IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Casa Margarita Enterprises Ltd. v. Huntly Investments Limited,* 2023 BCSC 907

Date: 20230530
Docket: S190278
Registry: Vancouver

Between:

Casa Margarita Enterprises Ltd.

Plaintiff

And

Huntly Investments Limited, The Pacific Investment Corporation Limited, Brent Wolverton, Mark Wolverton, Lisa Wolverton, Kathleen May Wolverton, Anne Louise Wolverton, Harold G. Wolverton, and Newton Ellis Wolverton

Defendants

Before: The Honourable Madam Justice W.A. Baker

Reasons for Judgment

Counsel for Plaintiff:	R. Josephson B. Clarke
Counsel for Defendants, Huntly Investments Limited, The Pacific Investment Corporation Limited, Brent Wolverton, Mark Wolverton, Lisa Wolverton, Kathleen May Wolverton, Harold G. Wolverton and Newton Ellis Wolverton:	D. Gruber D. Luca
Counsel for Anne Louise Wolverton:	P. Brackstone Written Submissions Only
Place and Date of Trial:	Vancouver, B.C. July 18-22, 25-29, 2022 September 6 and 7, 2022
Place and Date of Judgment:	Vancouver, B.C. May 30, 2023

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I. INTRODUCTION

[1] This a claim in oppression, which revolves around the efforts of Casa Margarita Enterprises Ltd., a shareholder in Huntly Investments Limited, to divest itself of its shares in Huntly at fair value.

[2] Huntly is a closely held corporation. With the exception of Casa, all of the defendant shareholders are members of the same extended family, the Wolverton family. The alleged oppressive conduct is said to have benefited the Wolverton family, and to have disadvantaged Casa which is a small minority shareholder and is not part of the Wolverton family.

[3] Casa seeks a declaration, pursuant to s. 227 of the *Business Corporations Act*, [SBC 2022] c. 57 [*BCBCA*] that the affairs of Huntly have been conducted in a manner oppressive or unfairly prejudicial to Casa. Casa seeks as its primary remedy that Huntly be ordered to purchase all of Casa's shares at fair value. Casa seeks a number of alternative remedies, including orders pursuant to s. 324 of the *BCBCA*.

[4] Huntly says nothing oppressive or unfairly prejudicial has occurred, and Casa's reasonable expectations as to Huntly's corporate governance have been met.

II. BACKGROUND

[5] In the 1960s the Cowan family and the Wolverton family were connected through business. Many of the details of how they were connected are lost because the parents who had the relationship are deceased.

[6] Because this action involves many members of the Wolverton family, I will refer to the Wolverton family members by their first names, simply to distinguish them from each other, and not to be disrespectful of them in any way. The Wolverton family members who play a role in the history of Huntly and the issues in dispute in this action begin with the two brothers, Newton and Harold. Newton married Dona Marie, and had three children: Brent, Mark and Lisa. Harold had two children, Kathleen and Anne.

[7] On November 30, 1966 Huntly was incorporated. On October 31, 1967 the original allotted shares were transferred to Newton, and Newton was allotted an additional 378 shares, making his total shareholdings 380 shares. On October 31, 1967, a number of other persons received allotted shares, in varying amounts – between 11 and 82 shares each. Newton also received two lots of additional shares, to be held jointly, in trust, with Alan Murray Eyre. The first lot was an additional 380 shares, and the second lot was an additional 126 shares. While a number of transfers have taken place since 1967, no further shares have been allotted.

[8] In 1967 Huntly acquired a number of properties through the bankruptcy of a company known as Elgin Investments. Two of these properties are still held by Huntly, and remain central to the dispute before me. These are the Stadacona and the Beaconsfield apartment buildings, located in downtown Vancouver. The Stadacona is comprised of one apartment building and two smaller buildings.

[9] On November 3, 1967 Newton and Alan Murray Eyre transferred 16 Class A common shares, which they held in trust, to MacNeil Investments Ltd. The shares in MacNeil were owned by members of the Cowan family. On August 1, 1973 Newton and Alan Murray Eyre transferred 7 Class A common shares, which they held in trust, to MacNeil. In 1982 MacNeil was renamed Cheyne Property Management Ltd., and later Cheyne became Casa.

[10] The Huntly Defendants urge me to draw inferences as to how Casa acquired its shares in Huntly, based on several court cases involving the Cowan family and Elgin Investments, and the minute book of Huntly. None of the witnesses for the Huntly Defendants had any direct knowledge of the circumstances by which Casa obtained its shares. The Huntly Defendants seek to have me find that the shares in Huntly were issued to MacNeil for no consideration, as an act of charity related to the bankruptcy of Elgin Investments. I decline to draw any such conclusions. I find these submissions to be entirely speculative.

[11] On June 29, 1971, all of the small shareholders (with the exception of Casa) transferred their shares (totalling 435 shares) to a company known as The Pacific

Investment Corporation Limited ("PIC"), a company controlled by the Newton Wolverton family. On December 9, 1971 Newton transferred 217 of the shares he held in his own name, into PIC. On August 1, 1973, Newton and Alan Murray Eyre transferred a total of 286 Class A common shares, which they held in trust, to PIC.

[12] PIC is a company in the business of real estate holding and development, restaurants and liquor manufacturing. Brent, Mark, Lisa, and Dona Marie, either personally or through various trusts and entities they control, own almost 99% of the PIC shares. The directors of PIC are Brent, Mark and Lisa.

[13] After the June 29, 1971 share transfer, other than the shares held by Casa, all shares in Huntly were owned by members of the Wolverton family, or by PIC, which itself is substantially owned and controlled by the Wolverton family.

[14] The current shareholders in Huntly, holding Class A common shares, are the following:

a) Kathleen and Anne, holding 55 shares each in their own names,

b) Brent, Mark and Lisa, holding 29 shares each in their own names,

c) the D.M. Wolverton Trust, the trustees of which are Brent, Mark, Lisa and their mother Dona Marie, holding 69 shares,

d) the Wolverton Alter Ego Trust, the trustees of which are Brent, Mark, Lisa and their mother Dona Marie, holding 343 shares,

e) PIC, holding 634 shares, and

f) Casa, holding 23 shares.

[15] In this action, all the shareholders, with the exception of Casa, are defendants. All the defendant shareholders, with the exception of Anne, are jointly represented. I will refer to these defendants jointly as the Huntly Defendants. Anne

was separately represented and provided written submissions, but did not attend the trial in person.

[16] Brent has been a director of Huntly continuously from December 15, 1988 to the present. Mark is also a director of Huntly. Brent handles the day-to-day operations of Huntly. Mark is not generally involved in the day-to-day operations, but is sometimes consulted regarding consequential business decisions. Brent testified that he and Mark make significant decisions for Huntly on an informal basis. In addition, Brent, Mark and Lisa meet quarterly to discuss Huntly and the other businesses within the Wolverton family.

[17] For many years Wolverton Securities Ltd. was controlled by the Wolverton family. Brent was a director of Wolverton Securities from 1990 to 2016. The company was sold to PI Financial Corp in 2016.

[18] Margaret Cowan's mother, Jane Cowan, and her brother Neil, provided property management services to Huntly's properties, the Stadacona and the Beaconsfield. Margaret Cowan also assisted with managing these properties when she was in university. Jane Cowan was a director Huntly from 1980 until 1986, and Neil Cowan was a director from 1986 to 1990. Neil Cowan also provided property management services to PIC for a number of years, and acquired 100 shares in PIC in 1989.

[19] On the deaths of her mother and brother, Ms. Cowan received their shares in Cheyne (now Casa) and PIC.

[20] On December 20, 2016, Margaret Cowan passed away. The administrator of her estate is Roger Killen. Ms. Cowan's shares in Casa form part of her estate. As she was the sole shareholder of Casa, Mr. Killen needs to wind up Casa and distribute its value to the beneficiaries of Ms. Cowan's estate. The sole asset of Casa is its interest in Huntly. In 2017, Mr. Killen began efforts to sell Casa's shares in Huntly, as part of the orderly winding up of Ms. Cowan's estate.

A. Memorandum and Articles of Huntly

[21] Huntly has no shareholder agreement. The Articles of Huntly provide the following, which are relevant to the issues before me:

a) Clause 17B.

> The Directors may refuse to register as a member any transferee of shares of whom they do not approve. The right to sell and/or transfer shares of the Company shall be restricted in that the holders of the common shares shall not be entitled to sell and/or transfer their respective shares without the consent of the Directors of the Company expressed by a Resolution passed by the Board.

b) Subsection E of Clause 62 of Table A.

> Subject to Section 111 of the "Companies Act", no Director shall be disqualified by his office from holding office or place of profit under the Company or under any Company in which this Company shall be a shareholder or otherwise interested, or from contracting with the Company either as Vendor, Lessor, Purchaser, or otherwise, nor shall any such contract or any contract or arrangements entered into by or on behalf of the Company in which any Director shall be in any way interested, either directly or as a shareholder or Director of another company, be avoided, nor shall any Director be liable to account to the Company for any profit arising from any such office or place of profit or realised by any such contract or arrangement by reason only of such Director holding that office or of the fiduciary relations thereby established. …

c) Clause 56

> The business of the Company shall be managed by the directors, who may … exercise all such powers of the Company as are not, the Companies Act, or any statutory modification thereof for the time being in force, or by these articles, required to be exercised by the Company in general meeting….

B. Legal and professional fees

[22] In the 2022 financial statements, Huntly claimed accounting fees of $57,000, legal fees of $1,063,000, and professional fees of $66,000. It was confirmed that the legal fees relate to the defence of this action, and the professional fees are the fees paid to Professor Kai Li, an expert witness called by the defence in this action.

[23] Casa takes issue with these fees being paid out of Huntly, as these fees reduce the available cash in the company, and require Casa to pay for the defence of the action it has taken against Huntly. I note also that in paying these legal and professional fees, it appears that Huntly is paying for not only its own defence, but also the defence of PIC, Brent, Mark, Lisa, Kathleen, the DM Wolverton Trust, and the Wolverton Alter Ego Trust.

C. Expert evidence

[24] The Huntly Defendants submitted an expert opinion prepared by Professor Kai Li. Ms. Li was qualified as an expert in corporate governance practices, in particular financial reporting, disclosure and related governance practices of small privately held companies.

[25] Prof. Li has little to any experience in corporate practices in British Columbia. Her academic work is focussed on corporations in the United States, Europe, China and Israel. Only one Canadian study, completed in 2009, was referenced in her report. Prof. Li's opinion was generally restricted to "typical" practices in private corporations. However, she was not asked, and was unable to answer under cross examination, questions that engage the kinds of facts which arise in the case before me.

[26] Ultimately, the question of oppression is a highly fact specific question. While Prof. Li was accepted as an expert on corporate practices, I did not find her opinion to be helpful to me in this case. This is not to say that Prof. Li's expertise was challenged, but simply that her opinion did not assist me in determining the issue of oppression on the specific facts of the case before me.

III. LEGAL PRINCIPLES

[27] The oppression remedy is an equitable remedy, allowing the court to make appropriate orders to ensure fairness to shareholders in the operation of a corporation. It takes into account the reasonable expectations of shareholders, including the business realities of the particular corporation, and the particular

features of the corporation at issue. It gives the court broad, equitable jurisdiction to enforce what is fair, and not just what is legal: *BCE, Inc., Re*, 2008 SCC 69 at paras. 56-59.

[28] In *BCE*, the court held at paras. 59-60:

> [59] Second, like many equitable remedies, oppression is fact-specific. What is just and equitable is judged by the reasonable expectations of the stakeholders in the context and in regard to the relationships at play. Conduct that may be oppressive in one situation may not be in another.
>
> [60] Against this background, we turn to the first prong of the inquiry, the principles underlying the remedy of oppression. In *Ebrahimi v. Westbourne Galleries Ltd.*, [1973] A.C. 360 (H.L.), at p. 379, Lord Wilberforce, interpreting s. 222 of the U.K. *Companies Act, 1948*, described the remedy of oppression in the following seminal terms:
>
> > The words ["just and equitable"] are a recognition of the fact that a limited company is more than a mere legal entity, with a personality in law of its own: that there is room in company law for recognition of the fact that behind it, or amongst it, there are individuals, with rights, expectations and obligations inter se which are not necessarily submerged in the company structure.

[29] While legal structures and corporate law principles remain important in the analysis, the true substance of how a corporation is controlled and operated, and relationships between related corporations, and within the corporation at issue, are all to be considered by the court. As stated by the court of appeal in *Canex Investment Corporation v. 0799701 B.C. Ltd.,* 2020 BCCA 231 at para 13, "The judge was entitled to look past corporate formalities to determine who truly controlled the Company, and who benefited from the transactions that were impugned in these proceedings."

[30] In determining the reasonable expectations of a shareholder, the court must determine the subjective expectations of the shareholder, and then must determine, objectively, whether those expectations are reasonable: *Jaguar Financial Corp. v Alternative Earth Resources Inc.*, 2016 BCCA 193 at para. 113. As stated at para. 62 in *BCE*, the court must determine "whether the expectation is reasonable having regard to the facts of the specific case, the relationships at issue, and the

entire context, including the fact that there may be conflicting claims and expectations."

[31] In *BCE*, the court described a series of factors that are relevant in determining reasonable expectations:

> [72] Factors that emerge from the case law that are useful in determining whether a reasonable expectation exists include: general commercial practice; the nature of the corporation; the relationship between the parties; past practice; steps the claimant could have taken to protect itself; representations and agreements; and the fair resolution of conflicting interests between corporate stakeholders.

[32] In addressing conflicting interests, "the duty of the directors to act in the best interests of the corporation comprehends a duty to treat individual stakeholders affected by corporate actions equitably and fairly. There are no absolute rules.": *BCE* at para. 82.

[33] In determining whether the reasonable expectations have been breached, the court must consider whether the impugned conduct harmed the shareholder in a manner direct and special, i.e. different from all or most of the other shareholders. In other words, if all shareholders were harmed equally by the impugned conduct, a case in oppression will not be made out. While the claimant may not be the only shareholder harmed, the claimant must establish that it has been directly and individually harmed. As stated in *Jaguar* at para 179:

> [179] In my view the authorities require a shareholder to show it suffered harm that is "direct and special", "peculiar", or "separate and distinct" from the harm suffered generally by all of the shareholders. In other words, a shareholder need not be the only shareholder oppressed in order to claim oppression, nor suffer a different harm than the corporation does, but it must show peculiar prejudice distinct from the alleged harm suffered by all shareholders indirectly.

[34] The court of appeal in *Jaguar* also cited with approval the decision of the Ontario court of appeal in *Rea v. Wildeboer*, 2015 ONCA 373 where that court held:

> [29] … On my reading of the authorities, in the cases where an oppression claim has been permitted to proceed even though the wrongs asserted were wrongs to the corporation, those same wrongful acts have, for the most part, also directly affected the complainant in a manner that was different from the

> indirect effect of the conduct on similarly placed complainants. And most, if not all, involve small closely-held corporations not public companies.
>
> …
>
> [33] Since the creation of the oppression remedy, courts have taken a broad and flexible approach to its application, in keeping with the broad and flexible form of relief it is intended to provide. However, the appellants' open-ended approach to the oppression remedy in circumstances where the facts support a derivative action on behalf of the corporation misses a significant point: the impugned conduct must harm the complainant personally, not just the body corporate, i.e., the collectivity of shareholders as a whole.
>
> [34] The oppression remedy is not available – as the appellants contend – simply because a complainant asserts a "reasonable expectation" (for example, that directors will conduct themselves with honesty and probity and in the best interests of the corporation) and the evidence supports that the reasonable expectation has been violated by conduct falling within the terms "oppression", "unfair prejudice" or "unfair disregard". The impugned conduct must be "oppressive" of or "unfairly prejudicial" to, or "unfairly disregard" *the interests of the complainant*: OBCA, s. 248(2). No such conduct is pled here.
>
> [35] That the harm must impact the interests of the complainant personally – giving rise to a personal action – and not simply the complainant's interests as a part of the collectivity of stakeholders as a whole – is consistent with the reforms put in place to attenuate the rigours of the rule in *Foss v. Harbottle*.

[35] The Huntly Defendants argue that a shareholder claiming oppression must establish that its reasonable expectations existed at the time it acquired its shares, relying on *Raging River Capital LP v. Taseko Mines Ltd*., 2016 BCSC 2302. In the case before me, Huntly argues that Casa's expectations must be rooted in the time it acquired its shares in Huntly, i.e. in 1967 and 1973.

[36] While this is certainly a factor for the court to consider, the court is not limited to examine only the expectations held at the time of share issuance. The court must consider the legal rights of the parties based on the articles and the equitable rights of the parties, including the nature of the company and the reasonable expectations of the parties: *Boffo Family Holdings Ltd. v. Garden Construction Ltd.*, 2011 BCSC 1246 at para 118. The court in *BCE* also acknowledged that practices and expectations can change over time, and that conduct over time could create a reasonable expectation, even where that expectation went beyond contractual rights, at para. 77, 101-112. Whether such an expectation could be made out

requires an examination of all circumstances, including commercial realities and the duties of directors to the corporation.

[37] It is clear from *BCE* that the most fundamental expectation to which shareholders are entitled, is fair treatment (para. 64).

[38] The Huntly Defendants argue that Casa's reasonable expectations must be assessed as a minority shareholder, where the shares were inherited, and where there is no shareholders agreement. In such a context, the Huntly Defendants argue that Casa's reasonable expectations are limited to the general expectations outlined by the trial judge in *Senyi Estate v. Conakry Holdings Ltd.*, 2007 CanLII 20102 (Ont.S.C.J.), at para. 9:

> (1) that the directors and officers will conduct the affairs of the corporation in accordance with the statutory and common law duties required of them in such capacities; (2) that the shareholder will be entitled to receive annual financial statements of the corporation and to have access to the books and records of the corporation to the limited extent contemplated by the Act; (3) that the shareholder will be entitled to attend an annual meeting of the corporation for the limited purposes of receiving the annual financial statements and electing the directors and auditor of the corporation, or will participate in the approval of such matters by way of a shareholder resolution; (4) that a similar approval process will be conducted in respect of fundamental transactions involving the corporation for which such approval is required under the Act; and (5) that the shareholder will receive the shareholder's *pro rata* entitlement to dividends and other distributions payable in respect of the common shares of the corporation as and when paid to all of the shareholders.

[39] *Senyi* was decided before *BCE*, the leading case in Canada on the oppression remedy. Therefore, while the factors outlined in *Senyi* are helpful, I do not agree that I am limited by them. Rather, the broad considerations described in *BCE* are applicable in the case before me.

[40] If Casa establishes that its reasonable expectations have not been met, Casa must also establish that the conduct complained of resulted in oppression, carrying with it the sense of coercive or abusive conduct; or unfair prejudice, that results in unfair consequences even if the state of mind is less culpable. Examples of unfair prejudice include, "squeezing out a minority shareholder, failing to disclose related

party transactions, changing corporate structure to drastically alter debt ratios, adopting a “poison pill” to prevent a takeover bid, paying dividends without a formal declaration, preferring some shareholders with management fees and paying directors’ fees higher than the industry norm”: *BCE* at para 93.

[41] In addition to its claim in oppression, Casa asserts a claim pursuant to s. 324 of the *BCBCA*, which permits the court to make the orders it considers just and equitable in the circumstances. Section 324 allows a court to make such orders whether or not the test for oppression is met. It is a section which provides a wide discretion to the court: *Boffo*, at para 119-122.

IV. ISSUES

[42] In final argument, Casa limited its allegations of oppressive and unfairly prejudicial conduct to the following:

a) Failing to treat Casa fairly and equitably by:

   i. preferring the interests of Wolverton shareholders over those of Casa, including providing Wolverton shareholders with access to information and privileges not provided to Casa;

   ii. structuring a special dividend in a manner prejudicial to Casa;

   iii. bullying or intimidating Casa for exercising its right to request and obtain audited financial statements.

b) Failing to make adequate disclosure regarding, and failing to permit Casa to vote on, a capital reorganization and a redevelopment of the Stadacona property;

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

[43] If I find that the affairs of Huntly have been conducted in a manner oppressive or unfairly prejudicial to Casa, is Casa entitled to relief and, if so, what relief?

[44] Evidence was led at trial as to a number of internal issues, such as salaries, benefits, and property management fees. I do not intend to canvas these issues, given the stated focus of Casa in final submissions.

A. Did the defendants act oppressively in preferring the interests of the Wolverton family members, and companies and trusts controlled by the Wolverton family, over the interests of Casa?

[45] Casa submits that the defendants preferred the interests of the Wolverton family over Casa in the following ways: providing members of the Wolverton family with access to information and privileges which were not provided to Casa, structuring the special dividend in such a way as to exclude or harm Casa, and by Brent bullying Casa when Casa exercised its right to obtain audited financial statements.

[46] I note at the outset, that beginning in or around spring of 2018, the tenor of the relationship between Brent and Mr. Killen became very testy, with each accusing the other of bad acts. Brent was of the view that Mr. Killen was trying to gouge the company by forcing it to buy back the shares at an inflated rate that was unsustainable for the company. The position of the Huntly Defendants at trial appeared to be that Casa was a charity case that should be grateful for the shares it had, and Casa was not entitled receive any value for its shares except at the discretion of Brent and Huntly. Mr. Killen was of the view that Brent was running the company to the sole advantage of the Wolverton family, and completely disregarding the legitimate interests of the estate of Margaret Cowan. All actions taken by both Brent and Mr. Killen were viewed by the other through these lenses. It was, and is, not a happy relationship. However, the unhappiness of this relationship is relevant to, but not determinative of, the issues in this case.

1. Did Huntly or the directors of Huntly provide the Wolverton shareholders (family members and companies and trusts controlled by the Wolverton family) with access to information not provided to Casa?

[47] Casa points to the following facts which it says prove Huntly provided members of the Wolverton family with access to information not provided to Casa:

Wolverton shareholders had access to valuation information which was not available to Casa, Brent arranged for share purchases in 2020 which favoured Kathleen, Anne, and PIC over Casa, and members of the Wolverton family were permitted to attend quarterly meetings where details about the company were discussed.

a) Share valuation and 2020 share purchases

i. Mr. Killen's attempts to value and sell the shares

[48] After Ms. Cowan passed away, Mr. Killen retained Kurt Aydin, a solicitor, to assist him in his role as administrator of Ms. Cowan's estate. Mr. Aydin asked Huntly's solicitor, Mr. Andison, to provide him with information regarding the value of Casa's shares in Huntly, for the purposes of obtaining a grant of probate.

[49] On April 19, 2017 Mr. Andison advised Mr. Aydin that Huntly would assemble information and provide it to Mr. Aydin later that week.

[50] On April 20, 2017, Mr. Li-Lam, also counsel for the estate of Ms. Cowan, wrote to Mr. Andison setting out the information he sought, including corporate registers, shareholder and directors minutes, financial statements and shareholder agreements. Mr. Li-Lam also asked whether the shares held by Casa were redeemable or retractable, in the event Mr. Killen intended to wind up Casa.

[51] On June 28, 2017, Mr. Li-Lam, emailed Mr. Andison with a request for an update as to the valuation of the Huntly shares.

[52] On July 5, 2017, Ms. Ferguson wrote to Mr. Li-Lam advising that Huntly was preparing a valuation of the Huntly shares, and she hoped it would be complete the following week.

[53] On July 24, 2017, Mr. Li-Lam requested updates from Mr. Andison and Ms. Ferguson. Mr. Li-Lam also advised he was considering having an independent appraisal of the Huntly properties completed, to facilitate the liquidation of the shares.

[54] On July 27, 2017, Ms. Ferguson provided Mr. Li-Lam with a copy of the valuation prepared by Mr. Parr, CPA. The valuation estimate was $28,890 per share, based on 2017 assessed values of the Beaconsfield ($16,320,000) and the Stadacona ($32,061,800).

[55] On July 31, 2017, Mr. Li-Lam wrote to Mr. Andison and Ms. Ferguson advising that Mr. Killen wished to liquidate the shares held by Casa, and asked whether the Wolverton family would purchase the shares.

[56] On August 10, 2017, Mr. Li-Lam asked Mr. Andison and Ms. Ferguson for the last three years of tax returns and financial statements for Huntly, and a copy of the memorandum and articles of Huntly.

[57] On August 16, 2017, Mr. Li-Lam emailed Mr. Andison advising that he was seeking a realtor's opinion on value, and asked that a representative of Huntly contact Mr. Killen to arrange a time when the properties could be inspected.

[58] On August 29, 2017, Mr. Li-Lam had a conversation with Brent. Brent advised Mr. Li-Lam that Huntly was not interested in purchasing the shares held by Casa, but that he would be able to assist on any independent valuation Mr. Killen may request. Mr. Li-Lam again requested last three years of tax returns and financial statements for Huntly, and a copy of the memorandum and articles of Huntly, as well as a copy of any special rights and restrictions or shareholders' agreement that detailed procedures and restrictions for the sale of shares to third parties.

[59] On August 30, 2017, Mr. Li-Lam wrote to Brent, Mr. Andison, and Ms. Ferguson, seeking a copy of the central securities register, to allow him to contact any other shareholders to see if they would be interested in purchasing the shares.

[60] On September 12, 2017, Mr. Li-Lam followed up with Brent and Mr. Andison, as he had not received a response to his requests.

[61] On September 12, 2017, Brent replied to Mr. Li-Lam indicating that he was gathering the material and would send it as soon as possible.

[62] On October 5, 2017, still not having received a response from Brent or Mr. Andison, Mr. Li-Lam wrote again to Brent and Mr. Andison requesting a response, and indicating that Mr. Killen would like to speak to the other shareholders about possibly purchasing the shares.

[63] On October 5, 2017, Brent responded to Mr. Li-Lam. He advised he would try to provide the articles and share registry in the following week. However, contrary to his earlier stated willingness to assist in the valuation of the shares, Brent advised Mr. Li-Lam of the following:

> I am withdrawing my previous offer to provide anything else.
>
> Financial statements were sent out to the shareholder of record as is proper, if they were not retained, that is unfortunate but not something we are willing to help with.
>
> Tax returns are internal and will not be available.
>
> As to a valuation, we are not inclined to assist with that either.
>
> In addition, if you provide us with a letter, offering the shares for sale, we will forward it to the shareholders.
>
> In the alternative you can attend our office of records. You will find, however that our shareholder registry contains only names. We will not be providing any additional information.
>
> Lastly, I assume you forwarded us a certified copy of Margaret's probated will. If you have not, please do. If the will has not yet been probated then we will not be forwarding anything until it is properly processed.

[64] The position of Huntly vis-à-vis the Cowan estate, and disposition of the shares in Huntly held by Casa, did not materially change after this point.

[65] Huntly did not permit Casa to have an appraiser enter the properties, in order to provide a valuation of the underlying assets of Huntly. Casa took the position that such an appraisal was necessary for it to understand the actual value of the shares.

[66] On November 24, 2017, Huntly held the 2016 AGM. By this time Mr. Killen had learned that Huntly did not have a written policy of redeeming or arranging for the purchase of shares. Mr. Killen tabled a motion at the AGM that Huntly develop such a policy. His motion was not seconded, and failed.

[67] Following the 2016 AGM, Brent offered to reach out to the Huntly shareholders to see if any were interested in purchasing Casa's shares. On December 17, 2017 Mr. Killen emailed Brent, asking him to invite expressions of interest for the acquisition of the shares held by Casa. Brent did nothing in response to this request for several months.

[68] On April 16, 2018, Brent, on behalf of Huntly, wrote to the shareholders indicating that a shareholder was interested in selling her shares, and stated that the last estimate of the liquidated value for the shares was $18,699 per share.

[69] No shareholders expressed any interest in buying the shares.

[70] In January 2019, Casa commenced this proceeding, as a petition. In July 2020, the petition was converted to an action.

[71] On April 19, 2022 Casa obtained a court order permitting it to access to the properties and conduct an appraisal. The court order also required Huntly to provide Casa with rent rolls, maintenance expense documents, and accounting ledgers setting out management fees and salaries and benefits paid by Huntly from January 1, 2017 to the date of the order. The order required the documents to be provided to Casa by May 10, 2022. When the documents were provided, the information was not segregated between the two buildings, and so a further request was made. On June 21, 2022 Huntly delivered revised income and expense records.

[72] Brent testified that he did not think it was in the best interests of Huntly for a shareholder to conduct appraisals of the properties. He was concerned about the impact an appraisal could have on Huntly if it got into the hands of property insurers, lenders, or tax authorities.

ii. Treatment of other shareholders

[73] In April 2017, Kathleen approached Brent about the value of her shares, and whether she had an option to sell them.

[74] In July 2017, at the same time that Casa was seeking a valuation of its shares, Kathleen Wolverton approached Brent, seeking to use her shares in Huntly as collateral for a loan. Brent replied that she could try to use her shares as collateral, and that Huntly had not redeemed any shares so he could not offer that.

[75] In November 2017, Kathleen wrote to Brent advising that her bank was asking for a letter stating the value of her Huntly shares. She noted that because no shares had been redeemed, that might be difficult.

[76] Brent responded that they had calculated a value for Huntly shares, which he could provide. He also offered to speak to her bank. On November 21, 2017 Brent, on behalf of Huntly, wrote a letter to be provided to Kathleen's bank, enclosing a valuation estimating the liquidated value of Huntly shares. The valuation was done by K.M. Parr, CPA, and was dated November 21, 2017. The valuation estimated the sale proceeds of 100% of the company at $36,574,926, and a per share estimate of value of $28,890. The valuation was based on BC Property Assessment values of the two properties.

[77] Brent was cross-examined on whether the BC Assessment values represented a market value for the properties. Brent agreed that the 2009 BC Assessment value of the Stadacona property was $17,000,000, and agreed that in *Huntly Investments Limited v. The Queen*, 2017 TCC 255, he testified the market value of the Stadacona in 2009 was approximately $50,000,000. Notwithstanding the obvious discrepancy between the assessed value and his view of the market value, Brent was unwilling to concede at trial that the BC Assessment value was "not even close to the actual value as he perceived it." He was also not willing to concede that the value of the Stadacona property had increased from 2009 to 2020.

[78] I do not accept Brent's evidence. I find that the BC assessment value of the properties is less than the market value. I also find that the value of the properties has increased since 2009, as the assessed values increased substantially over that period of time.

[79] In April 2018, Kathleen and Brent continued their discussion on the value of Huntly shares. In May 2018, Ms. Ferguson confirmed that the most recent share valuation was $28,890, which reflected an increase in land value in Vancouver since a prior valuation which was done at the time Kathleen's father, Harold, passed away in 2012.

[80] In May 2018, Annie Wolverton wrote to Brent and indicated that she wished to sell her Huntly shares, and asked Brent what steps she needed to take.

iii. 2020 share purchases

[81] On May 4, 2020, Brent wrote to Anne's husband, stating,

> A while back we agreed that, if the company purchased shares from the estate of Margaret Cowan, we would make the same offer to you and Annie. An agreement I intend to honour.
>
> Where I want to make sure we are on the same page is with regard to the number of shares. Margaret's estate has 23 shares which we would offer to purchase. I was intending to offer to purchase the same number of shares at the same price from yourselves. Our letter agreement is unclear and I want to make sure this works for you.
>
> I have stretched and I have the room to offer Kath and Barn the same (same number of shares, same price).
>
> If this is not your understanding then we will delay making anyone an offer until the company has more capacity. To be clear though, my guess is, that this would be some period of years.
>
> If you were in agreement that the same number of shares and the same price works for you then we would move forward sooner and I would work on purchasing the balance of your shares down the road, if that continues to be your desire (no promises on timing though).

[82] After writing to Anne's husband, the following week on May 13, 2020, he made an offer to Casa's shareholders. The offer was not to purchase Casa's shares in Huntly. Rather, the offer was to purchase Casa itself. The letter was written on Huntly letterhead, but the letter suggests that Brent personally would be acquiring the shares. It is not clear whether the offer was from Huntly or Brent.

[83] The May 13, 2020 letter stated:

> … assuming that I can be satisfied that Casa Margarita's only asset is its 23 shares in Huntly and that there are no material liabilities in Casa Margarita, I propose to acquire from the beneficiaries of Margaret's estate their interests in the share capital of Casa Margarita.
>
> The purchase price I am offering for the purchase of Casa Margarita's share capital is $374,962.10. That amount reflects a notional value of Casa Margarita's Huntly shares of $16,302.70 each.
>
> …
>
> This offer is subject to due diligence on Casa Margarita, and execution of a share purchase agreement in a form satisfactory. It is open for acceptance until May 25, 2020 in order to give you time to consult with the beneficiaries of Margaret's estate. You should advise them that the offer is non-negotiable, and in the event it is not accepted, the Respondents intend to seek judgment in the lawsuit without further negotiation.

[84] Brent testified that he created the offer using the 2019 BC Assessment values of the properties, and applying a 50% shareholder discount. The BC Assessment values for the combined properties was $59,332,800.

[85] The May 13, 2020 offer was clearly stated to be non-negotiable. In fact, Brent reiterated that if the offer was not accepted, the Huntly Defendants would seek judgment without further negotiation.

[86] Casa did not accept the offer from Brent. Mr. Killen testified that he could not assess the offer without obtaining a valuation of the company, which required an appraisal of the underlying properties.

[87] In July 2020, Dona Marie, on the advice and recommendation of Brent and Mark, purchased shares from Kathleen and Anne. Brent testified that Kathleen asked for the price to be increased to the value established when her father died, which was $18,700, and Brent thought that was reasonable and agreed. Brent testified that, "PIC wondered about selling its shares at that price", and then Brent arranged for the sale of 297 of PIC's shares. Dona Marie purchased a total of 343 shares from Kathleen, Anne and PIC. Two weeks after these shares were purchased by Dona Marie, they were transferred to Dona Marie, Brent, Lisa, and Mark, trustees of the Wolverton Alter Ego Trust. On July 30, 2020, Dona Marie also

received 69 shares from the estate of Newton, which were then transferred to the trustees of the D.M. Wolverton Trust, namely Dona Marie, Brent, Lisa and Mark.

[88] Brent agreed in cross examination that following the July 2020 share transactions, the family of Newton owned close to 90% of the shares in Huntly, whether directly or through PIC or various trusts. Kathleen and Anne, the children of Harold, owned 8.68% of the shares in Huntly, and Casa owned 1.83% of the shares.

[89] These share purchases in 2020 were not disclosed to Casa until six weeks after the transactions closed, on August 28, 2020.

[90] In August 2020 Brent swore an affidavit in which he stated that he believed Dona Marie would purchase Casa's shares in Huntly for $18,700 per share, or $430,100.

iv. Conclusion

[91] In 2017, Casa was provided with the same valuation information that was provided to Kathleen. While the appearance of the valuations was different, the content was the same. Both asked for, and received, valuation information from Mr. Parr. Casa received the valuation promptly from Ms. Ferguson. If anything, the valuation provided to Casa was more detailed than that provided to Kathleen.

[92] However, Casa was of the view that it could not properly assess the value of its shares. The Parr valuation was based on assessed values, and Casa wanted to know the appraised value of the underlying properties. Casa was in a very different position than the majority shareholders when it came to understanding the value of the properties. The Newton Wolverton family held over 90% of the shares in Huntly. Brent and Mark were the directors of Huntly, and had access to all the information they needed to understand the true value of the properties and the company.

[93] Brent's knowledge of the difference between the assessed value of the properties and the fair market value of the properties is demonstrated in the evidence he gave in the tax appeal. Brent testified that Huntly would obtain different appraisals for different purposes, such as lending, insuring, or taxation. As a director

of Huntly, Mark would have the same information available to Brent. As a result of the peculiar knowledge of Brent and Mark, the two Trusts, PIC, Brent, and Mark, holding 1104 shares in total, all had superior inside knowledge as to the value of Huntly. This information was not shared with Casa.

[94] Brent prevented Casa from performing its own assessment of value by refusing consent to the request of Casa to enter the properties for the purpose of an appraisal. I do not accept Brent's concerns, as to the risk that Casa's appraisal would be disclosed to third parties, were valid. If such a risk existed, it would have been a simple thing to place restrictions on the dissemination of any such appraisal.

[95] While Casa was ultimately able to obtain a real estate appraisal, it only achieved this a result of commencing this litigation and pursuing its interim remedies in the litigation process.

[96] The refusal of Brent and Huntly to permit Casa access to the properties for the purpose of an appraisal placed Casa at a peculiar disadvantage vis-à-vis the majority shareholders.

[97] In 2020, the inability of Casa to obtain appraisals of the underlying properties came to the forefront again.

[98] The 2020 share transactions were not true arms-length transactions. The parties were all related. While Dona Marie was the legal purchaser, it is clear that Brent controlled who would purchase shares and for what amount. The correspondence in 2020 shows Brent writing to the shareholders as if personally he would purchase the shares, or the company would purchase the shares. It is clear that Anne and Kathleen deferred to and relied on Brent in relation to arrangements for the purchase of their shares. It is clear that Brent "negotiated" for both Dona Marie and PIC, of which he was a director, and the shares were then all transferred into the Wolverton Alter Ego Trust, of which he was a trustee.

[99] Brent stated in his affidavit sworn in August 2020 that he believed Dona Marie would purchase Casa's shares for $18,700 per share. This was not a formal offer

and was never reduced to writing. I find this statement deliberately obscures the true state of affairs, namely that Brent controlled and orchestrated the purchase of any shares. If this was a true offer, Brent had the ability to express it as such, which he did not.

[100] Brent also testified that he tried to treat all shareholders equally, which was why he only purchased 23 shares from each of Kathleen and Anne. However, he then also arranged for PIC to sell 297 of its shares, which contradicts his testimony that he wanted to treat all shareholders equally by only arranging for a purchase of 23 shares.

[101] While Huntly is not a party to the share purchase agreements between Dona Marie and the three sellers, the directors of Huntly are required to approve and consent to any share transfers.

[102] In the circumstances of this case, I find that Brent controls what happens with Huntly in all respects. It is Brent who decides whether a share transfer will be facilitated, and in what way it will be facilitated. It is Brent who approves the share transfers. Brent was the driver of both the offer to the Kathleen and Anne, and the offer to the Casa shareholders. I find he was the driver of the PIC share sale as well, given his role in that company, notwithstanding his disingenuous evidence that “PIC wondered about selling its shares at that price”. His evidence taken as a whole clearly established that in contemplating the share transactions he was alive to the need for shareholders to be treated equally, although ultimately he did not do so.

[103] Casa was clearly treated unequally by Brent in relation to the 2020 share transactions. The only true offer made to Casa was a non-negotiable offer to purchase all the shares in Casa, not the shares Casa held in Huntly. The value offered was based on a notional value of Casa’s Huntly shares, which itself was less that the value paid to Kathleen, Anne and PIC for their Huntly shares, several months later. This offer was made by Brent knowing that he had obstructed Casa in its attempt to independently determine the value of the shares.

[104] Casa had an expectation that it would be treated fairly in relation to share purchases facilitated by Brent. Casa was not treated fairly by Brent or Huntly. Brent readily increased the share purchase price for his cousins, and ensured the same increased price was paid to PIC, a company he controlled. Brent did not increase his offer to Casa, as set out in his non-negotiable May 13, 2020 letter. I find Brent's statement in his August 2020 affidavit was not an offer upon which Casa could reasonably rely.

[105] Fairness to Casa included it being provided with reasonable access to information to allow for the shares to be valued in anticipation of a sale. I find the request by Casa for access to the properties to have an appraisal conducted was reasonable, given that the value of Huntly rests entirely in the real estate assets. I find Huntly's refusal to allow for the access requested by Casa was unreasonable in the circumstances, and was oppressive and unfairly prejudicial to Casa. It placed Casa at a disadvantage as against the controlling shareholders (PIC, the trusts, Brent and Mark), all of whom had preferential access to the true value of Huntly and its underlying properties.

[106] In addition, I find that the actions of Brent in relation to the share purchases in 2020 cannot be divorced from the actions of Huntly. Similarly, the actions of Dona Marie in the purchase of shares in 2020 were controlled by Brent. Brent controlled Huntly and was in a position to conduct the affairs of Huntly to the advantage of him and his immediate family.

[107] I find that Casa had an expectation that it would be treated fairly and equally with the other shareholders in relation to any share purchases, and that such expectation was reasonable in the circumstances of this case. Brent and Huntly did not make the same offer to Casa that they made to Kathleen, Anne and PIC. At no time was an offer made to purchase the shares Casa held in Huntly, and the offer made to purchase all the shares in Casa itself was based on a valuation which Casa, to the knowledge of Brent, was unable to assess. I find that the position taken

by Brent and Huntly vis-à-vis the offer made to Casa in contrast to the offers made to Kathleen, Anne and PIC was oppressive and unfairly prejudicial to Casa.

b) Quarterly meetings

[108] The evidence established that many of the decisions in the management of Huntly were made informally between Mark and Brent. In addition to informal meetings and decision making, Mark, Brent and Lisa attend quarterly meetings to discuss matters relevant to the companies and interests held by the Wolverton family, including PIC, Huntly and the two Trusts.

[109] Lisa is a shareholder of Huntly but is not a director of Huntly. Casa argues that in attending such meetings, she receives information which is not shared with Casa. Casa also argues that at these meetings business is raised which ought to be shared with Huntly shareholders for their input, and that the directors make decisions informally outside of convened directors meetings.

[110] Casa has not established that the way in which the business of Huntly is conducted has changed, such that Casa had an expectation which is now breached. While members of the Cowan family were on the board of Huntly, there is no indication that directors' meetings were formally and routinely called. The minute book discloses some minutes of directors' meetings in the early years of the company, which set out details of business discussed. However, by the 1970s, the directors' minutes reflect, for the most part, only routine business, such as the appointment of officers, the issuance of dividends, or the approval of share transfers, being recorded.

[111] There is no evidence that the conduct of shareholder meetings has changed over time, or that Casa ever expected to receive more than general information about the business of Huntly.

[112] Most importantly, Casa has not established that any business was discussed at the quarterly meetings was of a nature that a shareholder vote was required.

[113] I am not satisfied that Huntly has breached an expectation of Casa by Wolverton family members holding quarterly meetings to discuss their joint business interests.

[114] I find that the quarterly meetings held by Brent, Mark and Lisa are not oppressive as against Casa.

2. Was Casa treated differently that the other shareholders in the issuance of the special dividend?

[115] In 2020, Huntly conducted a reorganization, which will be discussed below. On May 5, 2022, Brent, on behalf of Huntly, wrote to Casa indicating that, following the 2020 reorganization, Huntly was in a position to offer shareholders a one-time tax free dividend. This dividend was said to represent "a distribution of the accumulated tax attributes of the company which can be received tax-free by Canadian resident shareholders." Huntly intended to pay the dividend over time, and provided the shareholders with the following details:

- The company will pay a dividend in the total amount of $6,500,000 or approx.. $5,134.28 per share.
- The dividend will be paid in the form of a non-interest bearing promissory note payable by the company to each shareholder of record. The note will be payable on the last day of each year in 10 installments starting on December 31, 2024 and ending on December 31, 2033.
- If circumstances allow, the note may be repaid earlier at the option of the company.
- The distribution of the note will be in the form of a capital dividend and as such the receipt of the note should be tax free in each shareholder's hands.
- For clarity, the dividend will be independent of the shares once issued and the holder of the promissory note will be able to collect even if they cease to be shareholder.

[116] All shareholders were initially issued the same promissory note, and were all to be paid out over the same time frame. On its face, therefore, Casa was not treated differently from the other shareholders on the initial issuance of the dividend.

[117] Casa argues that Huntly knew that Casa's beneficial owners (beneficiaries of the estate of Margaret Cowan) were elderly, and many were in the their 70s and 80s. In structuring the dividend to delay payment over 10 years, Casa argues many of the Casa shareholders would never receive their share of the dividend. The other shareholders of Huntly (Brent, Mark, Lisa, Kathleen, and Anne) were either in their 50s, or were trusts or a corporation whose beneficial owners were Brent, Mark and Lisa. As such, but for the shareholders of Casa, all of the other shareholders could reasonably expect to live through the ten years over which the dividend will be paid.

[118] Casa argues that it has a reasonable expectation of fair treatment, and the issuance of the dividend over a time frame which will likely result in its own shareholders being unable to obtain the benefit of the dividend is clearly unfair treatment.

[119] Brent testified that the delay in payment of the dividend was to accommodate Huntly's projected capital over the next decade, and was not intended to disadvantage Casa. He stated Huntly could not afford to pay the dividend over a shorter period of time because the company did not have cash flow which would allow it. Further, the promissory note which was issued remained payable whether or not Casa remained a shareholder at the end of the 10 year payment term. Brent testified that Huntly would support a process by which Casa's promissory note could be assigned to the individual beneficiaries of Margaret Cowan's estate.

[120] Following the completion of the trial, the parties were granted leave to adduce new evidence relating to information disclosed in the 2022 financial statements and AGM held December 14, 2022.

[121] After the May 5, 2022 letter, Huntly changed how the special dividend would be issued to one shareholder, PIC. In his affidavit sworn January 18, 2023, Brent states:

> It is the case that later on [after the issuance of the promissory note] the directors of Huntly, after taking advice from Huntly's accounting and tax advisors, decided that it was in the best interest of Huntly to deal with the $5,817,141 capital dividend owed to PIC under its promissory note by way of

> a set-off against Huntly's secured loan to PIC about which I gave evidence at trial, rather than cross-debts being maintained in this account.

[122] No details of the accounting and tax advice were provided.

[123] A number of years ago, Huntly issued a line of credit to PIC, which permits PIC to borrow from Huntly up to $5,800,000 for use in its businesses. Huntly borrowed the money which it lends to PIC, at a rate of prime plus 0.5%, using the Huntly real estate as collateral. The borrowing by PIC from Huntly is due on demand, is not collateralized, and has no fixed term of repayment. It bears interest at prime plus 1%. A promissory note, loan agreement and general security agreement between PIC and Huntly, all dated 2022, were entered in evidence. No evidence of security in place prior to 2022 was entered in evidence.

[124] The 2022 financial statements of Huntly show that, in 2021 PIC owed Huntly $5,614,797, and Huntly was indebted to its lender in the amount of $5,295,000.

[125] The 2022 payment of the special dividend to PIC allowed PIC to eliminate its debt to Huntly. However, Huntly, according to its 2022 financial statements, remains indebted to its lender in the amount of $4,555,000.

[126] In his May 5, 2022 letter to the shareholders, Brent stated that Huntly would pay a dividend in the total amount of $6,500,000, or approximately $5,134.28 per share. PIC owns 634 shares in Huntly. Its entitlement under the dividend, based on its shareholdings, should have been in the approximate amount of $3,255,000. However, in his January 18, 2023 affidavit, Brent stated that Huntly agreed to pay PIC $5,817,141 in respect of its capital dividend entitlement.

[127] I would not agree with Casa that the decision to pay the special dividend over ten years was oppressive, had all shareholders been treated equally in that respect. As a director, Brent is entitled to take into account the financial and commercial reality of Huntly. If Huntly did not have the cash flow that would allow the payment of the dividend over a shorter time frame, that is a legitimate consideration for the company. The age of the beneficiaries of Margaret Cowan's estate cannot override a

legitimate cash flow analysis in the company, and the duties the directors have to the company.

[128] However, Brent's explanation at trial that Huntly did not have sufficient cash flow to fund the capital dividend except by way of ten installments commencing in 2024 does not square with his decision in 2022 to payout the whole of PIC's dividend and, in fact, relieve PIC of its debt to Huntly in its entirety, to the tune of some $2,500,000 in excess of PIC's apparent capital dividend entitlement, according to the May 5, 2022 letter.

[129] It is clearly in the best interests of PIC to eliminate as soon as possible a large debt to Huntly. However, the Huntly directors' decision to eliminate PIC's debt to Huntly, purportedly by way of a capital dividend payment, has left Huntly with a significant debt obligation to its lender and no corresponding obligation from PIC to offset Huntly's own debt. In other words, the decision by the directors to preferentially payout PIC's capital dividend, in excess of its apparent entitlement based on the May 5, 2022 letter, has exacerbated Huntly's cash flow crunch and will reasonably contribute to the delay in paying out the other shareholders. The actions of Huntly vis-à-vis PIC undermines the legitimacy of Brent's earlier explanation that the company could not afford an earlier payout.

[130] I find that all shareholders, including Casa in this case, have a reasonable expectation that dividends will be issued and paid in the same manner and amount within the class of shares. I find that Huntly did not treat all Class A common shareholders equally in the issuance of the capital dividend. Rather, Huntly treated PIC preferentially by paying its share of the capital dividend ten years earlier than the other shareholders, and by paying PIC an amount clearly in excess of what will be paid the other shareholders on a per share basis. This unfairness is exacerbated by the fact that PIC is owned and controlled by the Wolverton family, such that in preferring PIC, the Wolverton family members who are shareholders and directors in Huntly are also preferred.

[131] I find that Huntly's actions vis-à-vis PIC's receipt of the capital dividend were oppressive to Casa. The fact that other shareholders, in particular Kathleen and Anne, were also treated unfairly by Huntly's preferential treatment of PIC does not detract from the individual harm suffered by Casa.

3. Did Brent, as a director of Huntly, bully or attempt to bully Casa in relation to its demand for audited financial statements?

[132] In 2018 Casa exercised its right, as a shareholder, to have audited financial statements prepared. This was the first time such a request had been made of Huntly. The cost of audited financial statements is quite a bit more than review engagement reports. To prepare audited financial statements for 2018, the auditors also had to go back and prepare audited financial statements for the years 2016 and 2017. This resulted in a delay of the AGM, and additional costs to the company.

[133] While Huntly did not think audited financial statements were necessary, it did accede to Casa's request and required the auditors to prepare audited financial statements.

[134] The bullying referred to by Casa relates to the fact that Brent wrote to the shareholders to advise them of the delay and additional costs to the company as a result of the preparation of the audited financial statements, and suggested that the dividends to the shareholders would be reduced as a result of the additional costs. Brent identified Casa as the shareholder causing the additional cost and resulting decrease in dividends.

[135] Brent did not deny that Casa was entitled to seek audited financial statements. He told Casa in advance that if audited financial statements were prepared, it would increase costs and reduce dividends. The dividends were in fact reduced due to the increased costs. It was fair for Brent to let the other shareholders know this. I agree that the letter from Brent, attributing blame to Casa for a reduction in dividends, was unduly antagonistic. But I do not find that it is evidence of oppression.

B. Did the defendants act oppressively in failing to make adequate disclosure regarding, and failing to permit Casa to vote on, a capital reorganization and a redevelopment of the Stadacona property?

1. 2020 Capital reorganization

[136] In 2020 Huntly transferred its beneficial interest in its properties to three subsidiary companies. Casa takes issue with the timing of this reorganization, and the lack of notice given to the shareholders before this reorganization was completed. The year end for Huntly is August 31. The reorganization was done on September 1, 2020. Casa learned of the reorganization in December 2020, when the transactions were disclosed in the notes to the August 31, 2020 financial statements, as follows:

> 10. Subsequent event
>
> On September 1, 2020, the Company subscribed for class A and B common shares of three recently incorporated companies ("Holding Companies"), which are wholly-owned subsidiaries of the Company. Subsequnetly, the beneficial ownership of the properties located at 601 Bute Street, 884 Bute Street and 1218 – 1222 Melville Street were each sold to one of the Holding companies in exchange for preferred shares of the Holdings Companies equal to the Fair Market Value of the properties transferred.

[137] At the 2020 AGM, which was to be held on December 15, 2020, Casa's accountant, Mr. Ruscitti, asked Brent to expand on the notes to the August 31, 2020 financial statements regarding the re-organization. Brent declined to provide any further details at the AGM. He testified that he did not want to provide a verbal explanation as he was planning on sending a detailed letter in the future.

[138] On May 6, 2021, Brent, on behalf of Huntly, wrote to Casa explaining, disingenuously, that the reorganization was done because Huntly had been approached by three shareholder groups who were seeking to have the company assist them in "their efforts with multi-generational planning by considering changing the capital structure of the company to a more flexible model". Brent stated that the board had considered the request and determined that the proposed structural changes were in the best interests of all the shareholders, did not impair the value of

any shareholder investment, and did not impair the company's operations. Mark testified that the three shareholders who requested the change were himself, Brent and Lisa. Mark also confirmed in evidence that these shareholders requested the change to confer a tax benefit on themselves.

[139] Brent's evidence at trial was that the reorganization was done to facilitate the development of the two properties separately. If the properties were held by separate companies, it would allow Huntly to sell the property specific company if it chose to divest itself of a property. Brent testified that Huntly still controls the subsidiary companies and the shareholder position in Huntly is unaffected. Preference shares were issued which represent the value of the real estate, and any appreciation in value will go to the common shares. Shareholders will be able to decide whether they want to hold both common and preference shares, or do something different with each class of shares, for example the common shares could be put in a trust or given to children.

[140] Brent testified that Huntly retained accounting, tax, and legal advisors, and the directors were satisfied there was no disadvantage to the shareholders.

[141] Casa argues that the reorganization has increased expenses for Huntly, in that now additional accounting and legal costs have been incurred, and will be incurred in the future, for the additional subsidiary companies. Casa also argues that its own costs are increased in obtaining a valuation of the shares of Huntly, because valuations will have to be done for each of the underlying subsidiaries, as well as for Huntly itself. Under cross examination, Mr. Killen agreed that the capital reorganization affected all shareholders equally.

[142] I agree that all the shareholders, except Casa and, potentially, Kathleen and Anne, knew about the plans for the reorganization before it was undertaken. I also agree that the reorganization was done to satisfy the personal needs of Brent, Mark and Lisa, i.e. to assist them in planning for their children. Casa did not share the concerns of Brent, Mark and Lisa regarding future planning.

[143] However, it cannot be said that Casa was treated differently than the other shareholders. All shareholders were treated equally in the reorganization. Further, and importantly, Casa could not point to any substantive harm it has suffered through the reorganization. While Casa may have to pay increased costs to have its preferred method of valuation prepared of its shares, because the subsidiaries will have to be valued separately, I am not satisfied that this affects Casa in a peculiar way that unfairly prejudices Casa.

[144] In terms of impact to Huntly itself, Casa has not proven that the capital reorganization has disadvantaged the company, or disadvantaged the shareholders' interest in the company. Vis-à-vis Huntly, the capital reorganization is neutral.

[145] As stated in *BCE*:

> [83] Directors may find themselves in a situation where it is impossible to please all stakeholders. The "fact that alternative transactions were rejected by the directors is irrelevant unless it can be shown that a particular alternative was definitely available and clearly more beneficial to the company than the chosen transaction": *Maple Leaf Foods*, *per* Weiler J.A., at p. 192.
>
> [84] There is no principle that one set of interests — for example the interests of shareholders — should prevail over another set of interests. Everything depends on the particular situation faced by the directors and whether, having regard to that situation, they exercised business judgment in a responsible way.

[146] I am not satisfied that the directors of Huntly were required to give the shareholders notice in advance of the capital reorganization, or that Casa suffered any peculiar harm as a result.

2. Stadacona redevelopment

[147] Casa submits that the directors have withheld information about the redevelopment of the Stadacona property. Plans to redevelop the Stadacona property have been in contemplation by Huntly since at least 2009. Casa has raised numerous questions about the redevelopment with Brent, and argues that Brent has not been forthcoming about the plans.

[148] Brent testified that any development will proceed in two phases. The first phase, which deals with rezoning and other matters, has “costs but no risks”. Brent testified that shareholders would be informed but would not be given an opportunity to vote on proceeding with phase one. With respect to phase two, which would involve major costs, shareholders would be asked to vote.

[149] Margaret Cowan herself raised with Brent, over the years, questions about Huntly’s plans for the properties. There is no evidence that Brent provided in depth information to Ms. Cowan about the development plans over the years. Rather, Brent would provide a letter to each shareholder when he provided their yearly dividend, and that letter would provide a brief overview of the state of the buildings and future plans. For example, in 2015 Brent advised shareholders that:

> **Stadacona** – We continue to look at opportunities as they present themselves for the Stadacona. The buildings are at or beyond their useful lives and although we are continuing to rent apartments and bring in revenues, maintaining the buildings in the group continues to be a lot of effort.
>
> We have engaged an architect to help in this effort and have been developing a strategy around next steps.

[150] At the 2017 AGM, the shareholders, including Casa, were presented with a document describing the planned redevelopment of Stadacona. They were told that the redevelopment would take place in two phases, and after Huntly obtained rezoning then a decision would be made about whether Huntly would pursue the redevelopment.

[151] At the 2017 and 2018 AGMs, Mr. Killen posed a number of questions to management. His questions were answered, albeit not with the level of detail he felt he was entitled to. At later AGMs, Mr. Ruscitti attended as Casa’s representative. He also asked questions at the meetings, and sent questions to Brent after the meetings.

[152] As an example of the level of detail provided, in response to questions posed by Mr. Ruscitti following the December 2021 AGM, Brent stated:

> The costs capitalized ($202,500) in 2020 were all third party development costs related to the development at 1218-1220-1222 Melville. The architect and consultants on the project were the majority of the expenditures.

[153] Casa submits that the plans for redevelopment of Stadacona should be presented to the shareholders for a vote, even at the first phase. Huntly submits that the first phase of a potential development is not a fundamental transaction which requires a shareholder vote.

[154] Casa relies on *Cholakis v Cholakis*, 2006 MBQB 91 at paras. 99-100 in support of its position. In *Cholakis*, there were five sons (four living at the time of trial), who were shareholders in a family owned business. Three sons were directors, although one son took on the primary role of managing the business. That one son limited his brothers' ability to participate in management decisions, and receive information about the company.

[155] In *Cholakis*, the errant brother was found to have clearly breached the provisions of the by-laws and letters patent of the company, and the provisions of *The Corporations Act*, R.S.M. 1987, c. C225, in failing to provide required financial statements, disclose remuneration of directors, give notice of and hold directors' meetings, and hold shareholder meetings. In addition, the errant brother caused the company to pay him interest on deferred management fees. The court found that there was no record of a directors' meeting or resolution to approve payment of interest, and found that such a payment was in breach of *The Corporations Act*. The court held that the interest was a significant amount of money and the shareholders had a reasonable expectation that at least the directors, if not the shareholders, would be given notice of and approve the payment.

[156] Casa does not take the position that the redevelopment of Stadacona is detrimental to Huntly, or not in the best interests of Huntly. Rather, Casa submits that the directors have an obligation to engage the shareholders in all phases of the proposed redevelopment. There is no shareholder agreement in Huntly which

supports such a proposition. Similarly, there is nothing in the articles of Huntly which would suggest the directors have any such an obligation.

[157] The situation in Huntly is very different from that in *Cholakis*. It is clear that the directors of Huntly provide the shareholders with financial statements, audited when requested by Casa, and hold AGMs where the redevelopment is discussed in a general way. The fact of the proposed redevelopment was not hidden from Casa. In my view, Casa has not pointed to any facts which would support a position that Huntly, or its directors, had an obligation to obtain a vote of the shareholders before pursuing rezoning and developing a proposal for redevelopment. Phase one falls squarely within the business judgment of directors entrusted with management of the company: *BCE*, para. 40.

[158] The *BCBCA* provides, at s. 301, that a company must not dispose of substantially all of its undertaking unless authorized to do so by special resolution. The activities undertaken in relation to phase one do not result in the disposition of any substantial portion of the undertaking of Huntly.

[159] If the proposed redevelopment reaches the point of becoming a fundamental transaction, then an obligation to seek a vote of the shareholders would likely arise. I agree with Huntly that phase two, i.e. where Huntly decides whether to sell one of its main assets, or redevelop a property and incur significant financing as a result, is the point where shareholder approval may be required: *Whitefort Capital Master Fund, LP v. Novelion Terapeutics*, 2019 BCSC 1162, paras 14-15. Brent testified that it was his intention to take phase two to a vote of the shareholders, which is consistent with his obligation under s. 301 of the *BCBCA*.

[160] In the result, I do not find that the Huntly Defendants have engaged in oppressive conduct against Casa in relation to the capital reorganization or the redevelopment of the Stadacona property.

C. Did the defendants act oppressively in refusing to redeem or arrange for the purchase of the Casa shares upon request

1. Ms. Cowan's sale of shares in PIC

[161] Ms. Cowan received her brother's shares in PIC, upon his death in 1990.

[162] On May 20, 1992 Brent, on behalf of PIC, sent a letter to its shareholders regarding the purchase of shareholdings of small shareholders. This letter states that following the passing of Mr. Wolverton, Sr., PIC had a valuation done of the company to determine the net value of the shares. Brent then stated:

> The company has from time to time made a policy of purchasing back or arranging for the sale of small positions on behalf of shareholders who wish to divest themselves of their investment. For those who have been with us for a long time, and that is most shareholders, we say congratulations on reaping the rewards of your investment and thank you for your loyalty as shareholders.

[163] On July 22, 1993 Margaret Cowan sold her shares in PIC to Wolverton Securities. Brent admitted that Ms. Cowan would have dealt directly with him in this transaction.

2. Ms. Cowan's interest in selling her shares in Huntly during her lifetime

[164] During her lifetime, Ms. Cowan was interested in the business of Huntly, and would periodically contact Brent asking for updates. Brent acknowledged that different shareholders would approach him for information from time to time, and he would respond as he felt was appropriate.

[165] I am satisfied that, at various points, Ms. Cowan expressed an interest in the value of the Casa shares in Huntly. In 2008, she wrote to Brent's executive assistant at that time, Ms. Joan Rogers, asking about the share value. Ms. Rogers suggested that Ms. Cowan speak to the company's accountant about the value of her holdings. She also suggested that Ms. Cowan contact Brent about their plans for the Stadacona and Beaconsfield properties, which Ms. Rogers noted had become very valuable property.

[166] Ms. Margaret Ferguson, Brent's present executive assistant, agreed that in January 2013 Ms. Cowan had left several messages for Brent to discuss with her the value of the shares Casa held in Huntly. In July 2013 Ms. Cowan left several message with Ms. Ferguson for Brent to contact her about the shares in Huntly. In March 2015 Ms. Cowan left several messages for Brent to contact her about the Huntly shares.

[167] A number of friends of Ms. Cowan testified as to what Ms. Cowan told them about her attempts to sell the shares Casa held in Huntly.

[168] The evidence of her friends is hearsay. While hearsay evidence is *prima facie* inadmissible for its truth, it may be admitted if it meets certain exceptions to the exclusionary rule, including the exception for evidence of state of mind, or the principled exception where the evidence is necessary and reliable: *Harshenin v. Khadikin*, 2015 BCSC 1213 at paras. 28-36.

[169] In the case before me, necessity is established because Ms. Cowan is deceased. Therefore, the issue is whether their evidence of Ms. Cowan's statements are reliable and may be received for their truth. I will now consider the evidence of each witness.

[170] Mr. Killen testified that before her death, Ms. Cowan met with Mr. Killen to discuss her will. Ms. Cowan had ovarian cancer at the time. They went over her will line by line, and then came to the Huntly shares. Ms. Cowan described the Stadacona and Beaconsfield properties, but said she did not know the value of the shares. Ms. Cowan told Mr. Killen that she had had a meeting with Brent where she asked him to have Huntly redeem her shares, but Brent refused. Mr. Killen said he had known Ms. Cowan for 30 years and knew her to be very stoic, but this rejection by Brent devastated her and she cried uncontrollably as she told him.

[171] Ms. Sari Sikstrom testified. She is a beneficiary of Ms. Cowan's estate, and had been her friend for 20 years. She testified that a few months before Ms. Cowan's death, they were on a walk and Ms. Cowan disclosed she was

experiencing financial problems. Ms. Cowan told Ms. Sikstrom that she had shares in a company, and had met with Brent, who she described as the owner of the company that was the major shareholder. Ms. Cowan said she told Brent that she was battling cancer and needed to redeem the shares so she would have enough to live on. Ms. Cowan told Ms. Sikstrom that the families had such a long connection, that she thought he would be open to her selling some shares. Brent said “no” to Ms. Cowan, and she was devastated. Ms. Sikstrom said Ms. Cowan cried when recounting the story, and that was the first time she had seen her cry in their 20 year friendship.

[172] Ms. Sharon Bliss recounted a similar exchange with Ms. Cowan, while Ms. Cowan was ill before she passed away. Ms. Bliss recalled few specifics, but she did remember Ms. Cowan being upset, expecting that her shares would be purchased, and that Ms. Cowan had met with Brent but he had refused her request.

[173] Ms. Felling had known Ms. Cowan for 60 years. Ms. Felling recalled a time when Ms. Cowan was staying with her at her home on Vancouver Island. Ms. Felling was in the TV room when Ms. Cowan came in crying. Ms. Cowan told Ms. Felling that she had met with a Mr. Wolverton wanting to redeem her shares. Mr. Wolverton told her that he would not redeem them or see if the shareholders would buy them. Ms. Cowan was devastated. Her financial situation was deteriorating and she did not understand why Mr. Wolverton would not help her.

[174] The Huntly Defendants did not oppose the admission of the hearsay evidence I have described above. However, they submit that no weight should be accorded to the evidence for a number of reasons, not all of which I will review. Their most persuasive arguments are that the witnesses are not reliable because they were unable to precisely remember details of when Ms. Cowan made the statements to them, or specific details of everything Ms. Cowan said to them. They also suggest that the witnesses are not reliable because they are beneficiaries to Ms. Cowan’s estate and are therefore self interested.

[175] I find that the witnesses Ms. Sari Sikstrom, Mr. Killen, Ms. Sharon Bliss, and Ms. Felling are reliable witnesses. The fact that they are beneficiaries does not in and of itself render their evidence unreliable. The statements reported to be made by Ms. Cowan were spontaneous and unprompted, and evoked in her an unusually strong emotional reaction. While they did not recall many exact details of their conversations with Ms. Cowan, there is a consistency in their evidence that is compelling. I accept the evidence of these witnesses is reliable as to the statements made by Ms. Cowan. I also accept their evidence as to the emotional state of Ms. Cowan when she made the statements.

[176] Brent did not recall having any conversation with Ms. Cowan about the redemption of her shares, but agreed that such a conversation was possible. Ms. Ferguson testified that she was not aware of a meeting between Brent and Ms. Cowan, but agreed that she was only aware of meetings in Brent's calendar and she was not aware of who he met outside the office.

[177] While Brent had no specific recollection of a conversation with Ms. Cowan about the sale of the shares Casa held in Huntly, he allowed it was possible. Further, his memory of her sale of shares in PIC was equally vague, although he ultimately accepted it was likely that she had dealt with him.

[178] I find, on a balance of probabilities, that the evidence establishes that Ms. Cowan had a conversation with Brent, during her illness before she passed away, where she asked him to find a way to purchase the Huntly shares held by Casa, and he refused. The evidence also establishes that Ms. Cowan discussed the value of the Huntly shares with Brent on many occasions over the years.

3. Conclusion

[179] I am satisfied that the evidence establishes that Margaret Cowan expected that she would be able to sell or redeem the shares Casa held in Huntly. This expectation is based on the particular circumstances of this case, including the long relationship between the Wolverton and Cowan families, the way shares were

treated in PIC – a separate but related company, and the history of buy outs of small shareholders in Huntly.

[180] Huntly, when it was incorporated, had a number of shareholders outside the Wolverton family. Over the years, all of these shareholders, except Casa, arranged for the purchase of their shares by PIC, a company controlled at that time by Newton. Preference shares held rights of redemption, while common shares did not. However, the pattern over the years in Huntly was that shareholders outside the Wolverton family would have their shares purchased by entities or people within the Wolverton family. There was a clear consolidation of interests inside the Wolverton family, and Casa remained an outlier.

[181] It is clear that when Ms. Cowan sought to sell her shares in PIC, it was Brent who arranged for the purchase by Wolverton Securities. While PIC is a separate company from Huntly, it is intimately involved in Huntly and it was reasonable for Ms. Cowan to expect that shareholders in Huntly would be treated in a manner similar to how they were treated in Huntly. I find that when Ms. Cowan approached Brent before her death looking for a similar accommodation with the shares held by Casa, she had a reasonable expectation that he would assist in the purchase of the shares by some person or entity within the Wolverton group. Unfortunately, Brent did not accommodate Ms. Cowan.

[182] The friends of Ms. Cowan were consistent that she was a stoic person, and was rarely upset. All her friends noted how upset she was when she was told that she would not be able to get any value for the shares held by Casa. That fact that Ms. Cowan was so unusually upset also bolsters a finding that she expected she could have the shares redeemed or purchased, and was shocked to find that she appeared to be left with no recourse to obtain any value for the shares.

[183] Brent’s approach to his cousins is consistent with the expectation held by Ms. Cowan and Casa. While Brent would not have the company redeem any shares, he actively looked for ways to purchase their shares. While the shares of his cousins and PIC were purchased by his mother, I am satisfied that the purchase was

arranged by Brent, and resulted in additional shares being transferred to a Trust held for his family, of which he was a trustee.

[184] Correspondence with his cousins indicates Brent intends to facilitate further share purchases from them in the future.

[185] I find that Casa's expectation that it could sell its shares to Huntly or to a shareholder in the Wolverton family (including PIC and the Trusts), was reasonable in the circumstances of this case. I accept that the shareholders in Huntly held a reasonable expectation that they would not locked into a position as shareholder for all time and, when they wanted to sell their shares, Brent would facilitate such a purchase.

[186] When it came to Casa, however, Brent did not meet the reasonable expectation held by Casa. When Ms. Cowan asked Brent to redeem or purchase the shares held by Casa, in the last years of her life when she was dying, Brent declined. Brent did not suggest any options for the purchase of the shares. He did not facilitate a purchase by himself or members of his immediate family or the corporate entities he controlled. This news was very upsetting for Ms. Cowan. After Ms. Cowan passed away, the only true offer Brent made to Casa was that he would purchase the shares in Casa itself, not that he would purchase the shares in Huntly held by Casa.

[187] I find that Brent and Huntly's refusal to entertain a fair and informed process whereby Casa could sell its shares is a breach of Casa's reasonable expectation, and is oppressive to Casa. Casa holds less than 2% of the shares in Huntly. Casa must be wound up to allow for the distribution of Ms. Cowan's estate. Without a process whereby Casa can sell its shares in Huntly, Casa is seriously disadvantaged, and its ownership interest is essentially valueless. Brent and the Huntly Defendants have taken advantage of the position of Casa, to their own benefit. By making it impossible for Casa to sell its shares at fair value, Huntly continues to benefit from the value those shares represent. As such, I find the refusal to entertain and facilitate a fair and informed process whereby Casa could sell its minority position to be oppressive and unfairly prejudicial to Casa.

D. Is Casa entitled to relief and, if so, what relief?

[188] On April 19, 2022 Master Vos ordered a bifurcation of this trial, severing liability from a determination of the value of the shares. As such, the relief at this phase of the trial relates simply to the liability of the defendants.

[189] I find the affairs of Huntly have been conducted in a manner oppressive and unfairly prejudicial to Casa. Casa is entitled to relief by way of a sale of its shares for fair value.

[190] Further, I am satisfied that there is a complete break down of trust and confidence between Huntly and Casa, for the reasons I have expressed. As such, I am satisfied that Casa is also entitled to relief pursuant to s. 324 of the *BCBCA*, by way of a sale of its shares for fair value.

[191] Casa seeks an order that Huntly purchase its shares, or that the shareholders be compelled, jointly and severally, to purchase Casa shares.

[192] It would not be fair or appropriate to make orders against all of the shareholders, jointly and severally. There is no evidence that Kathleen, Anne, Lisa, or the Trusts have participated in any oppressive actions. No orders will go against these defendants (except potentially with respect to costs in the ordinary course).

[193] I have found that Brent directed and controlled the oppressive conduct in this case. Mark also participated to the extent that he is a director of Huntly. PIC was a direct participant in several of the oppressive acts, including the 2020 share purchases and the 2022 capital distribution. Brent's actions have significantly contributed to the loss of trust and confidence between Casa and Huntly.

[194] I order that Casa's shares in Huntly shall be purchased by Huntly, Brent, Mark, and/or PIC at fair value.

[195] In this case, there may be a number of considerations, including tax considerations, which will impact Huntly, Brent, Mark, and PIC differently as purchasers. As such, I seek further submissions from these defendants and Casa as

to the appropriate form of order regarding the purchase of Casa's shares, acknowledging that the actual purchase value has not yet been determined. If the parties can reach agreement on the form of order, a joint letter may be provided to me through the registry, or the parties may submit a draft form of order with their agreed language. If a hearing is required, the parties may submit a request to appear.

[196] As soon as practicable, the parties shall set down a trial management conference before me to determine the next steps in completing the valuation of Casa's shares in Huntly.

[197] Costs will be determined following the completion of the valuation phase of this trial.

"W.A. Baker J."