

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Date: 20201203  
Docket: S227458  
Registry: New Westminster

Between:

**Farheen Rawji and 1134365 B.C. Ltd.**

Petitioners

And

**Hitesh Panchal, H.D.P. Holdings Inc., and 0371392 B.C. Ltd.**

Respondents

Before: The Honourable Mr. Justice Sewell

## **Oral Ruling Re Application Seeking an Alternative Valuation Remedy**

In Chambers

Counsel for the Petitioners:

P.G. Kent-Snowsell  
T. Goepel

Counsel for the Respondents:

D. Donohoe

Representative for 0888806 B.C. Ltd.,  
appearing in person

J. Buysen

Representative for D. Manning &  
Associates, appearing in person

H. Frydenlund

Place and Date of Hearing:

New Westminster, B.C.  
November 30, 2020

Place and Date of Ruling:

New Westminster, B.C.  
December 3, 2020

[1] **THE COURT:** On November 30 of this year, I dismissed an application made by the respondents H.D.P. Holdings Inc. and 2 non parties, Ghalib Rawji and 0888806 B.C. Ltd. ("0888"), which I will refer to collectively as the applicants, to require the petitioner, 1134365 B.C. Ltd., which I will refer to as "1134" in these reasons, to sell its shares in 0371392 BC Ltd. "the Company" to the applicants, pursuant to the terms of a share purchase agreement delivered by counsel for the applicants to counsel for the petitioners on November 12, 2020.

[2] At that time, I said I would deliver brief reasons for my decision this morning. These are those reasons.

[3] This application is made in oppression proceedings brought by 1134 and its principal, Farheen Rawji. The parties are principals of the shareholders of the Company. The principal asset of the Company is a motel in Mission, British Columbia. The Company owns the land and buildings on which the motel is located and operated. The only registered shareholders of the company are H.D.P. and 1134, but Ghalib Rawji and 0888 allege that they have a beneficial ownership interest in some of the shares held by the registered shareholders who hold them in trust for them.

[4] The parties agree that the Company's affairs are deadlocked and that some order should be made at some time pursuant to the *Business Corporations Act*, S.B.C. 2002, c. 57 to address that deadlock. However, the dispute over who beneficially owns the Company's shares means that it cannot be definitively stated at this time who has the majority interest in the Company.

[5] The Company's motel business operates on an annual basis at a modest profit, or at least did before the present pandemic affected its operations. The dispute between the shareholders has paralyzed its management and in the summer of 2020 caused its bank accounts to be frozen. These developments led to the Court appointment of a receiver over the land and motel owned by the Company.

[6] Subsequently, the receiver was granted a power of sale, effective December 1, 2020. However, the receiver will not be in a position to market the property until late December, thereby leaving the parties some time to attempt to resolve their differences.

[7] In November 2020, the applicant H.D.P. obtained an offer from a third party to purchase the Company's real estate, including the motel operations, for \$3,375,000. That offer prompted the applicants to bring the present application. The total price for all of the shares of the Company set out in the agreement for which approval is sought is \$2,650,000. The applicant's counsel explained in submissions that the amount offered for the shares of the company represented the net sale proceeds from the sale of its assets to the third party for \$3,375,000 less anticipated capital gains tax and recapture arising from the sale.

[8] Prior to the hearing of this application, the third party purchaser increased its offer for the motel and land to \$3,600,000, and I am told by counsel for the petitioner that the purchaser is also prepared to make an offer for the company's shares, but no such offer has been put in evidence or presented. During the hearing, counsel for the applicants informed the Court that his clients were prepared to increase the price they were willing to pay for the shares of the Company by \$200,000, presumably in part in response to the increased offer, and in part in response to some of the evidence which indicates that the adverse tax effects of an asset sale might be ameliorated by taking certain avoidance steps.

[9] There was some evidence, or at least an indication, that the highest and best use for the Company's property was to rezone it for residential purposes rather than continue its current motel operations. This fact is relevant to the issue of when the shares should be valued. Counsel for the applicants submits that the offer will put the application respondents in the same after-tax position they would have been if the Company's assets were sold for \$3,375,000. While it was not expressly stated, I assume that the increase of \$200,000 in the purchase price was intended to accomplish the same results for a sale at \$3,600,000.

[10] I see no need to review the authorities cited with respect to the role of the court in oppression proceedings. It is clear that if a court finds there are just and equitable grounds to wind up the Company, the court may make alternative orders, including an order that one group of shareholders or the other purchase the other's shares. In all cases the question is whether it is in the interests of justice that the order should be made. It is trite to say that a deadlock is a classic ground for the winding up of a company and that in this case, those options are open to the court. However, my difficulty with the present application is that the applicants have not satisfied me that even the increased price which they are prepared to offer represents the fair market value of the shares of the Company.

[11] For example, it may well be that the purchaser has not put its best offer forward. In addition, the evidence with respect to tax consequences of a sale does not satisfy me that the payment of capital gains or recapture cannot be minimized through effective tax planning. While the evidence about the willingness of the third parties purchaser, to make an offer for the purchase of shares rather than the land is not strictly speaking admissible, it is clear that no negotiations have taken place with the purchaser to maximize the return to the shareholders from a sale of either the land or the shares of the Company.

[12] This application was brought on short notice as an urgent application. It sought an order requiring the petitioners to sell its shares at a specific price on specific terms. One consequence of that way of proceeding is that the evidence necessary to determine the fair market value of the shares was lacking. On that ground alone, this application must fail.

[13] The applicant sought an alternative remedy of having the shares of the Company valued, and a direction that either a shotgun or some other method of determining who should be the purchaser be adopted. However, given the present circumstances of the Company, I am of the view that there is no guarantee that a valuation process could be completed in a time frame acceptable to the receiver who is conducting the sale.

[14] The other difficulty with ordering a valuation is that the unresolved issue of the beneficial ownership of the shares makes it difficult to determine the position of the parties on a shotgun or similar type of arrangement. The petitioner does not accept that the non-parties Ghalib Rawji and 0888 have a beneficial interest in the shares of the Company. I accept that there is strong documentary evidence in the record indicating that it was at least contemplated that they have such an interest, but at this time I am unable to resolve that issue given the direct conflict in the evidence. Until that issue is resolved, there can of course, be no final resolution of the issues raised in this petition.

[15] In my view, the critical issue is who should retain control of the Company and therefore be in a position to participate in realizing its maximum value. The present application could be seen as an attempt by the applicants to exclude 1134 from sharing in that maximization of value.

[16] I therefore dismiss the application.

[17] I understand that the parties agree that this proceeding should be converted to an action and that all unresolved issues be referred to the trial list on the usual terms. I therefore make that order. I am confident that the parties can agree on the exact terms of that order. If they cannot, they may make further application to me.

[18] Nothing in these reasons should be taken as preventing any party from making a further application for an earlier resolution of these proceedings if more complete information with respect to the value of the Company comes to light in the course of this litigation.

[19] The application respondents have been the successful parties on this application and are entitled to their costs on Scale B in any cause of the cause.