IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Jahnke v. Rhodes,*
2023 BCSC 614

Date: 20230414
Docket: 214674
Registry: Vancouver

Between:

Carolyn Jahnke

Petitioner

And:

436537 B.C. Ltd. and Donna Rhodes

Respondents

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

Reasons for Judgment

Counsel for Petitioner:	G. Cameron K. Milinazzo
Counsel for Respondents:	L. LeBlanc
Place and Date of Hearing:	Victoria, B.C. January 10 - 11, 2022 March 7, 2022
Place and Date of Judgment:	Victoria, B.C. April 14, 2023

Introduction

[1] The petitioner, Carolyn Jahnke, is a shareholder of the corporate respondent, 436537 B.C. Ltd. (“436”). The personal respondent, Donna Rhodes, is also a shareholder as well as a director and officer of 436.

[2] Ms. Jahnke alleges that Ms. Rhodes has mismanaged the affairs and operations of 436 and has treated Ms. Jahnke, as a shareholder of 436, in an oppressive and unfairly prejudicial manner. On account of this allegedly improper behaviour on the part of Ms. Rhodes, Ms. Jahnke seeks relief pursuant to the *Business Corporations Act*, S.B.C. 2002, c. 57 [*BCA*].

Background Facts

[3] Art and Hilda Chesson had two adopted children: Lorraine (“Lori”) Chesson and Donna Chesson (now Donna Rhodes).

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

[5] Later in her life, Lori Chesson married Ms. Jahnke’s father. Ms. Jahnke began living with her father and Ms. Chesson in 1974, when she was very young. Ms. Chesson was a positive parental influence in Ms. Jahnke’s life and the two continued to share a close relationship after Ms. Chesson and Ms. Jahnke’s father divorced in 1992.

[6] Ms. Rhodes has one child: Cynthia Watson. While not a shareholder of 436, Ms. Watson is a director of the company.

[7] For ease of reference, I will, for the remainder of these reasons, refer to the individual parties by their respective first names.

[8] Several years before the incorporation of 436, Art purchased a 36-unit apartment building located in downtown Victoria, British Columbia (“La Maison Blanche”). Day-to-day operation of La Maison Blanche was initially a family affair,

with Art and Hilda, and then following Art's death, Hilda and Lori, managing the property.

[9] 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.

[10] The articles of incorporation of 436 (the "Articles"), provide that both common shares and preferred shares carry one vote each. Moreover, the Articles stipulate that the owner of preferred shares is entitled to a discretionary non-cumulative dividend of 5% per annum of the redemption value of the shares, in priority to the common shares.

[11] Unlike the common shares of 436, the preferred shares carry redemption rights. The Articles describe the redemption value in relation to s. 85 of the *Income Tax* Act, R.S.C. 1985 c. 1, (5th Supp.), as well as the fair market value of property transferred to the corporation in consideration for the preferred shares.

[12] On the date of 436's incorporation, Lori and Donna each held 150 common shares in the company, with Hilda having 1000 preferred shares. At the same time, Hilda became the company's president, Lori became its treasurer, and Donna became its secretary.

[13] On 30 December 1992, Hilda transferred ownership of La Maison Blanche to 436. In exchange, she received a demand promissory note of $150,000. Additionally, the aggregate redemption value of her preferred shares was set at $1,750,000, the value attributed to La Maison Blanche. In a letter dated 14 January 1993, corporate counsel for 436 advised Hilda:

> …
>
> We are presently in the process of reviewing your will and presume that you will wish to attend to its' modification on your return to Victoria. In the meantime, you and your daughters should consider whether you wish to have a Shareholders' Agreement for the Company. You control the Company and protect your interests by way of the Demand Promissory Note and the retractable shares so that you should encounter no problem in the

> administration of the Company during your lifetime. Such agreement could provide, in fact, protection for your daughters as it could provide for the management of the Company during your lifetime and thereafter (upon your death your daughters will be equal shareholders and a deadlock could arise in the management of the Company). It is also possible to provide for the devolution of the shares in such an agreement.
>
> The shareholders may wish, however, to leave matters as they are with each shareholder free to dispose of their shares as they see fit by will. The Company's Articles already contain a right of first refusal which would give each of your daughters the right to acquire her sister's shares should her sister wish to sell the same.
>
> …

[14] At some point prior to her death, Lori and David re-established a relationship.

[15] 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 of 436.

[16] 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.

[17] 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.

[18] The current share structure of 436 is as follows:

	Common Shares	Preferred Shares	Aggregate Votes
Donna Rhodes	150	1000	88.5%
David Stewart	75	0	5.75%
Carolyn Jahnke	75	0	5.75%

[19] The 2020 British Columbia assessment of La Maison Blanche placed its value at $8,377,000.

Issues

[20] Based upon the materials before the Court and the submissions of counsel, there are three principal issues to be determined:

1) What are Carolyn's reasonable expectations as a shareholder of 436 and have any of them been violated in a manner that is oppressive or unfairly prejudicial?

2) If Carolyn has suffered no oppression or unfair prejudice, then is she still entitled to some form of just and equitable relief?

3) If Carolyn is entitled to a shareholder remedy, what should it be?

Position of the Petitioner (Carolyn)

[21] Carolyn submits that the intentions of the Chesson family, and particularly those of Art, Hilda and Lori, are relevant in considering whether her "reasonable expectations" as a shareholder of 436 have been oppressed or whether it would be just and equitable to grant her some form of remedy pursuant to the *BCA*.

[22] Carolyn also alleges that Donna's mismanagement of 436, including her above-market management salary; failure to hold annual general meetings ("AGMs"); failure to produce audited financial statements; payment of personal expenses with corporate funds; failure to keep the company in good standing with the Registrar of Companies; and excessive payment of dividends exclusively to herself, all constitute oppressive conduct that warrants a remedy under the *BCA*.

[23] In this petition, Carolyn also references an alleged failure on Donna's part to institute allowable rent increases for the residential suites at La Maison Blanche. During his oral submissions, counsel for Carolyn indicated that this facet of the petition would not be pursued.

[24] In his submissions, counsel for the petitioner identified the relief Carolyn seeks as follows:

a) A declaration that the affairs of 436 are being or have been conducted in a manner that is oppressive or unfairly prejudicial to Carolyn, contrary to s. 227 of the *BCA*;

b) A declaration that Donna is or has been exercising her powers as a director and officer of 436 in a manner that is oppressive and unfairly prejudicial to Carolyn, contrary to s. 227 of the *BCA*;

c) The following orders prohibiting and remedying the oppressive and unfairly prejudicial conduct, pursuant to s. 227 of the *BCA*:

   i. an order directing Donna to compensate 436 for sums improperly paid to her, totalling $560,275, which includes $80,087 in personal expenses and $480,188 in above-market management fees;

   ii. an order directing Donna, or in the alternative 436, to purchase Carolyn's shares in 436 for the sum of $2,221,318;

d) In the alternative, a declaration that it is just and equitable to order that 436 be liquidated and dissolved on the basis Carolyn has lost confidence in the administration and management of 436 thus entitling her to relief pursuant to s. 324 of the *BCA*; and

e) In the further alternative, an order directing Donna, or in the alternative 436, to purchase Carolyn's shares in 436 at a value to be fixed by a Business Valuator to be appointed by the Court, whose costs shall be borne by Donna.

Position of the Respondent (Donna)

[25] The respondent Donna submits that the parties' dispute and in particular the issues raised in Carolyn's petition are not suitable for summary disposition. Counsel for Donna maintains that the conflict on the evidence relating to the alleged excessive amounts paid by 436 to Donna as well as the hearsay nature of Carolyn's evidence in support of what she claims are her reasonable expectations as a

shareholder of 436, necessitate a trial, with all of the associated pre-trial procedural requirements, including the proper disclosure of documents and possible examinations for discovery.

[26] In the event the Court is satisfied that the issues in dispute are suitable for summary adjudication by means of affidavit evidence, then Donna argues that all rights and interests in 436 and La Maison Blanche were incidents of the corporate structure of 436, or, put another way, that each shareholder of 436 was and remains entitled to no more and no less than what is stipulated in the Articles. In advancing his position, Donna's counsel submits that the Articles must be strictly interpreted and that it makes little difference in the circumstances of this case what Art and Hilda intended when they purchased La Maison Blanche and incorporated 436 or whether 436 was a family-run company or not.

[27] Moreover, Donna argues that much of Carolyn's claim as to the intentions of Art, Hilda and Lori with respect to the future of 436 and La Maison Blanche relies on hearsay introduced through the petitioner's own affidavit, including various discussions she says she had with her family members over the years. Donna maintains that the evidentiary value of this evidence is limited and that in any event it provides no assistance in addressing the determinative issue, that is, the interpretation of the share structure of 436 or the rights and entitlements of its shareholders.

Position of David Stewart

[28] David filed a response to Carolyn's petition, but aside from that, he did not participate at the hearing of the petition.

[29] In his response, David indicates that he consents to all of the relief sought by Carolyn, except for an order liquidating and winding up 436. With respect to that relief, David takes no position. David also notes in his response that he "agrees with the factual basis as presented in the petition".

[30] David has not filed any affidavit evidence.

The Law

[31] The sections of the *BCA* that are applicable to this matter are ss. 227 and 324. The relevant portions of s. 227 read as follows:

> 227 …
>
> (2) A shareholder may apply to the court for an order under this section on the ground
>
> (a) that the affairs of the company are being or have been conducted, or that the powers of the directors are being or have been exercised, in a manner oppressive to one or more of the shareholders, including the applicant, or
>
> (b) that some act of the company has been done or is threatened, or that some resolution of the shareholders or of the shareholders holding shares of a class or series of shares has been passed or is proposed, that is unfairly prejudicial to one or more of the shareholders, including the applicant.
>
> (3) On an application under this section, the court may, with a view to remedying or bringing to an end the matters complained of and subject to subsection (4) of this section, make any interim or final order it considers appropriate, including an order
>
> (a) directing or prohibiting any act,
>
> …
>
> (h) directing a shareholder to purchase some or all of the shares of any other shareholder,
>
> …
>
> (j) varying or setting aside a transaction to which the company is a party and directing any party to the transaction to compensate any other party to the transaction,
>
> …
>
> (o) directing that the company be liquidated and dissolved, and appointing one or more liquidators, with or without security,
>
> …
>
> (4) The court may make an order under subsection (3) if it is satisfied that the application was brought by the shareholder in a timely manner.
>
> …

[32] In *Feng v. Bao*, 2021 BCSC 2067, Mr. Justice Mayer explained in succinct terms the difference between oppressive conduct and unfair prejudice:

[26] Oppressive conduct is "generally associated with conduct that has variously been described as "burdensome, harsh and wrongful", "a visible departure from standards of fair dealing", and an "abuse of power" going to the probity of how the corporation's affairs are being conducted (*BCE*, para. 92). Determining whether the oppressive conduct requirement is met involves consideration of moral culpability for taking advantage of a power position in an abusive or unfair manner—thus use of the word "oppressive".

[27] Unfair prejudice is considered not to be as severe or offensive as oppressive conduct (*BCE*, para. 93). An act is not unfairly prejudicial unless there is no rational and justifiable reason for the conduct complained of and the conduct was detrimental or damaging to the rights or interests of the applicant personally in their capacity as a shareholder (*Safarik v. Ocean Fisheries Ltd.* (1995), 12 B.C.L.R. (3d) 342 (C.A.), paras. 82, 120).

[33] The relevant portions of s. 324 of the *BCA* read as follows:

> 324(1) On an application made in respect of a company that is a financial institution by the superintendent, or made in respect of a company, including a company that is a financial institution, by the company, a shareholder of the company, a beneficial owner of a share of the company, a director of the company or any other person, including a creditor of the company, whom the court considers to be an appropriate person to make the application, the court may order that the company be liquidated and dissolved if
>
> (a) an event occurs on the occurrence of which the memorandum or the articles of the company provide that the company is to be liquidated and dissolved, or
>
> (b) the court otherwise considers it just and equitable to do so.
>
> …
>
> (3) If the court considers that an applicant for an order referred to in subsection (1) (b) is a person who is entitled to relief either by liquidating and dissolving the company or under section 227, the court may do one of the following:
>
> (a) make an order that the company be liquidated and dissolved;
>
> (b) make any order under section 227 (3) it considers appropriate.
>
> (4) If the court orders under this Act that a company be liquidated and dissolved, the court must, in its order, appoint one or more liquidators.
>
> (5) An appointment of a liquidator under subsection (4) takes effect on the commencement of the liquidation.

Discussion

[34] Before examining the substantive issues raised in the petition, there are two preliminary issues that arose at the outset of the hearing that need to be addressed. The first is whether the expert opinion evidence that Carolyn wishes to rely upon is admissible. The second issue is whether the matter is suitable for summary disposition.

Admissibility of the Affidavit of Katie Snell

[35] Carolyn wishes to rely upon the evidence contained in the affidavit of Katie Snell, sworn 28 September 2021. Ms. Snell is a real estate appraiser. At paragraph two of her affidavit, Ms. Snell attests to the fact that she was retained in September 2021 by Carolyn's legal counsel "to provide opinion evidence in this action". Furthermore, she attaches as an exhibit to her affidavit an appraisal report for La Maison Blanche, dated 22 September 2021. Amongst other things, Ms. Snell opines that the market value of La Maison Blanche, as of 12 August 2021, was $9,500,000.

[36] In addition to providing an appraisal amount for La Maison Blanche, Ms. Snell provides what essentially is expert opinion evidence relating to the operations of La Maison Blanche and the management costs associated with the property.

[37] While Donna accepts that the value of La Maison Blanche was $9,500,000 in August of 2021, she objects to the admissibility of the remainder of Ms. Snell's affidavit, especially the expert opinions expressed in the report relating to the operations and expenses associated with La Maison Blanche.

[38] The affidavit in question was delivered to Donna's counsel in September 2021, shortly after it was sworn. However, the note from Carolyn's counsel that accompanied the affidavit made no reference to it containing expert opinion evidence that the petitioner wished to rely on at the hearing of her petition. No formal notice pursuant to *Supreme Court Civil Rules* [*Rules*] was ever provided to Donna's counsel that Carolyn wished to rely upon the contents of Ms. Snell's affidavit as expert opinion evidence.

[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.

[40] In my opinion, Donna's objection to the admissibility of Ms. Snell's affidavit is well founded. The evidence in question is clearly expert opinion evidence and consequently if Carolyn intended to rely upon it at the hearing of her petition, then Ms. Snell's report should have been served in compliance with the *Rules*.

[41] With the consent of Donna counsel, I will however accept that the value of La Maison Blanche in August of 2021 was $9,500,000. Aside from that, the balance of Ms. Snell's evidence is ruled inadmissible.

Suitability for Summary Disposition

[42] The second preliminary issue that needs to be decided, prior to addressing the substantive issues in dispute, is whether the matter is suitable for summary determination on affidavit evidence. Quite understandably, Carolyn says it is. Donna on the other hand claims that there is an evidentiary clash between the parties, especially with respect to the expenses and payments Donna received from 436 as well as the reasonable expectations Carolyn claims with respect to her financial interests in 436 and the manner in which the company would be managed. Consequently, Donna maintains that the adjudication of the parties' dispute ought to be referred to the trial list.

[43] Recently, the British Columbia Court of Appeal in *Cepuran v. Carlton*, 2022 BCCA 76 [*Cepuran*], addressed the question of when it is appropriate to convert a petition to an action and refer it to the trial list. Writing for a unanimous five-person bench, Justice Griffin explained:

> [158] It should be kept in mind that the starting point for those matters that are properly brought by way of petition is that the *Rules* contemplate that a

> summary procedure will be appropriate: *Conseil scolaire* at paras. 29–30. This is different than the starting point for an action. There should be good reason for dispensing with a petition's summary procedure in favour of an action. The mere fact that there is a triable issue is no longer a good reason.
>
> [159] The modern approach to civil procedure, as encouraged in *Hryniak*, is to allow parties and the trial courts to tailor the pre-trial and trial procedures to a given case, in the interests of proportionality and access to justice, while preserving the court's ability to fairly determine a case on the merits. In my view, R. 16-1(18) and R. 22-1(4) work to reflect this modern approach within a petition proceeding.
>
> [160] To summarize, I am of the view that a judge hearing a petition proceeding that raises triable issues is not required to refer the matter to trial. The judge has discretion to do so or to use hybrid procedures within the petition proceeding itself to assist in determining the issues, pursuant to R. 16-1(18) and R. 22-1(4). For example, the judge may decide that some limited discovery of documents or cross-examination on affidavits will provide an opportunity to investigate or challenge the triable issue sufficiently to allow it to be fairly determined by the court within the petition proceeding, without the need to convert the proceeding to an action and refer it to trial.

[44] Keeping in mind these passages from *Cepuran*, I am not persuaded that there is as much of a material evidentiary clash between Carolyn's evidence and Donna's evidence as Donna asserts. The fact of the matter is, much of Carolyn's evidence has elements of hearsay in it, which I accept impacts the evidentiary weight to be attributed to it. Aside from Carolyn's two affidavits, there is little other evidence presented in support of the petition. There is no evidence from David or anyone else attesting to either Hilda or Lori's intention relating to the use and value of the common shares of 436 or of the governance and operation of the company into the future. Furthermore, much of Carolyn's evidence is uncontested by Donna. For example, Donna does not dispute or deny that she believes only "blood relatives" and "legal family members" of the Chesson family are entitled to any benefits from the financial plans Art and Hilda undertook during their respective lives, regardless of who owns shares in 436. More specifically, while she acknowledges that Carolyn is a shareholder, Donna maintains that as Carolyn's shares are common shares, she is not legally entitled to derive any financial benefit from those shares until 436's sole asset, La Maison Blanche, has been sold.

[45] In my opinion, this matter is suitable for adjudication based upon the affidavit evidence that has been filed and that it would not be contrary to the interest of

justice to do so. Although arguably there are triable issues raised in the pleadings and the evidence, keeping in mind the remarks of Justice Griffin in *Cepuran*, I do not find it necessary that the parties' dispute be referred to the trial list. I am satisfied that there is an evidentiary foundation before me upon which I can make findings of fact, which in turn will permit me to resolve the dispute between the parties.

Issue #1: Carolyn's expectations: What are they and are they reasonable?

[46] In *BCE Inc. v. 1976 Debentureholders*, 2008 SCC 69 [*BCE*], the Supreme Court of Canada examined the legal principles relating to claims based on shareholder oppressions and explained:

> [57] We preface our discussion of the twin prongs of the oppression inquiry by two preliminary observations that run throughout all the jurisprudence.
>
> [58] First, oppression is an equitable remedy. It seeks to ensure fairness — what is "just and equitable". It gives a court broad, equitable jurisdiction to enforce not just what is legal but what is fair: *Wright v. Donald S. Montgomery Holdings Ltd.* (1998), 39 B.L.R. (2d) 266 (Ont. Ct. (Gen. Div.)), at p. 273; *Re Keho Holdings Ltd. and Noble* (1987), 38 D.L.R. (4th) 368 (Alta. C.A.), at p. 374; see, more generally, Koehnen, at pp. 78-79. It follows that courts considering claims for oppression should look at business realities, not merely narrow legalities: *Scottish Co-operative Wholesale Society*, at p. 343.
>
> [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.
>
> …
>
> [68] In summary, the foregoing discussion suggests conducting two related inquiries in a claim for oppression: (1) Does the evidence support the reasonable expectation asserted by the claimant? and (2) Does the evidence establish that the reasonable expectation was violated by conduct falling within the terms "oppression", "unfair prejudice" or "unfair disregard" of a relevant interest?

[47] On the question of whether the evidence supports the reasonable expectations asserted by the aggrieved shareholder, the Supreme Court of Canada in *BCE Inc.* further explained:

> [70] At the outset, the claimant must identify the expectations that he or she claims have been violated by the conduct at issue and establish that the

> expectations were reasonably held. As stated above, it may be readily inferred that a stakeholder has a reasonable expectation of fair treatment. However, oppression, as discussed, generally turns on particular expectations arising in particular situations. The question becomes whether the claimant stakeholder reasonably held the particular expectation. Evidence of an expectation may take many forms depending on the facts of the case.

[48] The assessment of a shareholder's expectations and the determination of whether they are reasonable or not can be influenced by the nature of the company in question, especially if it is a family-operated enterprise. Madam Justice Murray addressed this issue in *Gierc Jr. v. Wescon Cedar Products Ltd*., 2021 BCSC 23 [*Gierc*], and concluded:

> [80] The courts further recognize that family companies bring different expectations than other commercial businesses. Our Court of Appeal in *Safarik v. Ocean Fisheries Ltd*., [1995] B.C.J. No. 1979, 12 B.C.L.R. (3d) 342 explained why:
>
> > 111 In the matter of shareholdings, the father did treat the respondent fairly and equitably. But in a company with no history of paying dividends, shares are in reality worthless unless they can be realized.
> >
> > 112 Family companies are very different from non-family companies. They are different because, usually when a young man joins his father in the business, he does so trusting his father to do right by him and the father intends to do right. Thus no contracts are drawn up. It is not unusual for differences to arise as they did here, not because either father or son is dishonourable but because each sees the world through different eyes.
> >
> > 113 If this were not a family company, but a company in which the respondent had simply bought his common shares and in buying them had decided not to be a director for whatever reason, there would be no case for an order under s. 295(3).
> >
> > 114 But, in my opinion, it is not erroneous to take a more liberal approach to the words "just and equitable" in the case of a family company in which one of the family after many years of service is no longer permitted to participate in the business.
> >
> > [Emphasis added.]
>
> [81] The reasonable expectations in this case involve a consideration of family relationships and the corporate structure.
>
> [82] The last paragraph of the quote from *Safarik* above is apropos the situation here. The Gierc brothers built Wescon with the clear intention that they would ultimately be half owners. The 2001 reorganization is a good example of steps that were taken to insulate the company from anyone outside of the family having ownership or control. I am satisfied that there is

> nothing in the articles of the trusts that alters the rights of either brother. They continue to be equal shareholders of the non-fixed value shares.
>
> [83] Reading the articles as a whole, I conclude that good faith and taking care of family members is central to the trusts. There is a flexibility built into the terms of the trusts to allow Frank and Tom to administer the trust in a way that benefits family members as and when needed. That there would be a falling out between Tom and Frank was clearly not foreseen or provided for.

Carolyn expected there to be an inheritance-based value to her common shares of 436

[49] Carolyn's first expectation is that she would be entitled to the inheritance she says Hilda intended for her children and their children, that being the value of her common shares in 436.

[50] Donna maintains that the estate plan created for Hilda using 436 was principally focussed on keeping La Maison Blanche in the Chesson family. By doing so, Hilda's financial well-being would be protected for the remainder of her life. Following Hilda's death, control of 436 would pass to her daughters (i.e., Lori and Donna). Lori and Donna would, in turn and by means of their Last Will and Testaments, transfer their respective interests in 436 to each other, so that the surviving sister would eventually own all of the shares of 436 and have control over the company's operations for their own benefit and that of future generations of Chessons. At no time during Hilda or the two sisters' lifetimes was it intended that La Maison Blanche would be sold. Donna's correspondence with Carolyn over the years generally reflects that position.

[51] Carolyn maintains that Art purchased La Maison Blanche and Hilda later incorporated 436 and transferred the property to 436 all as a means of providing a viable financial future for the Chesson family, including future generations like herself. This assertion is uncontested by Donna, though Donna contends that the Chesson family is limited to "legal members" or blood relatives, which excludes David and Carolyn.

[52] Carolyn disagrees with Donna's description of Hilda's estate planning strategy. Although she agrees that in 1992, when 436 was incorporated, the plan upon Hilda's death called for control of 436 devolving to Lori and Donna, and then, upon the death of one of the sisters, control passing to the surviving sister, Carolyn maintains that the transfer of La Maison Blanche to 436 was, for all practical purposes, an "estate freeze" designed to protect Hilda's financial interests during her lifetime, as well as the interests of her children, Donna and Lori, and subsequent generations of the family, including her grandchildren or step-grandchildren, like Carolyn, after she had died. Carolyn also asserts that Lori changed her mind and intended to leave her entire estate, including her shares in 436, to Carolyn, rather than to her sister Donna. Carolyn claims that Lori's position changed further when Lori reunited with her son, David, sometime in the 1990s. Carolyn insists that Lori's wish prior to her death was that her estate be shared equally between David and Carolyn. Aside from Carolyn's own evidence, there is no evidence supporting any of her assertions concerning Lori's intentions relating to her shares in 436. I note that David is silent on this point and offers no evidence in support of Carolyn's assertions.

[53] I am not convinced that what Carolyn believes with respect to the common shares she owns in 436 amounts to an expectation, whether reasonable or not, as that term is referenced in the jurisprudence. In *Stahlke v. Stanfield*, 2010 BCCA 603, Madam Justice Saunders explained at para. 18 that in determining whether the evidence supports the reasonable expectation of a shareholder, the court must first determine "…whether the asserted expectation is an expectation shared in the compact of shareholders rather than simply a personal aspiration…".

[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:

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;

b) The 436 common shares do not have redemption or retraction rights attached to them;

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.

[55] Carolyn's belief relating to her common shares in 436 is not shared by Donna. While David has, in a very token manner, indicated his support for Carolyn's position, I have no evidence from him explaining his expectations as a shareholder or the factual foundation upon which he might base those expectations.

[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*.

[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.

[58] Between 2000 and 2003, Donna repeatedly requested that Carolyn sell her common shares in 436 at a price of $1 per share. In correspondences with Carolyn, Donna told her that Hilda wished to have the shares back, which were “taken” from her, and that the only purpose of the issue of the shares to Lori and Donna in the first place was to enable the daughters to have employment roles and make RRSP contributions.

[59] On 13 August 2002, the solicitor for Hilda and 436 wrote to Carolyn and told her that he had been advised she was willing to sell her shares for $1 each. He requested that Carolyn return her share certificates to his office, in exchange for $75.

[60] Carolyn attests that she found these requests untoward and uncomfortable as she believed her shares were worth much more than $75. She also believed Donna was not accurately relaying Hilda’s true feelings on the matter. Notwithstanding these beliefs, Carolyn took no steps to clarify the situation, including having any discussions with Hilda about the matter. Carolyn says the reason she did not do so was because she did not want to cause discord within the family. I do not find this explanation to be a convincing one.

[61] I accept that Art and Hilda were loving parents who cared deeply for their children. I also conclude that the fact that their daughters, Donna and Lori, were not their biological children made little difference to them as parents and that they considered their daughters to be part of the Chesson family. Moreover, while they wanted to protect their own financial well-being and did so by investing in La Maison Blanche and then incorporating 436, Art and Hilda also wanted to protect their wealth so that it could be shared by future generations of the Chesson family. I again refer to the fact that Donna and Lori were the adopted children of Art and Hilda to underscore the point that there is no evidence that either Art or Hilda saw a blood relationship as a necessary element for membership in the Chesson family.

[62] Notwithstanding this finding, and keeping in mind the family nature and structure of 436, I am not convinced that Carolyn’s belief that Hilda had created an

estate plan using 436 that included any consideration of Carolyn's future financial interests is a reasonable one.

[63] Since June 2000 when Carolyn became a shareholder in 436, dividends were never paid to holders of common shares, like her. Instead, dividends were only paid to the holder of preferred shares. There is no evidence, even from Carolyn herself, that representations were made by Hilda, Lori or anyone associated with 436 that she or any other holder of common shares should expect or would receive dividends.

[64] Carolyn knew as early as 2000 that there was an issue with respect to her common shares in 436 and what entitlements flowed from them. She was also aware as of August 2002 when she received the letter from 436's legal counsel, that Hilda was looking to acquire Carolyn's common shares. In January 2003, Carolyn received a handwritten letter from Hilda in which Hilda notes:

> I understand your thoughts however the apartment is a company and we have to abide by its rules.
>
> I believe the lawyer has sent you a letter explaining the situation and has asked you to return it signed.
>
> I suggest that when we get home we get together with the lawyer and he can answer your questions.

[65] In her affidavit #1, sworn 11 May 2022 and filed in support of her petition, Carolyn explains her response to Hilda's letter of January 2003 as follows:

> [41] In 2003, I received a letter from Hilda that mentioned "the lawyer has sent you a letter explaining the situation and has asked you to return it signed"…
>
> [42] I recall discussing the sale of my shares with my grandmother Hilda shortly before receiving this letter. I explained to her that I would be open to the possibility of selling. A meeting with the lawyer never happened, and I never discussed the matter further with Hilda.

[66] Carolyn does not explain why she never discussed the issue further with Hilda or what, if any, efforts she made during Hilda's lifetime to address what was obviously a real and present issue within the Chesson family relating to her common shares in 436 and the financial benefits they may or may not have entitled her to.

This is not to say Carolyn did not have the opportunity to do so. In her affidavit #1, Carolyn confirms that she spoke with Hilda prior to her death in 2012:

> [45] Hilda passed away in fall 2012. Prior to her passing in 2012, I sat down with Hilda and she told me items she would like me to have, such as particular pictures she had painted that she wrote my name on the back of…
>
> [46] After my grandmother's passing, in keeping with my expectations that the Property was an inheritance to benefit Lori and Donna, and their respective children, I began to ask for more information about the Company's affairs.

[67] It is mystifying why, when she had the opportunity to do so, Carolyn did not clarify and confirm with Hilda what her intentions were relating to the outstanding shares in 436 and what she wished to bequeath to Carolyn. This conduct is particularly troublesome when in 2003, Hilda herself had spoken with Carolyn about the common shares. As I have previously noted, Carolyn took no steps to conclude that conversation. It was, in the circumstances, unreasonable for Carolyn to remain silent and simply hold on to an expectation that she knew or ought to have known was subject to being challenged by Donna.

[68] Equally problematic for Carolyn is the fact that she took no steps to confirm her shareholder position and the entitlements conferred by her common shares when the 1000 preferred shares in 436 passed to Donna alone upon Hilda's death. If Carolyn believed that Donna's receipt of those shares, which resulted in Donna obtaining control of 436, was inconsistent with Hilda's wishes, then Carolyn should have sought a variation of Hilda's Last Will and Testament. That did not occur and I can only conclude that Carolyn accepted that Hilda wanted and intended Donna to have all of the preferred shares and thus control of 436.

[69] In her affidavit #1, Carolyn summarized her expectation relating to her common shares as follows:

> [102] I expect to receive the financial benefit and security my grandparents intended for their family when [436] was incorporated; in other words, the inheritance they intended to grant. I have received no financial benefit from my shares in 436. Because of the deadlock in our voting shares (with David and I holding Lori's 50% share, and Donna holding a 50% share), I am

> unable to realize any of the inheritance Hilda, then Lori, intended for David and I on their passing.

[70] Based on the evidence before me, I do not find that Carolyn's assertion that she expected there to be an inheritance-based value to her shares entitling her to financial benefits beyond those established in the Articles to be anything more than an aspiration or belief on her part. Consequently, this facet of Carolyn's petition cannot found a claim that Donna's refusal to agree with Carolyn's perception and interpretation of her common shares and their value constitutes oppressive or unfairly prejudicial conduct.

Donna would act in the best interests of 436 and all of its shareholders

[71] Carolyn further expected that Donna, as a director and officer of 436, would fulfill her fiduciary duties and manage the company in manner that protected the company's interests, as well as those of its shareholders. Concurrently, Donna would not attempt to further her own personal interests over those of the company.

[72] In essence, Carolyn says she expected Donna would ensure that 436 operated in a business-like manner with the aim of maximizing the value of the company. Donna accepts that these are reasonable expectations that any shareholder of a corporation is entitled to hold and enforce if they believe any of them have been violated. However, Donna asserts that she has done nothing that could be considered a violation of any of these expectations.

[73] Carolyn is particularly critical of the manner in which Donna has managed the financial and business affairs of 436. She says Donna has engaged in self-dealing in an attempt to promote her own interests at the expense of 436 and its other shareholders, including by:

a) Charging exorbitant and unreasonable management fees for operating 436;

b) Using funds from 436 to reimburse her personal expenses; and

c) Collecting all of the dividends from 436 for herself, to the exclusion of the holders of common shares, like Carolyn and David.

[74] In my opinion, the evidence does not support the criticism Carolyn levels at Donna.

[75] In a letter dated 1 January 2007, Donna explained to 436's accountant her justification for drawing a $50,000 salary from the company for the work she performed managing its daily operations. In her letter, Donna notes:

> This job has become a 24/7 occupation. Unfortunately, problems connected to the building and people do not stop for weekends or holidays or happen from just 9:00 A.M- 5:00 P.M. My last vacation was in September 2000, [I] had to cancel two other trips because of problems and projects that have occurred. I have been called out at 1:45 A.M. because of someone setting the recycle bins, a tenant's car and the building on fire and at 3:45 A.M. as a result of water flowing down the **inside** of the patio window in a suite on the 2nd floor. Water eventually ended up in 11 suites because of the heavy rains and snow on the roof. Dan (my son-in-law) and I had to shovel off frozen ice and snow for two days while more was falling down upon us. I have been called on on a New Year's Day and an Easter Sunday because the elevator was acting up and people were stuck in it and I couldn't just leave them there for maybe over an hour by themselves. The elevator company's Head Office in Tennessee, USA will only take a verbal request from me for emergency after hour repairs. I have had to work nights and on weekends if I have a suite to remodel or plumbing etc. repairs. I try to do all the stripping and preparation work. With Dan helping sometimes, it has kept costs down and given me someone to rely on. My workday can start with a phone call at 7:00 A.M. and go on until who knows when because a lot of problems come to me after someone discovers them when they come home from work. All 'my people' are so nice and considerate to me that they start their conversation start [*sic*] with 'I don't like to bother you but – ex. My toilet has been running all day and I thought it might stop but it hasn't so---' (it is now 4:00 pm on a Friday afternoon). My social life has been affected because it is hard to plan too far ahead as I can't guarantee I won't have to cancel.
>
> …
>
> In closing, I want to say that I would not have changed a thing. I have been very lucky with the tenants I have chosen. They have gone through a lot, what with all the renovations and outside problems that are beyond my control. … Mom has been down several times and has seen how mixed up and exasperating a day can be here. She has been the one to say that I should be paid more. Dad instilled good work ethics in me. My personal financial ethic is – 'Don't expect more than you're worth but be worth what you expect'.
>
> [Emphasis in original.]

[76] I accept that Donna has endeavoured to manage La Maison Blanche in a manner that was in the business interests of 436 while remaining respectful of the rights of the tenants who had residential units in the building.

[77] The financial statements of 436 that are in evidence indicate that in 2012, before Hilda's death, Donna began drawing an annual salary, including benefits, of $72,247 from 436. That salary remained reasonably consistent from 2012 to 2019. The amount indicated in 436's 2020 financial statement indicates that Donna's salary and benefits amounted to $29,804. This decrease from previous years is unexplained.

[78] As previously noted, Donna became the president of 436 in or around 2010 and subsequent to that her role managing the business affairs of 436, and particularly the operations of La Maison Blanche, increased substantially. While Carolyn says the annual salary and benefits Donna receives for the work she does for 436 are exorbitant and unreasonable, I have no evidence to support that contention and in particular I have no evidence of what someone performing the work Donna does for 436 would generally receive as a salary and benefits. Given this lack of evidence, and given the amount and type of work Donna says she performs for the company, I am not persuaded that the compensation Donna receives from 436 for the work she does for the company is unreasonable or exorbitant. In other words, I do not find that by drawing the salary and fees that she does from 436, Donna is engaging in self-dealing to the detriment of the company or its shareholders.

[79] The financial statements of 436 also indicate that the family-run company has a history of shareholder loans. The evidence relating to the purpose of these loans and related shareholder withdrawals over the years is sparse. For example, the 2014 financial statement for 436 indicates an opening balance for shareholder loans as of 1 August 2013 was $210,071.62. Counsel for Carolyn points to what are labelled as shareholder withdrawals for "personal expenses" and "cash withdrawals" as examples of Donna making inappropriate financial transactions through 436's

accounts for her own personal benefit. The balance outstanding on the shareholder loans at the end of 436's 2014 fiscal year is noted to be $174,449.76. Counsel for Donna submits that Carolyn and her counsel are misreading and misinterpreting these entries on the financial statement in a fashion that incorrectly suggests Donna is withdrawing money from 436 for her own purposes. Counsel for Donna further submits, and I accept, that a proper reading of the financial statement in question confirms that any personal expense of Donna's, as opposed to one incurred on behalf of 436, has been credited back against the shareholder loan. In essence, any accounting errors that resulted in personal expenses for Donna being attributed to 436 have been corrected by reducing the amount of the outstanding shareholder loan. While the process is a cumbersome one, and it would naturally be preferable that personal expenses be kept well clear of 436's accounts, given the family-run nature and corporate structure of 436, it is understandable how some personal expenses can, inadvertently, be incorporated into the company's expenses. What is important is that any such errors are identified and corrected. I find that is what occurred in 2014. I would expect Donna to remain vigilant to avoid having any of her personal, non-436 related expenses intermingled with legitimate 436 expenses in the future.

[80] From 2012 to 2020, Donna received an average of $8,900 from 436 as reimbursement for the business expenses that she incurred on behalf of 436. Carolyn asserts these expenses were unjustified and detrimental to the corporate well-being of 436 and the interests of its shareholders. I am not convinced that is so. While there is evidence of Donna incurring expenses on behalf of 436, there is no evidence beyond Carolyn's complaint, that the expenses were unjustified, unwarranted or prejudicial to 436 or its shareholders. I am not satisfied that Donna's conduct in claiming business expenses amounts to improper self-dealing giving Carolyn a justifiable ground to seek relief under the *BCA*.

[81] I reach the same conclusion with respect to Carolyn's complaint about Donna receiving annual dividends from 436 when Carolyn and David receive none.

[82] In 2010, Hilda began receiving annual dividends of $87,500 on the preferred shares she had in 436. She received these dividends for three consecutive years prior to her death in 2012. The declaration of the dividends was made in compliance with the applicable terms of the Articles. Although the Articles did not require the issuance of a notice to the other shareholders, those shareholders were nevertheless informed of the dividends that were declared and paid to Hilda.

[83] The Articles govern the declaration of dividends. Since its incorporation in 1992, no dividends have ever been declared or paid to owners of common shares in 436. This includes Donna. I do not accept that by continuing the declaration of annual dividends for the preferred shares, a practice that started when Hilda was still alive and involved in the management of 436, Donna has somehow acted contrary to the interests of the company or in a manner that is unfair or prejudicial to the rights and interests of David and Carolyn.

[84] Overall, having considered the evidence and the submissions of counsel, I am not convinced that Donna's impugned conduct in managing the affairs of 436 constitutes self-dealing or any type of improper conduct that is oppressive or unfairly prejudicial to any of 436's shareholders.

Donna would comply with the requirements of the *BCA*

[85] The final of Carolyn's expectations can be seen as a subset of the ones I just addressed. That is, not only did Carolyn expect Donna to act in the best interests of 436 and its shareholders, she also expected Donna would ensure that the company operated in compliance with the *BCA*. Donna does not dispute that this is a reasonable expectation for any shareholder of 436 to hold.

[86] Specifically, Carolyn expected that Donna, as a director and officer of 436, would ensure that AGMs of shareholders were held, relevant corporate information was made available to shareholders, the company remained in good standing, and properly audited annual financial statements would be prepared and made available to shareholders.

[87] The simmering tensions between Carolyn and Donna came to a boil following Hilda's death. This resulted in Carolyn sending Donna a letter on 9 March 2013 in which she set out her desire to have Donna purchase her shares in 436. Additionally, Carolyn noted:

> If you are not prepared to buy my shares, I will want the company run in strict accordance with the law, have audited financial statements prepared and annual general meetings held each year. Of course, if you agree to purchase my shares I will sign the current annual resolution negating the need for a shareholders meeting.

[88] In her response dated 27 March 2013, Donna explained:

> You also stated in your letter that you **will** want the company run in **strict accordance of the law**. **Now you are questioning my work ethics in running the company**. I have always followed the regulations of business law, and will continue to do so, which is why I am pushing for the business at hand regarding the Resolution return to be settled.
>
> [Emphasis in original.]

[89] There is ample evidence before the Court that points to there having been serious difficulties organizing and holding AGMs in past years. This appears to have started in or around 2015 when it would seem no AGM was held, notwithstanding Carolyn enquiring about one. While Donna acknowledges that there have been years when no AGM has been held, she asserts that the shareholders of 436 waived the requirement for such a meeting.

[90] While it is clear on the evidence that as of 2013 Carolyn wanted 436 to be governed in accordance with the *BCA* and that Donna recognized her obligation as a corporate director and officer to ensure that was done, there were years when AGMs should have been held but were not.

[91] The arrival of the COVID-19 pandemic in early 2020 posed significant challenges for companies needing to hold AGMs. 436 was not immune to those challenges. Donna and Carolyn could not agree on how an AGM would occur in 2020 or 2021, so the meetings were never held. This history of not holding AGMs is troubling and I find the evidence does not support Donna's assertion that shareholder waivers were obtained for all of the years when an AGM was not held.

Having reached this conclusion, I also find that Donna is now acutely aware of her obligation to ensure that the requirements of the *BCA* concerning AGMs be scrupulously respected and followed so that the shareholders of 436 have an opportunity to meet annually to address corporate issues and assess the operations of the company, unless those shareholders have waived the need for such a meeting.

[92] In addition to Donna's failure to ensure AGMs were held, Carolyn is critical of the access she has been given to the financial records of 436. I am not convinced that this complaint of Carolyn's is borne out in the evidence. Although it may have taken what seemed like an unreasonable amount of time or an unreasonable effort on Carolyn's part, I am satisfied that whenever she requested corporate information relating to 436, that information was either shared with her or made available to her and I find she had a satisfactorily clear picture of the operation and finances of 436.

[93] A third criticism Carolyn raises with respect to Donna's conduct as the president and director of 436 is her failure to ensure that the company's annual reports were filed and the company remained in good standing. In late 2021, it came to Donna's attention that 436 was not in good standing with the Registrar of Companies as the company had failed to file annual reports for 2020 and 2021. How or why that occurred remains unexplained. Nevertheless, in what I find was an exemplary cooperative effort, counsel for Donna, counsel for Carolyn, and counsel for 436 were able to promptly file the necessary documents to return 436 to good standing. While it is unfortunate that this work needed to be done in the first place, I do not find this lapse on Donna's part to have caused any prejudice to the company or to its shareholders.

[94] The final complaint raised by Carolyn is Donna's refusal to have audited financial statements prepared for 436. As noted earlier in these reasons, Carolyn put Donna on notice in March 2013 that she wished to have 436 managed according to the law, including the *BCA*, and in particular she wanted annual audited financial statements prepared for the company.

[95] In her affidavit #1 sworn on 31 June 2021 and filed in response to the petition, Donna explains:

> [41] I understand that the Petitioner now requests audited financial statements. Audited financial statements have not previously been obtained for the Company as the expense has not been justified given the operations of the Company are discreet and all financial information is available to the Petitioner.
>
> [42] I believe that the Petitioner is requesting audited financial statements to increase the cost to the Company and be punitive. I understand that the Petitioner has the right to request audited financial statements be prepared and following the 2019 and 2020 annual general meeting, if the Petitioner exercises her right not to waive the requirement, I will request audited financial statements from the Company accountants.

[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 respectful 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.

[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.

[98] Having considered all of the evidence, I am satisfied that Donna's failures as a director and officer of 436 constitute an oppressive violation of Carolyn's reasonable expectation that the company would be managed and operated in accordance with the law and in particular the *BCA*.

Issue #2: Is Carolyn entitled to "just and equitable" relief under s. 324 of the *BCA*?

[99] Carolyn's alternative position, in the event her principal claim based on oppression or unfair prejudice is rejected, is that it is just and equitable that 436 be liquidated and dissolved, with each shareholder paid out in proportion to their shares. Carolyn advances this other position based upon what she says is Donna's clear antipathy towards her and her resulting loss of confidence in Donna's ability to manage 436 in a fair and reasonable way.

[100] As counsel for Donna noted in her submissions, while oppression or unfair prejudice need not be established in order for the Court to grant relief under s. 324 of the *BCA*, the draconian nature of an order directing the liquidation and dissolution of a company places on the party seeking the order the heavy burden of proving that such relief is just and equitable: see *Hull Limited v. Bean Services Inc.*, 2013 BCSC 1208.

[101] The jurisprudence is clear that the discretion to grant an order under s. 324 of the *BCA* must be exercised judiciously keeping in mind the well-established legal principle that the court should interfere in the internal workings of a company only when there is convincing evidence before it that provides a clear and articulable reason for doing so: see *Vivian v. Firth*, 2012 BCSC 517; *Chornoby v. Caycuse Acres Ltd.*, 2017 BCSC 456.

[102] In light of my finding with respect to oppressive conduct on the part of Donna, there is no need for me to address in any detail Carolyn's alternative argument founded on s. 324 of the *BCA*. I will however indicate for the sake of completeness, that I reject Carolyn's submission that Donna has treated the assets of 436 as her own property and has misappropriated company funds. The evidence before me does not persuade me that that is so.

[103] While I have found some of Donna's conduct to have been oppressive to Carolyn, I am not convinced that this behaviour warrants the draconian measure of ordering the liquidation of 436.

Issue #3: What remedy is Carolyn entitled to?

[104] This is a challenging question.

[105] Carolyn seeks an order compelling Donna to return to 436 a very significant sum that she says Donna has misappropriated from the company. I have rejected that request on the grounds that I am not convinced Donna has misappropriated or mismanaged any funds relating to 436.

[106] Carolyn also seeks an order directing Donna or in the alternative, 436, to purchase the common shares of 436 that Carolyn owns. I am not persuaded that Carolyn is entitled so such relief. While I have found some of Donna's conduct as a director and officer of 436 has been oppressive, I do not find the nature of that conduct justifies the order Carolyn seeks. I say this because in my opinion Carolyn's fundamental argument justifying such an order is ill-founded. She complains that Donna has received financial benefits resulting from the shares she owns in 436, when she and David have received no benefits from their shares. She also says that Donna has made it clear that Carolyn will likely never receive any financial benefit until 436 sells La Maison Blanche. The error that is fatal to Carolyn's argument is that Donna receives her financial benefits, and in particular the dividends that she does, because of the preferred shares she owns and not because of her common shares. For reasons only known to Hilda, all of the preferred shares that she owned were transferred only to Donna when Hilda died. That was Hilda's wish and intention. Carolyn has not and does not challenge this. Consequently, Carolyn is mistaken when she asserts that she and David, as owners of common shares in 436, are entitled to financial benefits comparable or equal to those that Donna receives. Carolyn's shares in 436 simply do not give her the right or ability to change the corporate structure of the company that has been in place since its creation. Carolyn is also wrong when she asserts that there is a deadlock between the shareholders that is hampering the proper management of 436. There is no deadlock. Donna has 1000 preferred shares as well as 150 common shares. With each share having one vote, Donna has 1,150 votes. Carolyn has 75 common

shares, meaning she has 75 votes. Even if she were to combine her shares with David's, Carolyn would still only have 150 votes to Donna's 1,150.

[107] I have already addressed the question of whether it is "just and equitable" that 436 be liquidated and dissolved pursuant to s. 324 of the *BCA* and have found that it is not.

[108] Although I am not prepared to grant most of the relief that Carolyn has sought in this petition, that does not mean I am not prepared to grant some remedy.

[109] Because of issues beyond the control of the parties or their counsel, I was unable to render my decision in this matter for a prolonged period of time. That is regrettable and I recognize it has likely had an impact on all of the parties.

[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*.

Conclusion

[112] For all of the foregoing reasons, I find that Donna's failure to ensure AGMs are held in compliance with the *BCA* and her failure to obtain audited financial statements for 436 constitute oppressive conduct contrary to s. 227 of the *BCA* and I am making a declaration to that effect. For the same reason, I will also grant the declaration sought by Carolyn that the affairs of 436 are being or have been conducted in a manner that is oppressive to her.

[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. In an effort not to further delay the conclusion of this matter, I will make my best efforts to expedite this hearing once counsel are prepared to proceed.

[114] The parties are also at liberty to make submissions as to costs.

"G.R.J. Gaul, J"