IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Jahnke v. 436537 B.C. Ltd.,*
2023 BCSC 2166

Date: 20231004
Docket: S214674
Registry: Vancouver

Between:

Carolyn Jahnke

Petitioner

And:

436537 B.C. Ltd. and Donna Rhodes

Respondents

Before: The Honourable Mr. Justice G.R.J. Gaul

Oral Reasons for Judgment

In Chambers

Counsel for the Petitioner appearing by teleconference:	G.R. Cameron K.F. Milinazzo
Counsel for the Respondent Donna Rhodes appearing by videoconference:	L.R. LeBlanc
For the Respondent 436537 B.C. Ltd.:	No appearance
Place and Date of Hearing:	Victoria, B.C. September 27, 2023
Place and Date of Judgment:	Victoria, B.C. October 4, 2023

[1] **THE COURT:** This matter involves a dispute between the shareholders of the family-run privately-held corporate respondent, 436537 B.C. Ltd. (“436”). That company's sole asset is a 36-unit apartment building in Victoria, British Columbia known as “La Maison Blanche”. The market value of La Maison Blanche, as of August 2021, was approximately $9.5 million.

[2] The petitioner, Carolyn Jahnke, is a minority shareholder of 436 by virtue of the fact that she owns 75 of the 300 common shares of the company. Her brother David Stewart, who has not participated in this proceeding, is similarly a minority shareholder.

[3] The individual respondent, Donna Rhodes, is the majority shareholder of 436 by virtue of the fact that she owns 150 common shares, as well as all of the 1,000 preferred shares of the company. She is also the president of 436. The only other director of 436 is Donna's daughter, Cynthia Watson.

[4] For ease of reference and clarity, and meaning no disrespect to anyone, I will use individuals’ first names during the course of these reasons.

[5] By petition filed 12 May 2021, Carolyn sought relief under the *Business Corporations Act*, S.B.C. 2002, c. 57 (“*BCA*”) for what she alleged was oppressive conduct.

[6] At the hearing of the petition, Carolyn wished to rely upon the affidavit evidence of Katie Snell. Ms. Snell is a real estate appraiser who Carolyn had retained to provide opinion evidence in this matter. That evidence consisted of an assessment of La Maison Blanche's market value, as well as expert opinion evidence relating to the operations of La Maison Blanche and the management and costs associated with the operations of the property. Although Donna's counsel accepted Ms. Snell's opinion that La Maison Blanche had a market value of $9.5 million as of August 2021, she objected to the balance of Ms. Snell's evidence, especially what was said to be opinion evidence regarding the operations and expenses associated with La Maison Blanche, on the grounds that Ms. Snell's expert

report had not been served in compliance with the *Supreme Court Civil Rules*. As noted at paragraph 39 of my reasons for judgment, indexed at 2023 BCSC 614:

> [39] Counsel for Carolyn acknowledged that the manner in which Donna's counsel was advised of the intended use of Ms. Snell's evidence was not entirely compliant with the *Rules*. Given that fact and Carolyn's wish not to have the hearing of her petition adjourned, her counsel indicated that she was prepared to proceed with the hearing, irrespective of the Court's ruling on the objection.

[7] I upheld the objection and, except for the valuation of La Maison Blanche, I ruled Ms. Snell's evidence inadmissible. In the result, the petition proceeded without any expert evidence relating to the manner in which 436's business operations and finances were being managed.

[8] At paragraph 97 of my reasons for judgment, I concluded:

> [97] In my opinion, Donna has not performed to the level expected of her as a director and officer of 436. She has been troublingly lax in organizing and holding AGMs and clearly failed to obtain audited financial statements for 436, even though she knew she was obliged to do so given Carolyn's insistence that they be prepared.

[9] In the result, I found Donna's conduct constituted oppressive behaviour. I also found that the affairs of 436 were conducted in a manner that were oppressive to Carolyn as a shareholder of the company.

[10] The task of determining the appropriate remedy, in light of my findings, proved to be a challenging one. Although I concluded that Donna and 436 had acted and continued to act in an oppressive manner, I was not satisfied on the evidence that was before me that the nature of that conduct warranted an order that either Donna or 436 purchase Carolyn's shares in 436. Nor was I convinced that the dissolution of 436 was an appropriate remedy. Again, referring to my reasons for judgment, I explained:

> [110] During the course of the hearing of the petition, I was informed by counsel that 436 had retained auditors and that work was being done to complete an audited financial statement for 2021. This means there is likely additional financial information that is now available and that may impact what remedies can or ought to be ordered pursuant to s. 227 of the *BCA*.

> [111] In all of the circumstances of this case, I find it would be appropriate for the parties to have an opportunity to consider these reasons and to then have leave to make further submissions with respect to what an appropriate remedy would be. This is consistent with the manner in which Justice Murray proceeded in *Gierc*.
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> . . .
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> [113] The parties have leave to schedule a further hearing to address what remedy or remedies ought to be ordered in light of my finding of oppressive conduct on the part of Donna and any further developments relating to the management or operations of 436 that have occurred since the hearing of the petition. . . .

Nature of the present hearing

[11] After having considered my reasons for judgment, the parties are back before me to determine what remedy or remedies ought to be ordered because of Donna and 436's oppressive conduct towards Carolyn as a shareholder of the company.

[12] The parties have also provided me with their submissions on the question of costs.

Position of the petitioner

[13] Carolyn maintains that Donna continues to exhibit an attitude and to conduct herself in a manner that is oppressive to her rights as a minority shareholder. She also contends that Donna still fails to understand her fiduciary obligations and continues to increase her significant shareholder loans to 436, to the company's detriment.

[14] Finally, Carolyn points to the fact that the audited financial statement for the corporate year end 2021 was inexplicably late in arriving, and to the fact that the audited statement for 2022 has not yet been delivered, as compelling evidence that Donna is unwilling or unable to properly manage 436's affairs in an appropriate and businesslike fashion. Consequently, Carolyn submits that the only means of resolving the situation is for Donna or 436 to buy her shares based upon the assessed value of 436's sole asset, La Maison Blanche.

[15] On the issue of costs, Carolyn contends that she has been the successful party in this litigation and therefore is entitled to her costs at Scale B.

Position of the respondent

[16] Donna asserts that she has remedied the deficiencies in the manner that she had been operating 436, especially what I found to be the oppressive conduct towards Carolyn. Specifically, Donna points to the fact that annual general meetings (“AGM”) have now been held and auditors have been appointed in accordance with the *BCA*. In light of having taken these steps, Donna submits that no further remedial order of the court is necessary under the *BCA*, and that the only issue to resolve is costs. On that latter issue, Donna submits that success has been mixed and consequently it would be appropriate for the parties to bear their own costs personally.

Discussion

[17] I begin by repeating some of the historical basis of this matter that I recounted in my earlier reasons for judgment.

[18] Art and Hilda Chesson had adopted two children: Lorraine ("Lori") Chesson and Donna Chesson, now Donna Rhodes.

[19] When Lori was young, she gave birth to a son, David Stewart. Given her circumstances at the time, Lori made an adoption plan and relinquished her parental rights regarding David when he was an infant.

[20] Later in her life, Lori married Carolyn's father. Carolyn began living with her father and Lori in 1974, when she was very young. As a step-mother, Lori was a positive parental influence in Carolyn's life and the two continued to share a close relationship after Lori and Carolyn's father divorced in 1992.

[21] Several years before the incorporation of 436, Art purchased a 36-unit apartment building in downtown Victoria, British Columbia, that is La Maison Blanche. Day-to-day operation of La Maison Blanche has always been a family

affair. Initially it was Art and Hilda who took care of the property's financial and operational management. Following Art's death, it was Hilda and Lori who assumed responsibility for operating the property.

[22] On 27 November 1992, after Art's death and at Hilda's instigation, 436 was incorporated. The initial directors of the company were Hilda, Donna, and Lori. The company was transitioned under the *BCA* on 1 September 2005.

[23] On the date of 436's incorporation, Lori and Donna each held 150 common shares in the company, with Hilda having 1,000 preferred shares. At the same time, Hilda became the company's president, Lori became its treasurer, and Donna became its secretary.

[24] On 30 December 1992, Hilda transferred ownership of La Maison Blanche to 436.

[25] Lori died in 1997, predeceasing Hilda, Donna, David, and Carolyn. Pursuant to the terms of Lori's last will and testament, her common shares in 436 passed in equal portions to David and Carolyn. That is, David and Carolyn each received 75 common shares in 436.

[26] Following Lori's death, Donna assumed control over the operations of 436 and La Maison Blanche together with Hilda. In or around 2010, Donna became the president of 436.

[27] Hilda died in 2012. In accordance with the terms of Hilda's last will and testament, all of her preferred shares in 436 passed to Donna alone.

[28] Since at least 2012, Donna has been the operating mind behind 436. Although she has installed her own daughter as a director, there is no dispute that Donna is the only person who manages and controls the day-to-day operations of 436, including all of its financial affairs.

[29] It is also an undisputed fact that La Maison Blanche was purchased, and 436 was incorporated, as a means of providing a viable financial future for the Chesson family and its descendants.

[30] Carolyn claims she is a member of the Chesson family and entitled to share in the benefits that flow from Art and Hilda Chesson's financial planning. Donna disagrees with Carolyn on this point, asserting that the Chesson family is limited to "legal members" or "blood relatives", and consequently Carolyn and David Stewart are excluded.

[31] In dismissing Carolyn's claim that she held a reasonable expectation to an inheritance-based value for her 75 common shares in 436, I concluded:

> [54] While I do not question that Carolyn earnestly believes that her shares in 436 carry greater financial value than what Donna attributes to them, in my opinion this belief does not rise to the level of an expectation, as that term is used in the jurisprudence. This belief of Carolyn's that her common shares in 436 create an entitlement to financial benefits beyond those arising from a corporate liquidation of assets, which I note parenthetically continue to exist, is a purely personal aspiration and not an expectation upon which a remedy under the *BCA* can be based. As counsel for Donna correctly points out:
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> > a) The 436 preferred shares have voting rights, which means that Carolyn only has 75 of the 1300 voting shares in 436, which equates to approximately 5.75% of the aggregate votes;
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> > b) The 436 common shares do not have redemption or retraction rights attached to them;
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> > c) The historical practice of 436, including prior to Donna's ownership of the preferred shares, indicates that dividends have never been paid to holders of common shares; they have been paid only to the holder of preferred shares; and
> >
> > d) Carolyn has been the holder of common shares in 436 for over 20 years. There has been no change in the treatment of shareholders of common shares since the company was incorporated in 1992.
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> . . .
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> [56] Having considered the evidence presented, I am not satisfied that Carolyn's expectation with respect to the value of her shares is one that is shared in the compact of 436 shareholders, and consequently this belief or aspiration of hers cannot found a claim for a shareholder remedy under the *BCA*.
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> [57] If I am wrong in concluding that Carolyn's arguably late claim of an expectation of financial benefit arising from her 75 common shares in 436 is

> not an expectation shared in the compact of 436 shareholders, then I would add that I find the expectation is not a reasonable one, given the evidence and circumstances in this case.

[32] Reaching this conclusion did not and does not mean Carolyn was not and is not a member of the Chesson family. Donna's assertion that Carolyn is not a part of the Chesson family is founded on the fact that Carolyn was not Lori's biological child. I will say at this point that this position is as thoughtless as it is disingenuous, given that Donna herself was adopted by Art and Hilda and is not their biological child.

[33] This disregard for Carolyn as a member of the Chesson family has permeated the manner in which Donna has operated 436 and has treated Carolyn as a shareholder of the company. In my reasons for judgment, I rejected Donna's assertion that the shareholders of 436 had waived the necessity of holding AGMs for the years where there were none. At paragraph 91, I found Donna and 436's history of not holding AGMs was “troubling”.

[34] Additionally, I rejected Donna's explanations for not having ordered the preparation of audited financial statements for 436. I explained in my reasons:

> [96] In my view, Donna's explanation for not having ordered the preparation of audited financial statements is unconvincing and disingenuous. She acknowledges that shareholders have the right to request audited financial statements. She was also aware that as of 2013, Carolyn, as a shareholder of 436, was making such a request. To disregard the obligation to comply with the request on the ground that the expense would be unjustified is, in my . . . view, unacceptable. Even if Donna's belief as to Carolyn's motivation for asking that annual audited financial statements be prepared is correct, and I stress that there is no evidence to support that belief, that did not permit Donna to simply ignore or reject what was legally being asked of her. In this respect, Carolyn is correct when she asserts that Donna showed a troubling disregard for her status as a shareholder of 436.
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> [97] In my opinion, Donna has not performed to the level expected of her as a director and officer of 436. She has been troublingly lax in organizing and holding AGMs and clearly failed to obtain audited financial statements for 436, even though she knew she was obliged to do so given Carolyn's insistence that they be prepared.

[35] At the hearing of the petition in early 2022, Donna's counsel indicated that Donna had developed a better understanding of her obligations as a director and

officer of 436 as well as her responsibilities to both the company and its shareholders and would, going forward, conduct herself in a manner that complied with the *BCA*. Moreover, it was made clear that audited financial statements for 436 for the years 2020 and 2021 would be delivered to Carolyn.

[36] Carolyn maintains that, notwithstanding what counsel had said on Donna's behalf and my finding that Donna was now acutely aware of her obligation to ensure that the requirements of the *BCA* be scrupulously respected, Donna has failed to live up to her counsel's representations and the expectations of her under the *BCA*.

[37] On 5 January 2022, five days before the first day of the hearing of the petition, Carolyn received from 436's accountants a package of documents relating to the company, including an unaudited financial statement for the fiscal year ending 31 July 2021, as well as a general ledger that had unexplained redactions.

[38] On 2 February 2022, Donna sent an email to Carolyn and David announcing that the AGM for 436's corporate year of November 27, 2020 to November 27, 2021, and fiscal year of August 1, 2020 to July 1, 2021 would be held on 24 February 2022.

[39] All three shareholders of 436, that is, Donna, Carolyn, and David, attended the February 2022 AGM. The minutes of the meeting indicate that Donna attended in her capacity as 436's "President / CEO / COO"; "Secretary Treasurer Comptroller"; "Preferred Shareholder"; and "Director". Carolyn and David are recorded as attending as "Common Shareholders". There is no explanation why Donna felt the need to include all of her corporate titles, presumably titles that she bestowed upon herself.

[40] Apparently, all shareholders agreed that the meeting be audio recorded. The minutes of the meeting were prepared by Donna. The content and tone of the minutes suggest the high level of tension between Donna and Carolyn continues unabated. In her Affidavit Number 3, sworn 25 April 2023, Carolyn explains:

> 7. I asked Donna several questions about the business of 436 during the meeting:
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> (a) I asked for an update on the status of the audited financial statements. She did not have a status update and replied "I know nothing."
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> (b) I asked why the 2021 unaudited financial information I received in January 2022 had been redacted. Donna replied "that is my own personal information" which is "not to be given out".
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> (c) Donna stated that the government mandates that she take a 5% dividend from the company. I asked Donna whether she intends to provide any dividends to the common shareholders. She replied that she was unsure, and it depended on expenses. She confirmed that no dividends to common shareholders were declared on the 2021 financial statements.

[41] In a responsive affidavit sworn 22 August 2023, Donna addresses Carolyn's observations about what she, Donna, allegedly said at the February 2022 AGM:

> 14. In response to paragraph 7 of the Jahnke Affidavit #3, the quotes attributed to me are incorrect and/or incomplete.
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> 15. In specific response to paragraph 7(a), I was advised by Ms. Jahnke that she was seeking audited financial statements and at this time, it was the first instance that I understood her to be seeking the appointment of an auditor. I responded that I did not know anything about it at that time as I was surprised by the sudden change in position from years prior.
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> 16. In specific response to paragraph 7(b), I advised Ms. Jahnke of my understanding of retained earnings and that she could seek any further information from the accountants. When questioned about my personal tax situation, I advised Ms. Jahnke that it was personal and that I did not wish to share the same. It was my understanding that Ms. Jahnke was seeking information on what I spent the funds owed to me by the Company on which I felt was personal and not pertinent to the operations of the Company.
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> 17. In specific response to paragraph 7(c), I did say that no dividends would be declared for 2021 and that future dividends would depend on the status of the Company in the future and advice received from the accountants.

[42] I find Donna's evidence to be disingenuous. If she disagreed with the quotes that were attributed to her as either incorrect or incomplete, then she could have referred to the audio recording of the AGM to provide an accurate record of what she had actually said. She did not do that and does not explain why.

[43] Her response to paragraph 7(a) of Carolyn's affidavit is nothing short of troubling. The evidence is clear that Donna was aware, as of 2013, that Carolyn wanted audited financial statements for 436 and wanted the requirements of the *BCA* to be complied with. That was expressed at paragraph 96 of my reasons for judgment that were delivered to the parties in April of this year. I cannot understand how Donna could affirm in an affidavit sworn some four months later, on 22 August 2023, that she only became aware of Lori's desire for the appointment of an auditor at the AGM in February 2022, and that she was surprised by what she characterized as Carolyn's "sudden change in position from previous years". Donna's position is entirely inconsistent with the evidence and I find it is a sign that she either wishes to ignore the evidence or is simply incapable of understanding it.

[44] It is clear to me that Donna's hostile and uncooperative attitude towards Carolyn and her rights as a shareholder of 436 remained unchanged throughout 2022.

[45] In January 2023, Carolyn received 436's unaudited financial statement for 2022. Accompanying the financial statement was another redacted copy of 436's general ledger. That same month, Carolyn also received an email from Donna requesting that she, Carolyn, waive the necessity of holding an AGM and of producing an audited financial statement. This request was, to say the least, puzzling given Carolyn's clear expression as far back as 2013 that she wanted the annual financial statements of 436 to be audited statements. This again suggests to me that Donna either is not listening to Carolyn's clear expressions as a shareholder of 436 or does not care about them.

[46] It was only following the release of my reasons for judgment in April 2023 that Donna called an AGM. That meeting was set for 11 May 2023.

[47] On 9 May 2023, the audited financial statement for 2021 was sent to Carolyn upon Donna's instructions. At the May 2023 AGM, Carolyn asked Donna about the status of the 2022 audited financial statement for 436, as it had not been provided.

Donna could not or would not respond to that question, nor could she explain why there were no audited financial statements for prior years other than 2021.

[48] I have already remarked in these reasons that my principal decision on the petition relating to the existence of oppressive conduct on the part of Donna and 436 was based upon the admissible evidence that was before me. In reaching my decision, I did not have any evidence to assist me with regard to the manner in which 436 was being operated and the expenses that were being claimed or associated with those operations. Such evidence, had there been any, may well have influenced my decision. Be that as it may, I cannot and will not change my decision.

[49] The minutes of the May 2023 AGM prepared by Donna are remarkably slim and minimal, especially when compared to those she prepared for the February 2022 AGM. Under the heading "Questions", Donna simply recorded that:

> Carolyn Jahnke presented questions which were discussed.

[50] Given the ongoing acrimony between Donna and Carolyn, and given the manner in which the minutes of the February 2022 AGM had been prepared, it is, in my view, incomprehensible why Donna would create minutes that do not record what questions were asked and what answers were given. This, in my view, is a continuing failure on her part as an officer and director of 436.

[51] To find out what was discussed at the May 2023 AGM, recourse can be had to Carolyn's most recent affidavit sworn 19 September 2023:

> 7. . . . David and I jointly posed three questions to Donna.
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> 8. First, having not waived the production of audited financial statements for 2022 we asked where the 2022 audited financials were. Donna did not have an answer, and it did not appear to me she understood the obligation.
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> . . .
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> 10. Second, we asked when the audited financials for prior years would be received, as audited financials for 436 for the years 2013-2021 had not been received. I reiterated to Donna that since 2013, I have demanded audited financial statements. Again, Donna did not have an answer. I told her

> I would leave it with her to find out the status, and I have not heard anything further. . . .
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> 11. Third, we asked whether any form of dividend would be issued to the common shareholders. Donna said no, and that there were "reasons for it".
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> 12. I then asked Donna further questions about the management of 436. I questioned why the redemptions of dividends on the preferred shares were not paid out directly to her, as the holder of the preferred shares. As they are non-cumulative by definition, I expressed concern that the practice of accumulation was not sustainable, and presented liability risk into the future for the Company. If an $87,500 dividend is continually banked into her shareholder's loan instead of being paid out in cash, at a 12 year accumulation, liability could reach over $1,000,000, driving the equity in the Company down. It was also inconsistent with Hilda's practice of not issuing a dividend while she was President of 436.
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> 13. I also observed the general sufficiency of the Company's retained earnings to pay the preferred share dividend taken by Donna on an annual basis. Donna was concerned that the Company couldn't afford the annual dividend, but she understood it was required by law, so chose to add it to the Company's debt. I explained she was not obligated to issue a dividend. We discussed it extensively, and Donna still did not understand why simply continuing to grow the Company's liability was a problem.
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> 14. Later in our conversation, I asked Donna if she thought she had to pay off her shareholder's loan before issuing a dividend to the common shareholders. She said yes.

Conclusion

[52] In my opinion, it is not open for me to reconsider the findings of fact that I have already made. They were based upon the evidence that was presented to me at the time. However, things have changed since then. AGMs have now been held for 2022 and 2023. Audited financial statements are being prepared and the one for 2021 has now been provided to Carolyn.

[53] While the 2022 audited financial statement remains outstanding, I accept that it is being prepared and will be delivered to Carolyn when it is ready. Having said this, I also note that it is incumbent upon Donna as the chief executive officer, chief operating officer, and all of the other titles that she has assumed with respect to 436, to ensure that the financial statements of the company are prepared properly and delivered in a timely fashion. Any delays or deficiencies will need to be explained by Donna.

[54] In my view, the oppressive behaviour that I identified and found breached the *BCA* has been addressed. That does not, however, mean all is well with 436 and its shareholders. As a matter of fact, I find it is not. There is still an unhealthy amount of tension between Carolyn and Donna and that is principally because of Donna and her condescending and uncooperative attitude towards Carolyn as a legitimate shareholder of 436. In this regard, I find that Donna has shown herself unable or unwilling to act as an appropriate and fair chairperson at the AGMs of 436.

[55] In *Western Wind Energy Corporation v. Savitr Capital, LLC*, 2012 BCSC 1414, a case not cited by counsel, Mr. Justice Savage observed the following with respect to the role of chairpersons:

> [20] Of course, a meeting chair's function is to oversee a meeting and not participate in a partisan way: *Blair v. Consolidated Enfield Corp.*, [1995] 4 S.C.R. 5 at para. 54. In *Blair*, Iacobucci J. said that "[c]learly, the chairman of any meeting, especially one mandated by and procedurally governed by statute, operates under a duty of administrative fairness". It is a duty of "honesty and fairness to all individual interests" and directed towards the best interests of the company.

[56] It may well be that if Donna continues in the way that she is operating 436 and Carolyn can obtain admissible expert opinion evidence, that a court may find that since my decision in April there are grounds to justify the substantive relief that Carolyn had sought on this current petition. I will say nothing more about this.

[57] Under section 227 of the *BCA* the court has a broad discretion to make an interim or final order that it deems appropriate to remedy any oppression or unfairly prejudicial acts.

[58] Given my concerns about Donna and her disrespectful, uncooperative, and unprofessional conduct towards Carolyn as a shareholder of 436, and in order to ensure the corporate governance of 436 is managed in an appropriate manner so that all shareholders have a clear understanding of the company's annual finances and operations, I will make the following orders pursuant to s. 227 of the *BCA*:

1) For the next three annual general meetings, Donna is prohibited from acting as chairperson. This means another director, officer, or other independent third party must assume that role.

2) For the next three annual general meetings, 436 is to retain a third party who is unrelated in any way to any shareholder, director, or officer of the company to act as recording secretary at the meeting. This person is to prepare the minutes of the AGM and circulate them to all shareholders as soon as practicable.

3) For all future AGMs, Donna is to prepare a detailed annual report to the shareholders of 436 describing and explaining her actions on behalf of the company for that year, including but not limited to her actions in her role as the company's CEO and the other titles that she has adopted. This is to include identifying and explaining any expenditures she has incurred on behalf of 436, and identifying and explaining any remuneration she has received from the company for the year in question. The annual report from Donna is to be provided to the shareholders no later than 30 days prior to the date of the AGM. In the event Donna resigns from any or all of her managerial positions with 436, then her replacement or replacements are to prepare the annual report to shareholders. The need to prepare and present these annual reports can be waived if all shareholders agree in writing in advance of the AGM.

[59] On the issue of costs, I am satisfied that it was Donna's attitude and conduct that compelled Carolyn to come to court seeking redress. Although Carolyn did not succeed this time around in having the court order Donna or 436 to purchase her shares, I am satisfied that she was the successful party, in that she was correct that both Donna and 436 were acting in oppressive manners and breaching her rights as a shareholder of the company. For all of these reasons, I find that Carolyn is entitled to her Scale B costs and that those costs are to be paid by Donna in her capacity as

the individual respondent and without any recourse to any of 436's financial resources.

[60] The parties have leave to seek further directions to ensure the proper implementation of my order.

"G.R.J. Gaul ,J."