

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *WJY 2015 Trust and Wang v. Teda Investments Inc. et al*,
2024 BCSC 1412

Date: 20240802
Docket: 2111218
Registry: Vancouver

Between:

WJY 2015 Trust and Wang

Petitioner

And

Teda Investments Inc. et al

Respondent

Before: The Honourable Madam Justice Murray

Reasons for Judgment

Counsel for the Petitioner: R. Clark

Counsel for the Respondent: S. Chang
J. Der

Place and Date of Hearing: Vancouver, B.C.
December 7 and 8, 2023

Written Submissions of Petitioner: January 11, 2024

Written Submissions of Respondent (Teda Investments Inc.): February 1, 2024

February 1, 2024

Written Submissions of Respondent (Buffalo Enterprise Inc.):

Place and Date of Judgment: Vancouver, B.C.
August 2, 2024

Table of Contents

INTRODUCTION 3

BACKGROUND..... 5

 The beginning of the project..... 5

 Teda invests in the project 5

 The Agreements..... 5

 Teda issues Retraction Notice..... 9

 Chai Sr. and Jr. become involved..... 10

ISSUES..... 12

ISSUE 1: IS THE TRANSFER OF SHARES IN TEDA FROM WANG AND LIU TO RUNSEN VOID PURSUANT TO ARTICLE 10.1 OF THE SHAREHOLDERS’ AGREEMENT?..... 13

ISSUE 2: ARE THE EXTENSIONS OF THE REDEMPTION DATE VALID?..... 15

ISSUE 3: HAVE THE AFFAIRS OF BUFFALO BEEN CONDUCTED IN A MANNER OPPRESSIVE TO THE PETITIONERS WHICH JUSTIFIES RELIEF UNDER S. 227 BCA?..... 17

ISSUE 4: SHOULD THE PETITIONERS BE GRANTED LEAVE TO COMMENCE A DERIVATIVE ACTION IN THE NAME OF BUFFALO AGAINST TEDA, WANG, CHAI SR., AND/OR CHAI JR. PURSUANT TO S. 233 OF THE BCA?..... 21

CONCLUSION..... 23

INTRODUCTION

[1] The Petitioners, WJY 2015 Trust (“the Trust”) and William Wang, seek *inter alia*, a declaration that the affairs of Buffalo Enterprise Inc. (“Buffalo” or “the Company”) have been exercised in a manner oppressive to them, and seek relief per the Court’s discretion under section 227 of the *Business Corporations Act*, SBC 2002, c. 57 [the *Act*]. Furthermore, they seek leave from the Court pursuant to section 232 of the *Act* to bring legal proceedings in the name of Buffalo.

[2] For clarity, throughout these reasons for judgment, I will refer to William Wang as “William.” I mean no disrespect by doing so.

[3] Buffalo is a closely held corporation with a registered office in Vancouver, BC. William incorporated Buffalo for the sole purpose of developing a residential complex in Saanich (“the Project”).

[4] Buffalo’s majority shareholder is Teda Investments Inc. (“Teda”), also a British Columbia company. The shareholders of Teda were Hongjun Wang and his wife Ms. Xin Liu. Throughout these reasons, I will refer to Hongjun Wang as “Wang.” Again, I do so for clarity and mean no disrespect.

[5] Buffalo’s minority shareholder is the Trust. Ms. Changxia Lv, William’s wife, is the trustee of the Trust. William is its beneficiary.

[6] 1151409 B.C. Ltd. (“115”) is a registered company in BC, contracted by Buffalo to manage the Project. It is owned by William and Ms. Lv.

[7] Wang was appointed as Director of Buffalo by Teda. Runguo Chai (“Chai Sr”) and Xingchao Chai (“Chai Jr”) were later involved in the Company. I will detail their involvement shortly.

[8] The Petitioners seek the following orders:

- (a) Against Respondent Wang for breach of his statutory and common law duties as a director of Buffalo; and,

(b) Against Wang, Teda, Chai Sr., and Chai Jr. for conspiracy to injure William, to deprive him of any interest or benefit in the Project, and to unlawfully divert to themselves the advantages, property, and interests that Buffalo, the Trust, William, and 115 have earned over the course of the Project.

[9] In addition, the Petitioners seek orders:

(a) Setting aside the retraction of all or any of Teda's shares in Buffalo pursuant to its Retraction Notice dated September 13, 2021 ("the Retraction Notice");

(b) Setting aside the Retraction Notice;

(c) Declaring void, the January 5, 2022 transfer of ownership of Wang's shares in Teda from Wang to Runsen Property Holdings Ltd. ("Runsen");

(d) Declaring that the February 2, 2022, meeting of shareholders of Buffalo was not valid and any resolutions passed are a nullity;

(e) Setting aside the February 2, 2022, election of Chai Jr. as Director of Buffalo;

(f) Declaring that unless or until the Retraction Notice is set aside, shares of Buffalo held by Teda have no rights as against or with respect to Buffalo other than to be paid pursuant to the Retraction Notice and no longer carry the right to vote;

(g) Prohibiting Teda from giving notice pursuant to s. 8 of the Share Pledge Agreement, dated November 7, 2019, and from taking any further steps with respect to the Retraction Notice pending further order of the Court; and

(h) Prohibiting Teda from taking any steps to terminate the Management Agreement with 115 pending further order of the Court.

BACKGROUND

The beginning of the Project

[10] Buffalo incorporated in October 2017. Its first director was Ms. Lv. The Trust held all of Buffalo’s voting shares (“the Class A Shares”). As noted, William is the sole beneficiary of the Trust.

[11] In December 2018, Buffalo purchased an eight-unit townhouse complex at 4096 Torquay Drive in Saanich with the aim to redevelop it into a 90-unit strata building.

[12] The property was funded through two sources: a mortgage of \$3.15 million and approximately \$2.35 million from William. As the project progressed, William also provided further funds.

Teda invests in the Project

[13] In the fall of 2019, Buffalo needed further capital. Teda, represented by its principal, Wang, agreed to invest \$3.2 million in return for 1,222 Class B voting shares. These funds were used to discharge the mortgage.

[14] At all material times, Teda has been Buffalo’s only Class B shareholder and the Trust, Buffalo’s Class A shareholder. Teda owns 55% of the total shares.

The Agreements

[15] As part of the equity financing, on November 7, 2019, Buffalo and the Trust entered into a number of agreements (“the Agreements”) with Teda:

- a) Shareholders’ Agreement,
- b) Guarantee Agreement,
- c) Share pledge Agreement,
- d) Management Agreement; and,
- e) Special Rights and Restrictions Agreement.

[16] In addition, the parties agreed that the Articles of Incorporation would be amended to provide its Class B shareholders (of which Teda was the sole such shareholder) with a right of retraction.

[17] The Agreements are key to the present applications. Pursuant to Article 13 of the Share Pledge Agreement, all of the Agreements dated November 7, 2019, constitute the “entire contract between the parties.” Accordingly, all Agreements must be read together. I will highlight portions of each Agreement in turn.

[18] The *Shareholders’ Agreement* contains the following provisions that are key to the present Petition [with emphasis added]:

- a) The Board shall consist of one Director, which is to be nominated by Teda. The initial Director was Wang (Art. 4.1);
- b) The sole director has the power to
 - (a) Redeem any outstanding shares in Buffalo (Art. 5.1(c));
 - (b) Enter into agreements out of the ordinary course of business (Art. 5.1(h));
- c) No shareholder shall transfer directly or indirectly, any shares held or owned beneficially by it. Any transfer in violation shall be invalid and void and shall not be registered in any books or recognized for any purpose including for voting rights (Art.10.1). The only exception to this is a transfer to a related party (Art. 10.2);
- d) The parties agree to maintain the confidentiality of Confidential Information, which includes information regarding pricing or costs, technical information and other information that if shared with competitors could be detrimental to Buffalo’s interests (Art. 12);
- e) Class B shares have rights of retraction as follows:
 - (a) A Class B shareholder can issue a Notice of Retraction on or after 18 months of the issuance of the shares, which is to be delivered to Buffalo (Art. 29.3);

(b) The Notice of Retraction has to specify the number of shares to be redeemed and the date for retraction which must satisfy the following:

- (a) If at that time any other Class B shareholder has already specified a Retraction date that has not passed, then that date already specified is the Retraction Date; or
- (b) In any other case, the Redemption Date must be at least 2 months after the latest date that such Retraction Notice is given.

(Art. 29.4)

(c) The retraction price was the issue price of the Class B shares plus 10% annual interest (Art. 29.12).

[19] The right of retraction and ability to withdraw from the Project was an important consideration for Wang in entering into the Shareholders' Agreement.

[20] The *Guarantee Agreement* guarantees Buffalo's obligation to redeem the shares if Teda exercises its right of retraction in accordance with the Articles as follows:

- a) The Trust, William and Ms. Lv, will pay Teda for the full amount to which Teda is entitled upon exercise by Teda of its Class B retraction rights, if Buffalo is unable to comply for reasons of insolvency or lack of funds ("the Guaranteed Obligation") (Art. 1);
- b) The Trust will execute a Share Pledge to secure the guarantee in favour of Teda (Art. 2);
- c) Teda can assign or sell the Guarantee without notice to the guarantors, William, Ms. Lv or the Trust (Art. 13).

[21] The *Share Pledge Agreement* supports the Guarantee Obligation by granting Teda a security interest in the Trust's 1000 Class A voting shares in Buffalo. It provides that:

- a) All of the Trust's Class A shares are guaranteed to Teda in respect of Buffalo's obligations upon the exercise of Teda's retraction right;
- b) In the event of default of the Guaranteed Obligation, Teda shall give written notice to the Trust of the outstanding payment obligation. The Trust has 7 days to dispute the notice or pay the outstanding amount. Failing that Teda can take steps to transfer the Class A shares into its own name (cl. 8).

[22] The *Special Rights and Restrictions Agreement* restricts Teda's rights of retraction. It provides that:

- a) If the holder of Class B shares wishes to exercise its Class B retraction right the holder must give notice in writing to the company specifying the number of shares to be redeemed and the date for retraction (Art. 29.4);
- b) The redemption date can be changed by the agreement of the Company and all holders of Class B shares (Art. 29.7(2)).
- c) Buffalo is not obligated to redeem all the shares to the extent that such retraction would render the Company insolvent (Art. 29.5);
- d) The Director is required to determine whether the Company can afford the retraction. The Company will only be obligated to redeem the number of shares it can afford without becoming insolvent (Art. 29.5);
- e) Any amount unpaid is subject to 20% interest (Art. 29);
- f) On the retraction date, the Class B shares will be deemed to have been redeemed and will be cancelled. The holders of the Class B shares will have no further rights against the Company other than the right to be paid for its shares (Art. 29.10).

[Emphasis added.]

[23] The *Management Agreement* provides that William and Ms. Lv, through 115, would manage the Project. Under the agreement, 115 has responsibility for all aspects of the development. 115 must provide Buffalo information about the Project as reasonably requested by Buffalo (Art. 7). The Management Agreement is

terminated upon the occurrence of an Event of Default which includes the insolvency of 115 or Buffalo (Art. 2).

[24] Put simply, under the Agreements, Teda is permitted to give Buffalo a Retraction Notice specifying the number of shares sought to be redeemed and the date of redemption. The date of redemption can be extended with the consent of Buffalo and all Class B shareholders (Art. 29.7(2)). The Director of Buffalo will then advise Teda on how much Buffalo is able to pay without becoming insolvent. The guarantors, William, Ms. Lv, and the Trust, are responsible for the remainder of the payout. If the guarantors do not pay, Teda gets their Class A Shares. Whether Teda is paid or not, its shares are deemed to have been redeemed on the retraction date and are cancelled, meaning Teda loses all rights regarding Buffalo.

Teda issues Retraction Notice

[25] On September 13, 2021, Wang caused Teda to issue a Retraction Notice to Buffalo of its intention to redeem all of the Class B shares. The retraction date was specified as November 13, 2021.

[26] In October or November 2021, Wang began discussions with Chai Sr. about Chai Sr. purchasing Teda and thus becoming involved in the Project. According to the Petitioners, Chai Sr. and Chai Jr. are competitors of Buffalo. In any event, Teda had already served the Retraction Notice. Chai Sr. deposes that he had nothing to do with that decision.

[27] Wang gave Chai Sr. access to confidential information about the Project. Filed as an exhibit in this application is an authorization signed by Wang authorizing Chai Sr. and an associate to have “full access to information, records and documents” in the possession of the architect regarding the Project. The architect was instructed not to speak to 115 about the request.

[28] On November 12, 2021, Mr. Clark, counsel for the Trust and William, wrote to counsel for Teda, advising that Wang was in a “hopeless conflict of interest” and that

“paying the full retraction price to Teda would render Buffalo insolvent.” He then wrote:

Recent events have driven us to the conclusion that Teda does not seek, in actuality, to effect the legitimate retraction of Teda’s shares at all, but rather, by triggering the Guarantee and Pledge, to move to take my client’s shares and in essence, take over the entire project itself or for itself and with a gentleman by the name of Mr. Chai. Key to that strategy on the part of Teda is the breach by Wang and Buffalo of the company’s articles and their duties.

Buffalo Enterprises Inc. should be in negotiations with Teda to reduce the retraction obligation, in its own best interests, not cooperating with Teda in rendering itself insolvent. Mr. Wang is in breach of his duties (and the articles) both to Buffalo and to my client.

My client hereby demands that Mr. Wang conduct a proper analysis to determine what partial retraction of Teda’s shares Buffalo can afford and effect that limited retraction...”

[29] On November 15, 2021, counsel for Teda notified Buffalo by letter that, “Teda hereby extends the Class B Redemption Date (as such term is defined in Section 29.4(2) of the Articles) from November 13, 2021 to December 6, 2021, pursuant to section 29.4(2) of the Articles.” Teda subsequently further notified Buffalo of extensions of the retraction date from December 6 to December 19, 2021, December 19, 2021 to January 7, 2022, and from January 7 to January 14, 2022. The Petitioners take the position that the extensions are invalid as they were not consented to by Buffalo. I will return to this.

Chai Sr. and Jr. become involved

[30] Chai Sr. is the sole director of Runsen Property Holdings Ltd. (“Runsen”). On or about December 15, 2021, on behalf of Runsen, he entered into a share purchase agreement with Teda to acquire all of the issued shares in Teda from Wang and his wife (“the Teda Share Transfer”).

[31] Chai Sr. deposes that he and William were friends and business partners. He alleges that William was supportive of his involvement in the Project. He further asserts that he and William had worked on several projects together in the past, and that William had discussed the Project with him in 2020 and told him that he would be happy for him to be involved. This is inconsistent with William’s evidence that Chai Sr. is a business competitor. It is also inconsistent with William’s actions.

[32] On December 24, 2021, the Petitioners commenced these legal proceedings to prevent the Teda Share Transfer and to prevent Teda from retracting its Class B shares in Buffalo.

[33] On January 5, 2022, the Teda Share Transfer closed and Wang transferred his shares in Teda to Runsen.

[34] William takes the position that the Teda Share Transfer is an indirect sale of Buffalo shares and is contrary to the Articles, in particular Art.10.1, of the Shareholders Agreement.

[35] A new director of Buffalo had to be appointed as Wang had transferred his shares in Teda to Runsen. As such, Wang appointed Chai Sr. as the interim director of Buffalo.

[36] On January 12, 2022, Teda filed a Notice of Change of Directors appointing Chai Jr. as the sole director of Teda.

[37] On January 12, 2022, counsel for the parties negotiated a Standstill Agreement in which Teda agreed to not take any steps pursuant to the Retraction Notice pending the Petitioners' application for interim relief. The Respondents submit that the Redemption Date is held in abeyance under the Standstill Agreement and as the Redemption Date has not passed, Article 29.10 does not apply and Teda continues to be a voting Class B shareholder.

[38] On January 19, 2022, Chai Jr. issued a Notice of Extraordinary Meeting of the Shareholders ("the Meeting Notice"). It provided that Wang had resigned effective January 5, 2022, that Teda was empowered to call the meeting for the election or appointment of a replacement, and that Chai Sr. was appointed interim director of Buffalo.

[39] Before the meeting occurred, on January 26, 2022, Chai Sr. in his capacity as interim sole director, sent a letter to the Trust and 115 seeking a project progress meeting to take place on January 28, 2022, and requesting information regarding the

Project, including budgets and books of account. Ms. Lv did not meet with Chai Sr. Nor was the requested information provided to him.

[40] On February 2, 2022, the Extraordinary Meeting of the Shareholders was held. Chai Jr. was appointed sole director of Buffalo.

[41] Counsel for the Petitioners appeared at the meeting via proxy and voiced objections to the meeting being held and to Teda voting. They contended that the vote was invalid as per clause 29.10 of the Articles of Buffalo. Teda was unable to vote as its shares had been deemed to be cancelled on the Redemption Date. The Petitioners' objections were overruled by Teda's counsel who was acting as chair of the meeting.

[42] As of February 2, 2022, control of Teda and Teda's shares in Buffalo had been transferred to Chai Jr. as sole director of Buffalo, and the Retraction Date had passed without Buffalo seeking to reduce its redemption obligation.

[43] On February 9, 2022, Chai Jr., as director of Buffalo, delivered a second notice to 115. In the notice, Chai Jr. demanded that 115 provide information about the Project, stating that if the requested information was not provided by February 14, 2022, then Buffalo would consider this a default, which if not cured within 30 days, would be considered a notice of termination per the Management Agreement.

[44] The Petitioners maintain the position that Chai Jr. had no authority to summon the meeting or to receive the information. However, the Petitioners advised Chai Jr. that if Teda withdrew the Retraction Notice they would provide what they had of the requested information.

ISSUES

[45] Counsel agree that the issues to be decided can be framed as follows:

- 1) Is the transfer of shares in Teda from Wang and Liu to Runsen invalid and void pursuant to Article 10.1 of the Shareholders' Agreement?
- 2) Are the extensions of the Redemption Date valid?

- 3) Have the affairs of Buffalo been conducted in a manner oppressive to the Petitioners which justifies relief under s. 227 *BCA*? and
- 4) Should the Petitioners be granted leave to commence a derivative action in the name of Buffalo against Teda, Wang, Chai Sr., and/or Chai Jr. pursuant to s. 233 of the *BCA*?

[46] I will consider the issues in turn. However, I will first address a procedural matter. I have determined that the fact that Wang was not represented at the hearing is not an impediment to my findings. Mr. Wang was served with the Amended Petition (as well as the original Petition). He failed to file a response. As such, he was not entitled to notice of the hearing date. Neither do I find the fact that Runsen was not present to be an impediment to my findings.

ISSUE 1: IS THE TRANSFER OF SHARES IN TEDA FROM WANG AND LIU TO RUNSEN VOID PURSUANT TO ARTICLE 10.1 OF THE SHAREHOLDERS' AGREEMENT?

[47] As set out above, on or about December 15, 2021, Wang and his wife Xin Liu sold all of their shares in Teda to Runsen, of which Chai Sr. is its sole shareholder. Shortly thereafter, Chai Sr. was appointed as interim director of Teda in place of Wang.

[48] The Petitioners argue that the Teda Share Transfer is invalid and void, as it was an indirect transfer of shares in Buffalo, contrary to Article 10.1 of the Shareholders' Agreement, which reads:

Article 10.1: Except as specifically provided in the Shareholders' Agreement, no Shareholder shall Transfer, directly or indirectly, any Shares now or hereafter held or owned beneficially by it. Any purported Transfer in violation of Section 10.1 shall be invalid and void and shall not be registered in the books of (Buffalo) or otherwise recognized for any purpose (including, without limitation, for the purpose of determining voting rights or determining entitlements to dividends or other distributions).

[Emphasis added.]

[49] "Transfer" is defined in Article 1.1(y) of the Shareholders' Agreement as "any sale, exchange, transfer, assignment, gift, pledge, mortgage, charge, encumbrance, hypothecation, grant of a security interest, alienation or other transaction, whether

voluntary, involuntary or by operation of law by which the legal title or beneficial ownership of, or any security interest or other interest in such security, passes from one person to another or to the same person in a different capacity, whether or not for value, and any agreement to effect any of the foregoing” (emphasis added).

[50] The Respondents counter that the transfer is valid as Teda at all material times remained the shareholder of Buffalo, irrespective of the business dealings of its own shareholders—Wang and his wife, Liu. They rely on well settled law that a corporation is an independent legal entity which is distinct and separate from its shareholders (*Edgington v. Mulek Estate*, 2008 BCCA 505 at para. 21). Even where a shareholder has considerable control, or the corporation appears to be merely the shareholder’s alter ego, as is often the case in a closely held corporation, the courts will rarely intervene and pierce the so-called corporate veil unless the result would be “flagrantly opposed to justice” (*Edgington* at para 23).

[51] In response, the Petitioners contend that this is a matter of contractual interpretation of the Shareholders Agreement. I agree. In a closely held corporation like Buffalo, it is often important to a shareholder to have some degree of control over who the other shareholders are. The Agreements were drafted to address just that. Article 10.1 prevents transfers to unrelated third parties without the agreement of all shareholders. The exception to Article 10.1 above is set out in Article 10.2, as follows:

Article 10.2: Exempt Transfers

Exempt Transfers shall be permitted under this Agreement, provided that:

- (a) the Related Party remains such for so long as the Related Party holds the Shares or any part thereof; and,
- (b) prior to the Related Party ceasing to be such, the Related Party transfers its Shares back to the transferring Shareholder or to another Related Party of the transferring Shareholder.

An Exempt Transfer shall not release the transferring Shareholder from its obligations hereunder, such Shareholder to remain jointly and severally liable with the Related Party transferee therefor.

[52] “Related Party” is defined in Article 1.1(t) as:

- (i) any Affiliate of such Shareholder; or,
- (ii) any immediate family member of such Shareholder, including without limitation a spouse (including common law), biological or adopted child, parent or sibling.

[53] Reading these provisions together, I am satisfied that Buffalo, Teda, and 115 intended to do business together as a closely held corporation. To indirectly transfer shares to an unrelated third party, as addressed in the Articles, without consent of the shareholders, would change the business partnership and structure that the contracting parties agreed to. Further, on the facts of this matter, I have no trouble discerning that the Teda Share Transfer was in effect an assignment of the Teda's Retraction Rights to a third party. I find that it is invalid and void.

ISSUE 2: ARE THE EXTENSIONS OF THE REDEMPTION DATE VALID?

[54] As above, the Petitioners argue that the extensions of the Redemption Date were invalid as they were not consented to.

[55] The Articles that govern the Retraction Right and redemption of shares are as follows:

29.3. Class B Retraction Right B

Each holder of a Class B Common Share has the right, exercisable by it at any time after the date that is 18 months after the date of issuance of such Class B Common Share, to require the Company to redeem such Class B Common Share on the terms and subject to the conditions set out in these Articles (the "Class B Retraction Right").

29.4. Procedure to Exercise Class B Retraction Right B

Subject to these Articles, if the holder of a Class B Common Share wishes to exercise the Class B Retraction Right, the holder must give a notice in writing of that exercise (the "Class B Retraction Notice") to the company and to each other holder of Class B Common Shares (the "Other Class B Shareholder"), specifying:

- (1) The number of the holder's Class B Common Shares to be redeemed; and

- (2) The date for retraction of those Class B Common Shares (the “Class B Redemption Date”) which date must satisfy the following requirements:
 - (a) if at that time any Other Class B Shareholder has already specified a Class B Redemption Date that has not passed, then that date already specified is the Class B Redemption Date; or
 - (b) in any other case, the Class B Redemption Date must be at least two months after the latest date that such Class B Retraction Notice is given to the Company and to the Other Class B Shareholders.

[56] Article 29.7(2) provides that the Redemption Date may be changed by agreement of the Company and all Class B shareholders:

29.7. Redemption

(1) The Company will redeem the number of Class B Common Shares specified in the relevant Class B Retractions Notice on the applicable Class B Redemption Date, on the terms and subject to the conditions set out in these Articles.

(2) Despite the terms and conditions set out in these Articles, the applicable Class B Redemption Date can be changed by the agreement of the Company and all holders of Class B Common Shares.

[Emphasis added.]

[57] The Petitioner says that Buffalo did not agree to the extensions, as required by the Articles. The extensions were simply effected via letter from counsel for Teda.

[58] This is significant. If the extensions are invalid, then the Class B shares are deemed to have been cancelled on the Redemption Date pursuant to Article 29.10 which states:

29.10. No Further Rights

The class B Common Shares to be redeemed on any Class B Redemption Date will be deemed to have been redeemed on the date and the holders of those Class B Common Shares will have no further rights against the Company in respect of those Class B Common Shares, except the right to be paid in full Class B Redemption Amount, and those Class B Common Shares:

- (1) will be, and will be deemed to have been, redeemed; and
- (2) unless otherwise determined by the Company will be, and will be deemed to be, cancelled;

on such Class B Redemption Date.

[Emphasis added.]

[59] If the extensions are invalid, then the Class B shares are deemed to be cancelled as of November 13, 2021, and the only right Teda, as (the former) Class B shareholder had as of that date was to be paid the redemption amount. The consequence of this is that Teda did not hold the Class B shares such that it could transfer them to Runsen. Nor did Teda have the voting rights to appoint Chai Sr. interim director, to call a meeting, or to vote to appoint Chai Jr. director of Buffalo.

[60] Teda takes the position that the extensions were valid.

[61] The provisions are clear. Class B shareholders have the right to set a Redemption Date. They also have the right to extend the Redemption Date with the consent of Buffalo.

[62] There is no evidence that the consent of Buffalo was sought or obtained. As a result, I find that the extensions were invalid. I further find that pursuant to Article 29.10, the Class B shares were cancelled on November 13, 2021. All actions taken by Teda after that date are void, including:

- a) The transfer of the Class B shares to Runsen;
- b) The appointment of Chai Sr. as interim Director of Buffalo in place of Wang;
and
- c) The appointment of Chai Jr. as Director of Buffalo.

[63] What Teda is entitled to is to be paid the redemption amount once that amount is determined.

ISSUE 3: HAVE THE AFFAIRS OF BUFFALO BEEN CONDUCTED IN A MANNER OPPRESSIVE TO THE PETITIONERS WHICH JUSTIFIES RELIEF UNDER S. 227 BCA?

[64] The Petitioners bring this action for oppression remedy under s. 227 of the Act which reads in part as follows:

- (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.

[Emphasis added.]

[65] Oppression is an equitable remedy that seeks to ensure fairness, that is, that which is just and equitable. It gives the court a broad discretion to enforce not only what is legal, but what is fair: *BCE Inc. v. 1976 Debentureholders*, 2008 SCC 69 [BCE] at para. 58.

[66] Oppression is fact-specific. The court will consider business realities and the context of the impugned conduct, rather than the narrow legalities associated with it. Whether conduct is just and equitable is measured by the reasonable expectations of the stakeholders in the context and in regard to relationships at play: *BCE* at para. 59.

[67] To prove oppression, the claimant must first “identify the expectations he or she claims have been violated ... and establish that the expectations were reasonably held.” The nature of the expectations must be objective and contextual given general commercial practice, the nature of the corporation, the relationship between the parties, past practice, steps that the claimant could have taken to protect themselves, and any representations and agreements between the parties.

[68] Next, the claimant must establish that the failure to meet said reasonable expectations involved unfair conduct and prejudicial consequences. That is, the affairs of the company are being conducted in a manner that is “burdensome, harsh, and wrongful,” “a visible departure from the standards of fair dealing,” or an “abuse

of power” going to the probity of how the company’s affairs are being conducted: *BCE* at para. 92.

[69] The Petitioners outline their reasonable expectations in the Amended Petition as follows:

At all material times, the Trust and William reasonably expected that:

- a) Wang, in exercising his responsibilities as Buffalo’s sole director, would strictly comply with its corporate governance rules, and that he and Teda would consult with the Trust with respect to any proposed changes in Buffalo’s direction and affairs;
- b) Wang, in exercising his responsibilities as Buffalo’s sole director, would manage its affairs in accordance with the requirements of the *Act* and the Articles;
- c) William and Ms. Lv, as the guiding force behind the Project, through 115, would manage its development to conclusion;
- d) If there was to be any interference with 115’s role, the Shareholders would deal with 115 fairly and only after full and proper consideration of its interests had been given;
- e) Wang would recognize and respect William’s and the Trust’s reasonable expectations, as shareholders, and would not act inconsistently with those expectations, and not in a way that was unfair;
- f) William would remain involved in the project through to completion and his interest would be to participate in the profit in accordance with his rights as shareholder or beneficial shareholder;
- g) Wang would consider and enforce any limitations to Teda’s right to restrict the Class “B” shares in the best interest of Buffalo and its shareholders, and in particular, would not permit Buffalo to become insolvent.

[70] The Petitioners say that their reasonable expectations were breached by the respondents when Chai Sr., Chai Jr., Wang, and Teda “conspired” together to “injure William, to deprive him of any interest or benefit in the development, and to unlawfully divert to themselves the advantages, property, and interests that William, the Trust, Buffalo, and 115 have earned over the course of the project.” More specifically, the Petitioners plead that:

- a) Wang agreed to breach his fiduciary duty to Buffalo, and act in breach of the Articles by not objecting to the redemption of Class B shares which would render Buffalo insolvent. Wang failed to make the redemption determination despite the fact that Buffalo is unable financially to redeem the shares;
- b) Wang failed to protect Buffalo's confidential information by sharing it with Chai Sr.;
- c) Wang and Teda excluded William, 115, and Ms. Lv from the project. They instructed key consultants to Buffalo not to disclose information about Chai Sr. to 115's representatives;
- d) Wang transferred the shares in Teda to Runsen contrary to the Articles;
- e) The respondents voted Chai Jr. as director of Buffalo when Teda was not authorized to hold a meeting or vote.

[71] There is no evidence from Ms. Lv as the Trustee for the Trust regarding the expectations of the Trust or how the Trust was oppressed. The only evidence of the reasonable expectations of the Petitioners comes from William's affidavit. William attests to having the following expectations:

- a) That Wang would take his duties as Director of Buffalo "seriously" and manage Buffalo in keeping with its best interests;
- b) That Wang would avoid conflicts of interest and act in accordance with the Articles;
- c) That Wang would consider and enforce the limitation to Teda's right of retraction;
- d) That he and Ms. Lv would continue to direct the project;
- e) That Wang would consult with him and Ms. Lv in respect of proposed changes in Buffalo's direction and, if there was a change, to deal with 115 fairly.

[72] While William is "concerned that [Wang] intends to terminate the Management Agreement after Teda seizes the Trust's shares," that is simply

William's subjective opinion. In any event, any dispute between Buffalo and 115 (a non-party) is subject to the arbitration clause in the Management Agreement.

[73] The only specific conduct being challenged is Buffalo's failure to resist or limit the Right of Retraction. There are two issues with this challenge. First, Teda has the contractual right to deliver a Retraction Notice; it was a term that was specifically negotiated. And second, the Articles do not require Buffalo to object to the Retraction Notice. Rather, the Articles grant Buffalo the right to refrain from redeeming the Class B shares to the extent that such redemption would render the company insolvent. Buffalo is unable to make the determination because 115 has not provided it with the financial information it requires to do so. As a result, it is not yet known if the Articles have been satisfied as the Petitioners have refused to provide the necessary information.

[74] Having considered all of the submissions and all of the evidence, I find that the Petitioners have failed to establish the elements of an oppression claim.

ISSUE 4: SHOULD THE PETITIONERS BE GRANTED LEAVE TO COMMENCE A DERIVATIVE ACTION IN THE NAME OF BUFFALO AGAINST TEDA, WANG, CHAI SR., AND/OR CHAI JR. PURSUANT TO S. 233 OF THE BCA?

[75] Under s. 232 of the *Act*, a shareholder or director may apply to Court for leave to bring a proceeding in a company's name to enforce a right, duty, or obligation owed to the company or to obtain damages for a breach.

[76] As per s. 233(1) of the *Act*, the complainant must show the following in order to obtain leave to commence a derivative action:

- a) the complainant has made reasonable efforts to cause the directors of the company to prosecute or defend the legal proceeding,
- b) notice of the application for leave has been given to the company and to any other person the court may order,
- c) the complainant is acting in good faith, and
- d) it appears to the court that it is in the best interests of the company for the legal proceeding to be prosecuted or defended.

[77] Complainant is defined in s. 232(1) of the *Act* as a shareholder or director of the company. Shareholder “includes a beneficial owner of a share of the company and any other person whom the court considers to be an appropriate person to make an application under this section” (s.232(1)).

[78] The Petitioner says that:

- a) “William and the Trust have made reasonable efforts to cause Wang to prosecute a claim on behalf of Buffalo against Teda and himself.”
- b) “The Trust and William are acting in good faith.”
- c) “It is in the best interests of Buffalo that its confidential information be protected” and not further disgorged.

[79] Further, the Petitioners say that “Buffalo stands to be harmed by the Conspiracy” (that is the alleged agreement between Chai Sr., Chai Jr., Wang, and Teda to injure William and to deprive him of any interest in the project).

[80] The Respondents argue that the Petitioners’ application fails to satisfy any of the statutory prerequisites. I agree.

[81] First, there is no evidence that the Petitioners have made any efforts to cause any of the directors past or present—Wang, Chai Sr., or Chai Jr.—to pursue a claim.

[82] Second, there is no evidence upon which it can be determined that a derivative action is in the best interests of Buffalo. It appears that the primary objective is to protect William’s interest in the Project. Regardless, I am unable to find that the proposed action is in Buffalo’s best interests as it has not been made clear what the proposed action is. The Court cannot grant leave to bring an action “based on hypotheticals concerning the scope and substance of the claims”: see *Lost Lake Properties Ltd. v. Sunshine Ridge Properties Ltd.*, 2009 BCSC 938 at para 49.

[83] The Petitioners’ application to commence a derivative action is dismissed.

CONCLUSION

[84] I make the following orders:

- a) The January 5, 2022, transfer of Wang's shares in Teda from Wang to Runsen is void;
- b) The Meeting of Shareholders of Buffalo held on February 2, 2022, was not validly held and any Resolution or votes cast at that meeting are a nullity;
- c) The election of Chai Jr. as Director of Buffalo, which took place at the Extraordinary Meeting of the Shareholders held February 2, 2022, is set aside;
- d) The extensions of the Redemption Date are invalid;
- e) As per Article 29.10, the Class B shares in Buffalo are deemed to have been redeemed and cancelled on the original Redemption Date being November 13, 2021;
- f) As per Article 29.10, the Class B shares in Buffalo held by Teda have no rights other than the right to be paid pursuant to the Retraction Notice and subject to Article 29.5;
- g) The Petitioners' application for oppression remedy is dismissed. Accordingly, Orders sought 1, 2, 6, 11, 12 and 13 of the Amended Petition are dismissed;
- h) The Petitioners are not entitled to commence a derivative action in the name of Buffalo against Wang, Chai Sr., Chai Jr., or Teda. Orders sought 4 and 5 of the Amended Petition are dismissed;
- i) Order sought 3 in the Amended Petition is dismissed as abandoned;
- j) The original Petition is dismissed.

[85] If the parties are unable to agree on costs, a time may be set through Scheduling to address same.

“The Honourable Madam Justice Murray”