COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *1264777 B.C. Ltd. v. 0694813 B.C. Ltd.,*
2023 BCCA 410

Date: 20231110
Docket: CA48889; CA48890

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Between:

1264777 B.C Ltd. and Gurdev Kaur Gill

Appellants
(Respondents)

And

0694813 B.C. Ltd.

Respondent
(Petitioner)

And

Emi Herawati

Respondent
(Respondent)

- and -

Docket: CA48890

Between:

1264777 B.C. Ltd. and Gurdev Kaur Gill

Appellants
(Petitioners)

And

Surinder Kaur Gill, 0694813 B.C. Ltd., and Emi Herawati

Respondents
(Respondents)

Before: The Honourable Madam Justice Bennett
The Honourable Mr. Justice Hunter
The Honourable Mr. Justice Voith

On appeal from: An order of the Supreme Court of British Columbia, dated January 30, 2023 (*1264777 B.C. Ltd. v. Gill*, 2023 BCSC 131, Vancouver Docket S221670).

Counsel for the Appellants, 1264777 B.C. Ltd. and Gurdev Kaur Gill:	B.B. Olthuis, K.C. N.P.R. Bond
Counsel for the Respondent, 0694813 B.C. Ltd.:	R. Mittal S.L. Clarke
Place and Date of Hearing:	Vancouver, British Columbia September 12, 2023
Place and Date of Judgment:	Vancouver, British Columbia November 10, 2023

Written Reasons by:
The Honourable Mr. Justice Voith

Concurred in by:
The Honourable Madam Justice Bennett
The Honourable Mr. Justice Hunter

Summary:

The appellant challenges i) the chambers judge's interpretation and application of s. 146(2) of the Business Corporations Act, which creates an exception to the indoor management rule, and ii) the finding that the appellant did not advance the argument that the respondent had actual knowledge of the purported fraud. Held: Appeal dismissed. The chambers judge was correct in determining there was no evidence of actual knowledge on the part of the respondent, as his evidence about his actual knowledge was both uncontested and unchallenged. Further, the appellant did not meaningfully advance the argument that the respondent had actual knowledge of some impropriety. Thus, the live issue before the chambers judge was primarily related to constructive knowledge. There was ample evidence in the record that supported the judge's findings of a lack of constructive knowledge of any wrongdoing on the part of the respondent.

Reasons for Judgment of the Honourable Mr. Justice Voith:

[1] These appeals arise out of a purported fraud engineered by two individuals who unlawfully accessed the corporate registry for 1264777 B.C. Ltd. ("777") and filed a notice of change of directors listing one of them, Surinder Kaur Gill, ("Surinder") as the sole director of the company. At the time, 777 owned an unencumbered vacant property located in Vancouver (the "Property"). Surinder and her husband, Tarsem Singh Gill ("Tarsem"), then approached 0694813 B.C. Ltd. ("813") and another individual and caused 777 to enter into two mortgages and an assignment of rents against title to the Property.

[2] 813 thereafter filed a foreclosure petition, while 777 and its sole shareholder, Gurdev Kaur Gill ("Gurdev"), filed a petition seeking to set aside the two mortgages. Both petitions came before the judge at the same time. The threshold question before the judge was whether he could determine the issues before him solely on the basis of the affidavit evidence that had been filed. That issue turned, in part, on whether the indoor management rule under s. 146(1) of the *Business Corporations Act*, S.B.C. 2002, c. 57 [*BCA*] governed. Unless the actual or constructive knowledge exception under s. 146(2) of the *BCA* was engaged, it was not open to 777 to argue that Surinder was not its director when 777 granted a mortgage over the Property to 813.

[3] The judge determined he could decide the issues before him on the basis of the affidavit evidence that had been filed by the parties. He further determined that neither the actual knowledge nor the constructive knowledge exceptions under s. 146(2) of the *BCA* were engaged. He granted the relief sought by 813 in its foreclosure petition and dismissed the petition of 777 and Gurdev.

[4] The appeal brought by 777 and Gurdev focuses on the judge's findings relating to the application of s. 146(2) of the *BCA*. For the reasons that follow, I would dismiss the appeal.

1) Background

[5] These appeals arise out of cross-petitions. The first is a foreclosure petition arising from a mortgage in the principal amount of $1,200,000, granted by 777 to 813 over the Property and registered on October 16, 2020 (the "Mortgage"). The relief sought in this petition included an *order nisi* with a one-day redemption period.

[6] The second petition seeks various forms of relief on behalf of 777 and Gurdev. The judge observed that a number of the parties to this petition shared the same surname and, without intending any disrespect, proposed to refer to them by their first names. I have, for the same reason, adopted the same practice. In this petition, 777 and Gurdev seek to set aside the Mortgage and a separate mortgage granted to Emi Herawati, in the principal amount of $200,000 and registered on December 11, 2020.

[7] The judge observed that Ms. Herawati appeared before him and, as a second mortgagee, expressed her opposition to the foreclosure petition. She did not participate further in the hearing before the judge.

[8] The position of 777 before the judge was that the Mortgage was obtained by a fraud orchestrated by Tarsem and Surinder. In September 2020, Gurdev and her husband, Kuldip Gill, ("Kuldip") decided to buy the Property after Tarsem asked Kuldip whether his family wanted to receive an assignment of a purchase and sale agreement for the Property for $1,538,000.

[9] Tarsem is a distant relative of Gurdev and Kuldip. They knew Tarsem was a property developer in the greater Vancouver area and that he had been accused of fraudulent activities in the past. They understood the allegations against him had not been proven in court and Tarsem had told them he had "committed to being entirely honest" since those allegations were made.

[10] Gurdev and Kuldip accepted the assignment from Tarsem and, on or about September 21, 2020, completed the purchase of the Property through 777. At Tarsem's suggestion, they had him incorporate 777 for them. It appears that it was during this process that Tarsem learned the private login details for the online profile through which 777 could make filings in the corporate registry.

[11] When 777 was first incorporated, Gurdev was the sole director of 777. At some point, between September 21 and October 16, 2020, Tarsem and Surinder improperly filed a notice of change of director listing Surinder, in place of Gurdev, as the sole director of 777.

[12] Paramjit Singh Grewal is the principal of 813. He is a real estate developer and private equity lender. He met Tarsem in 1996 and had done business with him in the past. In early October 2020, Tarsem and Surinder approached Mr. Grewal to borrow money for a six-month term for the construction of a duplex on the Property. Surinder told Mr. Grewal the Property was owned by her numbered company and that she thought it would take about six months for construction to reach lock-up (the stage in residential construction when the walls, windows and doors are in place so the structure can be secured).

[13] After undertaking various forms of due diligence, Mr. Grewal agreed to lend $1.2 million to 777 for six months at a rate of 12% per annum.

[14] The loan expired on May 16, 2021. Mr. Grewal asked Surinder and Tarsem about getting repaid and was told he would get his money. He continued to follow up with them about twice a month thereafter. On November 9, 2021, counsel for 813 sent a demand letter to 777. 813 filed its foreclosure petition on February 24, 2022.

2) The judge's reasons

[15] The judge appreciated that he first had to determine the "threshold question" of whether he could decide the issues before him on the basis of the affidavits that had been filed. Relying on *Beedie (Keefer Street) Holdings Ltd. v. Vancouver (City)*, 2021 BCCA 160 at para. 80, he confirmed that for the purposes of Rule 22-1(7) of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009, a triable issue of fact or law is an issue that is not "bound to fail". That test has been expressed differently at different times. In *Memphis Rogues Ltd. v. Skalbania*, [1982] 38 B.C.L.R. 193 at 202, 1982 CanLII 469, this Court said:

> The question has been stated in a number of ways: Is there no real substantial question to be tried? Is there no dispute as to facts or law which raises a reasonable doubt? Is it manifestly clear that the appellants are without a defence that deserves to be tried? Although cast in different terms, all point to the same inquiry, namely, is there a bona fide triable issue?

See also *HGE Administrative Services Ltd. v. Perrick*, 2011 BCCA 308 at para. 18; *Coast Capital Savings Federal Credit Union v. Arbutus Bay Estates Ltd.*, 2021 BCCA 185 at paras. 28 and 30.

[16] The judge identified that under R. 22-1(7)(d) a court may "order a trial of the chambers proceeding, either generally or on an issue, and order pleadings to be filed and, in that event, give directions for the conduct of the trial and of pre-trial proceedings and for the disposition of the chambers proceeding". He identified that R. 21-7(5)(k) specifically allows for such orders in foreclosure proceedings. He also identified that in *Cepuran v. Carlton*, 2022 BCCA 76, this Court, at para. 160, clarified that where a triable issue is raised in a petition proceeding, a judge is not required to refer the matter to the trial list under R. 22-1(7). Instead, they have a discretion to do so or they can employ other pretrial procedures to resolve the issues before them; see also *The Owners, Strata Plan NW 499 v. Louis*, 2022 BCCA 231 at paras. 40–42. The appellants take no issue with the judge's expression of the principles that govern these issues.

[17] The appellants argued the Mortgage was void under ss. 25 and 26 of the *Land Title Act*, R.S.B.C. 1996, c. 250 because it was the product of fraud. The judge

determined these provisions were inapplicable and did not give rise to a *bona fide* triable issue. The appellants have not appealed that conclusion.

[18] The judge next considered whether a triable issue arose under s. 146 of the *BCA*. The appellants accept that the judge's decision to grant 813 an *order nisi* under the foreclosure petition and to dismiss the petition they had brought was "largely premised on his conclusion that there was no triable issue with respect to the indoor management rule". It is this conclusion that underlies the present appeal.

[19] The judge's conclusion has two aspects. On the question of whether 813 had actual knowledge that Surinder was not a director of 777, the judge said: "There is no evidence that, and at the hearing of the petitions [777] did not take the position that, [813] had actual knowledge that Surinder was not a lawful director".

[20] On the question of whether 813 had constructive notice of Surinder's true status, the judge determined that 813's position was bound to fail "because its allegations, even if true, [did] not bring it within the words of s. 146(2) [of the *BCA*]". The judge, however, also considered the specific factual concerns or allegations 777 raised to argue that 813 should have been aware of fraud on the part of Surinder and Tarsem. He concluded that these allegations were "not supported by the evidence".

3) Standard of review

[21] Different aspects of the issues raised by the appellants are subject to different standards of review. In *Coast Capital Savings* at para. 25, this Court confirmed "[i]t is within the discretion of a judge to decide whether there is a *bona fide* triable issue and whether to grant the *order nisi*, and these decisions are entitled to deference on appeal"; see the further authorities referred to at paras. 26–27.

[22] The question of whether the judge properly interpreted s. 146(2) of the *BCA* is a question of law for which the standard of review is correctness and the judge's interpretation is owed no deference: *Housen v. Nikolaisen*, 2002 SCC 33 at para. 8.

The standard of review for the various findings of fact made by the judge is palpable and overriding error: *Housen* at para. 10.

4) Analysis

[23] Section 146 of the *BCA* provides:

> **146** (1) Subject to subsection (2), a company, a guarantor of an obligation of a company or a person claiming through a company may not assert against a person dealing with the company, or dealing with any person who has acquired rights from the company, that
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> (a) the company's memorandum or notice of articles, as the case may be, or articles have not been complied with,
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> (b) the individuals who are shown as directors in the corporate register are not the directors of the company,
>
> (c) a person held out by the company as a director, officer or agent
>
> (i) is not, in fact, a director, officer or agent of the company, as the case may be, or
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> (ii) has no authority to exercise the powers and perform the duties that are customary in the business of the company or usual for such director, officer or agent,
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> (d) a record issued by any director, officer or agent of the company with actual or usual authority to issue the record is not valid or genuine, or
>
> (e) a record kept by or for the company under section 42 is not accurate or complete.
>
> (2) Subsection (1) of this section does not apply in respect of a person who has knowledge, or, by virtue of the person's relationship to the company, ought to have knowledge, of a situation described in paragraphs (a) to (e) of that subsection.

[24] Section 146 represents the codification of the common law “indoor management rule”. The object of the common law rule was to allow persons or entities dealing with a corporation to assume that its internal procedures had been properly complied with: *Royal British Bank v. Turquand* (1885), [1843-60] All E.R. Rep. 435, 119 E.R. 886 (Eng. C.A.); the Supreme Court of Canada later adopted the principles in *Turquand* in *McKnight Construction Co. v. Vansickler*, [1915] 51 S.C.R. 374 at 382–383, 1915 CanLII 605.

[25] Section 146 is worded similarly to functionally equivalent provisions in federal and provincial business corporations legislation: see *e.g.* s. 18 of the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44, s. 19 of the *Business Corporations Act*, R.S.O. 1990, c. B.16 and s. 19 of the *Business Corporations Act*, R.S.A. 2000, c. B-9. The purpose of these various statutory provisions is also consistent. Persons doing business with corporations should not have to be concerned about whether the company's internal housekeeping is in order. Instead, it is the company that should bear the burden of any unauthorized activity by their agents or others; JA VanDuzer, *The Law of Partnerships and Corporations*, 4th ed (Toronto: Irwin Law, 2018) at 238–240; Deborah Cumberford, *The Annotated British Columbia Business Corporations Act*, 3rd ed (Toronto: Thomson Reuters, 2021) (loose-leaf updated 2021, release 3) vol 1 at BCA-289; *AOD Corporation v. Miramare Investment Incorporated*, 2022 ONCA 95 at para. 20, citing *The Midas Investment Corporation v. Bank of Montreal*, 2016 ONSC 3003 at para. 4.

[26] The rule is also intended to ensure the efficient conduct of business; RWV Dickerson, JL Howard and L Getz, *Proposals for a new Business Corporations Law for Canada* (Ottawa: Information Canada, 1971) at 28–29.

[27] Section 146(2) establishes two exceptions to the general rule. The first is if a person has actual knowledge of one or more of the circumstances described in s. 146(1); the second is if the person "ought to know", or has constructive knowledge, of one or more of the circumstances described in s. 146(1) "by virtue of the person's relationship to the company".

i) Actual knowledge

[28] As noted earlier, the judge addressed the issue of "actual" knowledge in two ways. He found "there [was] no evidence that… [813] had actual knowledge that Surinder was not a lawful director [of 813]". He also observed that 777 "did not take the position" that 813 had such actual knowledge. 777 contends the judge erred with respect to both conclusions.

[29] The judge's first finding, that there was "no evidence" of actual knowledge on the part of 813, requires some further context. In his second affidavit dated August 5, 2022, Mr. Grewal deposed:

> 38. At no time did I have any knowledge of any fraudulent matters relating to 777. I understood 777 was Surinder's company and it was 777 to which I advanced the Loan in good faith.
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> 39. The only persons with who I communicated with regarding the Loan were Tarsem Singh Gill and Surinder Kaur Gill. I had no knowledge of Gurdev Kaur Gill or her alleged involvement in 777 and I am therefore unable to provide the Court with any information with respect to the facts deposed to in the Gill Affidavits.
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> 40. As I stated, I had no personal knowledge of Gurdev Kaur Gill or her alleged involvement in 777 at any time during the negotiation of the Loan, the preparation, execution and registration of the mortgage, or after default.

[30] There was no formal application at the hearing before the judge to cross-examine Mr. Grewal on his affidavit. 777 advised the judge that it had not made any such application because it would have been required to lay its "cards on the table as to what [they wanted] to cross-examine Mr. Grewal about". The judge determined the parties should proceed on the basis of affidavit materials alone so that he could determine whether the applications could be decided on that basis or, alternatively, whether it would be necessary to develop "some sort of *Cepuran* procedure". During the hearing before the judge, and in argument on appeal, 777 also indicated that it had documents in its possession that would establish actual knowledge on the part of Mr. Grewal. However, those documents, for measured reasons made by counsel, were never placed before the judge.

[31] Ultimately then, Mr. Grewal's evidence about his actual state of knowledge was both uncontested and unchallenged. The judge was correct when he said there was "no evidence" of actual knowledge on the part of Mr. Grewal.

[32] The appellants further argue that the judge erred in not considering the adequacy of Mr. Grewal's denials more fully. They rely on various authorities in aid of this submission. In *Progressive Construction Ltd. v. Newton*, [1981] 117 DLR (3d) 591 at 596–597, 1980 CanLII 493 (S.C.), Esson J., as he then was, explained that a doubt can be raised about a party's affidavit evidence without there being a need for

the opposing party to file any evidence. For example, "it may be that the applicant's material is worded in an artful and evasive manner so as not to appear trustworthy".

[33] I do not believe such concerns are engaged in this case. There is nothing "artful" or "evasive" about Mr. Grewal's denials.

[34] The appellants also argue that the judge erred when he asserted 777 "'did not take the position'" 813 had actual knowledge of Surinder's wrongdoing and when he said he did not understand 777's application materials "'to contain allegations of fraud against [Mr. Grewal]'". 777 contends the judge's "failure to consider whether there was a triable issue regarding [Mr. Grewal's] participation in the fraud" is a reversible error of law.

[35] To start with, we have established the judge did consider whether there was any evidence of Mr. Grewal's actual knowledge of fraud or impropriety. Having said that, the position that 813 had "actual knowledge" of some wrongdoing was not advanced before the judge in any meaningful way. While the submissions of counsel for 777 did refer to the "actual or constructive knowledge" of Mr. Grewal, or assert that Mr. Grewal "knew or ought to have known", the "actual knowledge" aspect of that enquiry was simply never addressed or developed by 777. In such circumstances, it is not surprising that the judge understood the real or live issue before him was whether 813 and Mr. Grewal had any constructive knowledge of wrongdoing. The judge was only required to grapple with the live issues in the application before him: *R. v. Zsombor*, 2023 BCCA 37 at para. 45; *McKenzie v. Lloyd*, 2018 BCCA 289 at para. 35.

ii) Constructive knowledge

[36] The judge addressed the constructive knowledge of Mr. Grewal and 813 in two ways. First, he looked to the circumstances 777 alleged were suspicious, and that ought to have caused 813 and Mr. Grewal to know of Surinder and Tarsem's fraud, and he determined that those circumstances did not properly fall within the ambit of s. 146(2). This is an interpretive exercise that the parties agree gives rise to a question of law. It is this finding that 777 appeals.

[37] However, the judge also went on to consider whether, "[i]n any event", the allegations 777 relied on to ground its constructive submissions were supported by the evidence. He found they were not and he did not accept that 777's submissions were "sufficient to raise a triable issue that Mr. Grewal or [813 fell] within the constructive knowledge exception in s. 146(2)". 777 does not appeal these findings of fact.

[38] 777 does submit it raised other issues or indicia of concern that were not addressed by the judge in his reasons. The judge addressed each of the specific issues that 777 raised in its written materials, presumably because these were the issues 777 chose to focus on. There was, however, no need for the judge to expressly address each of the issues or arguments 777 raised: *R. v. J.M.H.*, 2011 SCC 45 at para. 32; *R. v. Dinardo*, 2008 SCC 24 at para. 30. To the extent that 777 raises an issue about the sufficiency of the judge's reasons, though 777 did not express its concern in those terms, a judge's reasons are not viewed "on a stand-alone, self-contained basis": *R. v. R.E.M.*, 2008 SCC 51 at para. 37. Rather, they are viewed in the context of the record and the submissions of counsel: *R.E.M.* at para. 37; *Shannon v. Shannon*, 2011 BCCA 397 at para. 9.

[39] In this case, there was a significant body of direct and circumstantial evidence before the judge that spoke to the *bona fides* of 813 and Mr. Grewal. Between 2001 and 2008, Mr. Grewal did a successful property deal with Tarsem and made four loans, secured by mortgages, to Tarsem's children. These loans were repaid, except for one that occurred during the 2009 economic downturn. The judge also said:

> [26] Mr. Grewal deposes that he conducted due diligence, including checking the property's assessed value, prices of properties for sale in the area, speaking with architects and other builders in the area, and confirming that a duplex could be built on the Property. He agreed to lend Surinder $1,200,000 for the six-month period at a rate of 12% per annum.
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> [27] On October 16, 2020, an opinion letter was prepared for the Mortgagee by solicitors. The opinion letter states that the Mortgagor is a British Columbia company in good standing and that it has the corporate power to grant security. Further, the opinion letter confirms that the identities of the authorized signatories of the Mortgagor were verified.

[40] There was ample evidence in the record that supported the judge's findings of a lack of constructive knowledge of any wrongdoing on the part of 813 and Mr. Grewal. The judge's second, or alternative, basis for finding that 813 and Mr. Grewal did not have constructive knowledge of any wrongdoing is dispositive of this ground of appeal.

[41] However, because the judge's interpretation of s. 146(2) may be expressed too narrowly, I have decided to address this issue as well. The judge said:

> [59] In my view, the Mortgagor's position on the constructive knowledge exception is bound to fail because its allegations, even if true, do not bring it within the words of s. 146(2). Subsection (2) states that subsection (1) does not apply in respect of a person who "by virtue of the person's relationship to the company, ought to have knowledge of a situation described in paragraphs (a) to (e) of that subsection".
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> [60] Paragraphs (a) to (e) specifically deal with compliance with a company's memorandum or notice of articles, the authority of directors, officers or agents, and the records issued by directors, officers or agents, or kept by the company – not with circumstances that might lead one to suspect fraud.
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> [61] In the other words, the question under s. 146(2) is not whether the Mortgagee ought to have known, in general terms, that there were suspicious circumstances. The question in this case is whether the Mortgagee knew, or ought to have known *by virtue of the person's relationship to the company*, that
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> > 146(1) …
> >
> > > (b) the individuals who are shown as directors in the corporate register are not the directors of the company, …
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> [62] There is no evidence that Mr. Grewal had any relationship to the company – that is, the Mortgagor. Therefore, there is no basis for asserting that he ought to have known that Surinder was not the company's director by virtue of Mr. Grewal's relationship to the Mortgagor.
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> [Italic emphasis in original; underline emphasis added.]

[42] The appellants submit the interpretation of s. 146(2) was not argued before the judge and neither party advanced an interpretation of the provision that is consistent with the judge's conclusions. They submit the judge approached the meaning of s. 146(2) too narrowly. They argue that in the case of a newly formed company, as was the case here, a person who does business with the company will necessarily have no "relationship with the company". In such circumstances, based

on the judge's interpretation, s. 146(2) will be inapplicable regardless of what other obvious indicia of impropriety or concern may attend the transaction. They argue that s. 146(2) should be interpreted more broadly and ask whether a person "in all of the circumstances" ought to know that there is some concern with one or more aspects of s. 146(1)(a)-(e).

[43] The question raised by the appellants has broader import. For example, it also extends to circumstances where a party enters into a transaction with a company for the first time. Here too, arguably, the person has no "relationship with the company".

[44] The specific question raised by the appellants does not appear to have been expressly considered by the courts. Certainly, there are cases where courts have concluded that something arising from the previous relationship of a person or entity with a company should have caused that person to know that an aspect of s. 146(1)(a)-(e) was of concern.

[45] Thus, in *Cavell Developments Ltd. v. Royal Bank of Canada*, [1991] 48 B.L.R. 80 at 94, 1990 CanLII 415 (S.C.), aff'd [1991] 78 D.L.R. (4th) 512, 1991 CanLII 749 (C.A.), the Court concluded the bank ought to have been aware "something was amiss" when an individual, purporting to act with the authority of a company, certified a resolution claiming to be both president and secretary of the company. However, that assertion was inconsistent with the corporate information the company had filed earlier with the bank.

[46] In *Ramey v. Winkleigh Co-operative Housing Corporation*, 2010 ONSC 4676, a representative of the defendant signed a contract with the plaintiff in circumstances where the plaintiff was aware of limitations on the signing authority of the individual it dealt with: at para. 39. The court determined the plaintiff could not rely on the indoor management rule and should have made inquiries to ensure the contract had the necessary prior approval from the board of directors. See also *Royal Bank v. Ag-Com Trading Inc.*, [2001] O.J. No. 474 at paras. 66–70, [2001] 104 A.C.W.S. (3d) (S.C.J.).

[47] There are other cases, however, where parties have sought to set aside an agreement or transaction on grounds that are, at least in part, unrelated to any past relationship between the parties or knowledge of the corporate affairs of the company. For example, in *Accra Wood Products Ltd. (Bankruptcy of)*, 2014 BCSC 1259, a trustee in bankruptcy, who unsuccessfully sought to avoid the application of the indoor management rule, argued a creditor should have known a credit agreement had been signed without authority. In aid of this submission, the trustee relied on various factors including the terms of the credit application and aspects of general lending practice; at para. 21.

[48] In *Schaus v. Mountain Ridge Developments Inc.*, 2009 ABQB 94, the plaintiffs sued to foreclose on a mortgage granted by the defendant. The defendant argued that the mortgage had been granted without authority and the plaintiffs ought to have known this. The defendant relied on different indicia of concern such as the initial absence of its corporate seal on some documents and delivery of some cheques payable on the company account of one of the directors of the defendant rather than the account of the defendant corporation: at paras. 18, 20–21. Though the defendant was not successful, its submissions support a constructive knowledge inquiry that extends beyond the relationship between the two parties.

[49] The modern rule of statutory interpretation confirms that “statutory interpretation cannot be founded on the wording of legislation alone”: *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27 at para. 26, 1998 CanLII 837. Instead, those words are to be read in their entire context, in their ordinary and grammatical sense and harmoniously with the object of the legislation in question: *Rizzo* at para. 41.

[50] In my view, there are problems with interpreting the constructive knowledge component of s. 146(2) so narrowly as to exclude any evidence, indicative of fraud or impropriety, that is not somehow tied to the “person’s relationship to the company”. Such an interpretation would not be consistent with the general purpose of the indoor management rule. In *Froom v. Lafontaine*, 2023 ONCA 519, the court said:

> [46] …The third party is entitled to assume that the corporation's internal procedures have been complied with unless the third party knew or ought to have known otherwise [Footnote omitted.]. Stated differently, the indoor management rule provides that a party dealing with a corporation acting in good faith and without knowledge of any irregularity, is entitled to assume that the corporation has complied with its internal policies and procedures.

[51] This broad description of the indoor management rule and its purpose extends beyond concerns that emerge from a third party's relationship to the company alone. At the same time, reliance on legislative purpose does not allow a court to wholly ignore the language of a statutory provision (*ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board)*, 2006 SCC 4 at paras. 39, 71, 78–80 and 86; *University of British Columbia v. Berg*, [1993] 2 S.C.R. 353 at 371, 1993 CanLII 89). Instead, the object of the interpretive exercise is to achieve harmony or coherence between language, purpose and context: R Sullivan, *The Construction of Statutes*, 7th ed (Toronto: LexisNexis, 2022) at 257–258.

[52] In this case, the difficulty arises from the word "relationship". That word is often defined to mean "the way in which two or more people or things are connected…":*Concise Oxford English Dictionary*, 11th ed, revised (Oxford, U.K.: Oxford University Press, 2008) at 1214. In this sense, the word often suggests some existing or pre-existing association. But that need not be so. Common synonyms for the word "relationship" include "interaction", "dealings" and "business": *The Merriam-Webster Thesaurus*, *sub verbo* "relationship," accessed October 19, 2023 (<https://www.merriam-webster.com/thesaurus/relationship>). Each of these synonyms can readily arise in the context of a single transaction.

[53] When viewed in this light, the question under s. 146(2) can include issues that arise from past interactions between the parties and that ought to cause one of them to be concerned about the matters addressed in s. 146(1). But they can also arise from the circumstances of a particular transaction. Neither the language of s. 146 nor the purpose of the indoor management rule necessarily excludes certain categories of evidence from the scope of s. 146(2) and the court's consideration of a party's constructive knowledge. Thus, there may well be cases where indicia of

concern or potential impropriety, unrelated to the person's relationship with the company, leads a court to conclude that a contracting party "ought to have known" of some irregularity within the company's internal policies and procedures.

[54] As noted earlier, in this case the judge found there was "no evidence" of any such indicia of concern before him.

Disposition

[55] In my view, the appeal should be dismissed.

"The Honourable Mr. Justice Voith"

I AGREE:

"The Honourable Madam Justice Bennett"

I AGREE:

"The Honourable Mr. Justice Hunter"