly does not include the value of Casa's Class B common shares in Bute Street Holdings Ltd., Bute Beacon Holdings Ltd. and Melville Street Holdings Ltd.; and

b) The valuation of Casa's Class A shares in Huntly is to be made as of September 21, 2023.

[4] Casa submits the appropriate valuation date is January 9, 2019, the date the litigation was commenced. To the extent that Huntly was reorganized since 2019, with class B shares in three new subsidiary companies issued to all original shareholders, Casa submits that ancillary orders should be made to essentially unwind those transactions as they relate to Casa. Similarly, Casa submits that the promissory note issued to it in 2022 should be cancelled and only the distributions

already made to Casa under the promissory note should be accounted for in the valuation determination.

The Law

[5] The court has broad discretion in fashioning an appropriate remedy in a case where oppression is established. The discretion must be exercised only to rectify the oppression. It is not a means to punish the party engaged in oppressive conduct, or to achieve some result other than the rectification of the oppression: *Smith v. Ritchie*, 2009 ABCA 373, at paras. 19– 22.

[6] In *M. McIsaac Family Holdings Ltd. v Tolam Holdings Ltd.,* 2020 BCCA 371 [*McIsaac*], the court of appeal considered the appropriate valuation date for shares in a case where oppression was found in a closely held company, and a share purchase was ordered. The court reviewed the law and held:

> [131] It is clear that the question to be answered by the court, when ordering the sale of shares in response to a petition for a winding-up, is what valuation date is just and equitable. A similar analysis based on equity exists under the oppression remedy, but the oppressive conduct of a party is to be weighed in the mix of factors.
>
> [132] I accept that there is no legal "presumption" of a valuation date under s. 227(3)(g) and (h) [of the *Business Corporations* Act, S.B.C. 2002, c. 57] when a company or shareholder is ordered to purchase the shares of a shareholder, but the date of the filing of the petition is an important factor to be weighed in determining what valuation date is just and equitable.
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> [133] Indeed, the date of a petition proceeding under the *BCA* of the nature of the one commenced by the respondents, to buy-out a minority shareholder's shares, is a sensible starting point in the analysis of what is just and equitable, for several reasons.
>
> [134] First, the filing of the petition marks a formal step by one group of shareholders to terminate the shared corporate relationship with another. At the very least, it would seem that there should be good reason to deprive the shareholder that is the target of the proceeding of the benefit of their shares prior to this first formal step.

[7] Based on the reasoning in *McIsaac*, and the cases referred to therein, I find that the date of the filing of the petition is an important starting point in determining the date for valuation. Ultimately, however, the court must determine which valuation date would be fair and equitable on the facts of the case before it.

[8] Whether the date the petition was filed is fair and equitable will be assessed in relation to a number of further considerations.

[9] The court in *McIsaac* reviewed some of the factors to consider in determining whether a date other than the filing date ought to be set as the date for a share valuation. It must be noted that in *McIsaac* the court considered the valuation date in the context of a court ordered winding-up, which may be ordered in the case of a deadlock and does not carry with it the blameworthy conduct found in a case of oppression. In the case of a court ordered sale under the winding-up remedy, the court is more likely to order the date of trial as the appropriate date of valuation. As explained in *Discovery Enterprises Inc. v. Ebco Industries Ltd*., 2002 BCSC 1236, with reference to *Safarik v. Ocean Fisheries Ltd*. (1996), 17 B.C.L.R. (3d) 354 (C.A.):

> [229] … Because the court concluded it was appropriate to avert the need for a wind-up by means of the purchase and sale of shares among shareholders effected by means of what is called, in the vernacular, a "shot-gun" purchase and sale arrangement, the use of share values determined at or following the judgment on appeal was required to reflect the fact that the purchase and sale was a substitute for the prospective results that would flow from a winding-up.

[10] In *McIsaac* the court discussed some of the factors to be considered in relation to the oppression remedy, which include:

a) Misconduct is a factor to be weighed in an oppression proceeding. Where the party engaging in oppressive conduct would benefit from a rising market, the date of judgment may be preferred over the petition filing date so as to deprive that party of any positive changes in the company's fortunes after the petition date: paras. 136–137, referencing *De Cotiis v. De Cotiis*, 1995 CanLII 1044 (B.C.S.C.) at paras. 99–100, *Livramento v Millennium Powder Coating Ltd*., 2007 BCSC 1282 at para. 58, *Dais v. Virvilis*, 2018 BCSC 459 at paras. 107–108, 144, *Runnalls v. Regent Holdings Ltd.*, 2010 BCSC 1106; *Discovery Enterprises* at para. 233.

b) Where there is a decline in share value due to general economic conditions, such as the worldwide economic meltdown in the latter part of

> 2008, it might not be fair to place the burden on the purchasing shareholders, and therefore a date later than the filing of the petition might be appropriate: para. 138, referencing *Runnalls*.

[11] The facts in *Runnalls* are somewhat unique. The evidence in that case was that as a result of the "worldwide financial meltdown that commenced in the latter part of 2008", the share value decreased by more than $1,000,000 over the course of the litigation: para. 12. The court found the trial date to be the appropriate date for valuation because:

> [109] … The decline in value since the date of the petition is not the result of continued oppression or the conduct of any of the parties. If the petitioners had received the value of their shares on the date of the petition, they would presumably have purchased other investments that would also have been at risk from the general economic decline. It would not be fair to now place the burden of those changes on only one party. I therefore find May 31, 2009 to be the appropriate valuation date.

[12] As such, the court in *Runnalls* essentially reasoned that setting the valuation date at the date the petition was filed unfairly protected the petitioner from losses it would have suffered in any event for reasons wholly unrelated to the oppressive acts.

Application to Case

[13] The case before me was started by petition filed on January 9, 2019. On July 13, 2020, the respondents obtained an order converting the petition to an action. On July 19, 2022, Casa was granted leave to amend the notice of civil claim.

[14] The amended claim set out detailed allegations of oppression going back to 2017, all of which were determined in the liability trial.

[15] The applicants stress the importance of pleadings in litigation, relying on the case of *Mercantile Office Systems Private Limited v. Worldwide Warranty Life Services Inc*., 2021 BCCA 362, wherein the court of appeal reiterated the foundational nature of pleadings in guiding the litigation process. Of course, the importance of pleadings is not disputed.

[16] The applicants then submitted before me that the grounds upon which I found oppression were not found in the original petition. Rather, the allegations made in support of the grounds of oppression, as found at trial, were only pleaded in the amended notice of civil claim filed in July 2022.

[17] In between the filing of the petition and the filing of the amended notice of civil claim, the management of Huntly took several steps in the company which impacted the Huntly shares.

[18] In 2020, Huntly was reorganized and the beneficial ownership of four properties was transferred to three holding companies. Huntly was the sole shareholder of the holding companies, holding Class C preferred shares, and Class B common shares in each of the holding companies. Next, Huntly distributed its Class B common shares in the holding companies to its common shareholders by way of stock dividend on October 23, 2020. Following the stock dividend, any growth in the market value of the properties would accrue to the benefit of the Class B common shares of the holding companies, and not to the benefit of Huntly.

[19] In 2022, Huntly issued a special dividend to its shareholders based on tax benefits flowing from the 2020 reorganization. All shareholders were issued promissory notes. Casa received a promissory note in the amount of $118,088.47. The promissory note was payable over a 10-year period, beginning in December 2024.

[20] At trial, I found that the affairs of Huntly were conducted in a manner oppressive or unfairly prejudicial to Casa in relation to the following allegations:

a) failing to treat Casa fairly and equitably by preferring the interests of Wolverton shareholders over those of Casa, including providing Wolverton shareholders with access to information and privileges not provided to Casa;

b) treating Casa differently than the other shareholders in relation to the special dividend issued in 2022; and

c) refusing to redeem or arrange for the purchase of the Casa shares upon request.

[21] On appeal, new evidence was presented regarding the special dividend. While the court of appeal found an error in my calculation of the dividend allocation, it nevertheless agreed with my conclusion that Casa had established oppressive and unfairly prejudicial conduct in relation to the special dividend.

[22] While I found that the 2020 reorganization was done to satisfy the personal needs of Brent, Mark and Lisa Wolverton, to assist them in planning for their children, I found that all shareholders were treated equally and therefore the reorganization could not be said to be oppressive to Casa.

[23] I note that the petition filed in 2019 alleged that Ms. Cowan (the 100% owner of Casa) had the reasonable expectation that Casa's minority shareholdings in Huntly would be purchased back, that in 2015 she asked Brent Wolverton to arrange for the purchase of the Casa shares and Brent refused, and that her executor asked Huntly to redeem the Casa shares in 2017 at the AGM but was refused. In the basis for the oppression remedy in the 2019 petition, Casa alleges the following:

> 51. The Petitioner has the following reasonable expectations:
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> a) to have its minority shareholding redeemed upon request, in accordance with past policies and practices;
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> b) to be treated fairly;
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> …
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> 52. The Respondents have unreasonably refused to have the Petitioner's shareholding redeemed in accordance with past policies and practices.

[24] In the 2022 amended notice of civil claim, the bases of the oppression claim are expanded, and include allegations in relation to conduct occurring after the initial filing of the petition.

Impact of pleading amendments

[25] The applicants submit it would not be fair to use the filing date of the petition as the date of valuation, because the relevant allegations of oppression were not

pleaded until 2022 when the amended notice of civil claim was filed. I disagree. The primary allegations upon which Casa was successful at trial are found in the petition, and include conduct and expectations predating the filing of the petition. Further, once an amendment is made, the plaintiff is entitled to rely on all the allegations in the amended pleading. To the extent the amendment adds details and supplements allegations found in the original pleading, all those amendments are available to ground findings of liability and the appropriate remedy.

[26] If the first act of oppression did not occur until after 2019, the applicants would be on a stronger ground to argue that the filing date was not appropriate as a date to value the shares. However, critical findings of oppression in this case relate to conduct that pre-dates the filing of the 2019 petition.

[27] I agree with Casa that it was initial refusal of the applicants to redeem or arrange for the purchase of Casa's shares when asked to do so first by Ms. Cowan, and later by Mr. Killen, that gave rise to the filing of the petition in 2019. The filing of the petition gave notice to the applicants that Casa was seeking to have its shares valued and purchased because of the conduct Casa alleged to be oppressive. While I found that the oppressive conduct continued during the course of the litigation, this does not change the fact that the applicants were on notice in 2019 as to the relief sought by Casa. I do not agree that it would be unfair to the applicants to use the 2019 filing date as the valuation date.

[28] The applicants submit that PIC was not involved in any oppressive acts prior to 2019, and was mentioned only in relation to the 2020 share purchases and 2022 capital distribution. The final order at trial, as amended after appeal, is:

> 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.

[29] Therefore, the applicants submit that it is not fair to PIC to be required to purchase shares valued in 2019, when PIC is not mentioned in relation to any oppressive acts until 2020. While this argument has a superficial appeal, I am not

satisfied that it holds up under scrutiny. I found that PIC was a company controlled by Brent Wolverton, and he used PIC as a vehicle to buy out other shareholders as he deemed appropriate. The final order at trial permits the defendants to choose the ultimate purchaser of Casa's shares, whether it be one of the personal defendants or PIC, a company controlled by Brent Wolverton and used by him to purchase shareholdings from other shareholders. I do not agree that it is unfair to PIC to set the valuation date at the date of the filing of the petition.

Impact of corporate actions since 2019

[30] The applicants submit that, due to the 2020 reorganization, and the 2022 promissory note, it is not appropriate to value the Huntly shares in 2019.

[31] Following the 2020 reorganization, Huntly no longer owns the Class B shares of the holding companies, and the holding companies now own the real properties which previously made up the value of Huntly. The trial order only requires the purchase of shares in Huntly. Because I did not find the 2020 reorganization to be oppressive, the applicants submit that the fairest valuation date, in the circumstances of this case, is a date after the reorganization as Huntly's value is now substantially less than it was in 2019.

[32] In addition, there is no order that Casa must give up its Class B shares in the holding companies, or its promissory note, and therefore to value Huntly shares in 2019 would mean that Casa is able to "double dip" – it would receive the value its shares held in 2019, and it would retain that value through its Class B shares and the promissory note.

[33] Counsel for Casa clarified that it seeks to have the Huntly shares valued as at 2019 and it also seeks to, effectively, cancel both its Class B shares in the holding companies and the promissory note, setting off against the 2019 share value the funds it received under the promissory note in December 2024. The mechanism by which Casa would rid itself of the shares and the promissory note was not the subject of submissions on this hearing, but would be argued at the valuation trial.

[34] I agree that the Class B shares issued in 2020, and the promissory note issued in 2022, would have to be addressed in submissions at the valuation trial, and Casa would not be entitled to retain these assets in the event the Huntly shares are valued as at 2019.

[35] I find that the changes in Huntly's corporate structure in 2020, and the issuance of the 2022 promissory note, are not obstacles to the valuation of the Huntly shares as at 2019. The court has a broad discretion under s. 227(3) of the *Business Corporations Act*, S.B.C. 2002, c. 57, to make the orders necessary to ensure that Casa does not retain its Class B shares or promissory note, and thus ensure that Casa does not receive any benefit in excess of the share value it was entitled to in 2019.

Change in value of the underlying real estate assets

[36] The applicants submit that, if the underlying properties are to be accounted for in any valuation, the properties have dropped in value since 2019 and therefore any valuation should reflect current property values. In support of this argument, the applicants rely on an affidavit exhibiting the assessed values of the four real properties from 2019 to 2025. In 2019, the assessed values of the properties totalled $63,759,200. In 2022, at the date of trial, the assessed values of the four properties totalled $59,354,600. The assessed values of the properties have continued to drop slightly since 2022. I note that, while assessed values are relevant to a valuation, they are not equivalent to a market valuation. I agree that the change in assessed values suggest that there might have been a decline in market value, but I am not able to conclude that such a decline has been established based on the assessed values alone.

[37] The applicants submit that, if the real properties are to be valued, it would not be fair to value the properties at a date when the properties held more value than they do now, relying on the case of *Runnalls*. They submit that the decrease in value is market driven, and has nothing to do with their oppressive acts. As such, it would

not be fair to them to have to pay a value based on an earlier point in time when the real estate had a higher value.

[38] I cannot accede to the argument of the applicants. The oppressive acts began prior to 2019, and continued up to the date of trial. While it is possible that the market value of the properties declined somewhat from 2019 to the date of trial, the issue before me is the fairest date to value the shares to rectify the oppression.

[39] The oppression began as early as 2015, when Ms. Cowan first asked Brent Wolverton to buy back her shares. However, Casa seeks to have the shares valued in 2019, when it gave notice to the applicants of its claim, by way of the filing of the petition. If the oppression was rectified in 2019, Casa would have had the benefit of the value of its shares at that time. It would have distributed the value to the beneficiaries of Ms. Cowan's estate, and those beneficiaries would have been able to invest or use the funds as they saw fit. There is no evidence before me that, over the course of this litigation, the world suffered a global financial event such that all assets and investments could be expected to experience a decrease in value.

[40] In *Runnalls*, the court found that a worldwide financial crisis affected everyone across the board. The court found that by valuing the shares at a point in time pre-dating the worldwide financial crisis, the plaintiff would receive an unwarranted financial benefit, in effect protecting the plaintiff from financial impacts that were suffered by society as a whole.

[41] In my view, the facts before me are more aligned with the facts in cases like *De Cotiis*, *Livramento,* and *Discovery Enterprises*. In those cases, the respondents sought to establish the valuation date at the date of the filing of the petition, because the share value had increased over the course of the litigation. The courts found that the respondents were not entitled to receive the upside in share value at the expense of the successful petitioner.

[42] In the case before me, to accept a valuation date other than the date the petition was filed, would penalize the petitioner by depriving it of the value it would have received when it first approached Brent Wolverton seeking to have its shares purchased. In rectifying the oppression, in the case before me, I find that Casa is entitled to receive the value it would have received if the oppression had not occurred. It is not fair and equitable for Casa to share in any loss of value in the real properties that may have arisen during the course of this litigation.

September 21, 2023 as valuation date

[43] The applicants submit that the appropriate valuation date is September 21, 2023. Their rationale for this date is that it is halfway between the trial decision and the decision of the court of appeal.

[44] I cannot accept the argument of the applicants. In my view, the valuation date must be tied to the filing date of the original pleading, or the first date oppression was established if such post-dates the filing date, or the date of trial if there are compelling reasons to establish such a later date. However, an arbitrary date post-trial cannot satisfy the requirement of fairness or equity in setting a valuation date.

Conclusion

[45] Oppression has been established, and a share purchase has been ordered. The task of the court on this application is to establish the fairest date to value the shares, in order to rectify the oppression. For the reasons set out above, I am satisfied that the date of the filing of the petition, January 19, 2019, is the fairest date to value the shares Casa held in Huntly at that time, in order to rectify the oppression suffered by Casa.

"W.A. Baker J."