

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Yinghe Investment (Canada) Ltd. v. CCM  
Investment Group Ltd.*,  
2024 BCSC 1477

Date: 20240813  
Docket: S241955  
Registry: Vancouver

Between:

**Yinghe Investment (Canada) Ltd.**

Petitioner

And:

**CCM Investment Group Ltd. and Run Guo Holdings Ltd.**

Respondents

Before: The Honourable Justice Warren

## Reasons for Judgment

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Place and Dates of Hearing:

Vancouver, B.C.  
June 11 and 12, 2024

Place and Date of Judgment:

Vancouver, B.C.  
August 13, 2024

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**Introduction**

[1] This petition proceeding represents one aspect of a multifaceted shareholder dispute between Yinghe Investment (Canada) Ltd. (“Yinghe”) and Run Guo Holdings Ltd. (“Run Guo”), each of which is a shareholder of CCM Investment Group Ltd. (“CCM”). In this chapter, the central question is whether Yinghe ought to have been able to vote some of the shares of CCM owned by Run Guo at CCM’s annual general meeting held on March 28, 2024 (the “AGM”).

[2] Yinghe delivered a proxy to CCM to vote the shares in question, but Run Guo then delivered a revocation of the proxy. A representative of Run Guo, Mr. Xin Liu, was chairing the AGM. He determined that the revocation was valid and, accordingly, the shares in question could be voted by Run Guo and not Yinghe.

[3] The petitioner, Yinghe, seeks relief pursuant to s. 227 or s. 228 of the *Business Corporations Act*, S.B.C. 2002, c. 57 (the “Act”). Section 227 gives the court broad jurisdiction to grant relief where, among other things, the affairs of a company have been conducted, or the powers of the directors have been exercised in a manner that is oppressive to a shareholder, or where some act of the company has been done that is unfairly prejudicial to a shareholder. Section 228 gives the court broad jurisdiction to grant relief where a company or director, among others, contravenes a provision of the Act or the articles of a company, among other things.

[4] Specifically, Yinghe seeks:

1. A declaration that Yinghe was entitled to vote 1,000 shares of CCM owned by Run Guo at the AGM.
2. A declaration that the proxy dated March 28, 2024 appointing Jian Sheng Chen as proxy holder for the 1,000 shares in question was valid.
3. A declaration that the revocation of proxy of Run Guo dated March 28, 2024 was invalid.
4. An order varying the result of the following resolutions at the AGM:

- (a) the resolution to elect MNP as auditor of CCM was defeated with 511,000 votes against and 509,000 votes in favour;
- (b) the resolution to elect Xiao Tong Fan as a director of CCM was defeated with 511,000 votes against and 509,000 votes in favour;
- (c) the resolution to elect Liu Xin as a director of CCM was defeated with 511,000 votes against and 509,000 votes in favour;
- (d) the resolution to elect Dapei Lu as a director of CCM was defeated with 511,000 votes against and 509,000 votes in favour; and
- (e) the resolution to elect Jian Sheng Chen as a director of CCM was carried with 511,000 votes in favour and 509,000 votes against.

5. Costs.

[5] Run Guo opposes the granting of all of the relief sought by Yinghe.

[6] CCM does not contest the validity of the proxy but takes the position that the revocation of the proxy was valid and the chair of the AGM, Xin Liu, properly gave effect to it.

**Background**

[7] CCM is a British Columbia company. It has four corporate shareholders. The principals of the shareholders of CCM are all Chinese businesspersons. Many of the documents relating to the management of CCM were written in Chinese without the assistance of a lawyer.

[8] Yinghe owns 50 percent of the shares of CCM. Its nominee to CCM's board has historically been Jian Sheng Chen.

[9] Run Guo owns 35 percent of the shares of CCM. For many years, Guoqiang Liu was Run Guo's nominee to CCM's board, but since March 2023 its nominee has

been Xin Liu, who is the son of Guoqiang Liu. Mr. Liu Jr. is currently the sole director of Run Guo. His mother and his father, Mr. Liu Sr., are former directors of Run Guo.

[10] Yi Teng Investment Inc. owns 10 percent of the shares of CCM. Its nominee to CCM's board has historically been Xiao Tong Fan.

[11] Dasmart International Consulting Ltd. owns five percent of the shares of CCM. Its nominee to the CCM board has historically been Dapei Lu.

[12] Yi Teng and Dasmart did not file responses to the petition despite being served.

[13] CCM was incorporated in 2007. At the time of its incorporation, it had two shareholders, Yinghe and Mo Yeung International Enterprise Ltd. ("Mo Yeung").

[14] CCM developed a mixed-use strata building in Richmond known as "the Grand at Lansdowne" (the "Building").

[15] The shareholders of CCM were in a period of transition between 2011 and 2013 as CCM explored how to finance the Building.

[16] As of February 28, 2012, Yinghe held 50 percent of CCM's shares; Mo Yeung held 25 percent of CCM's shares; Dasmart held five percent of CCM's shares; Yi Tang held ten percent of CCM's shares; and Broadway Camera Ltd. ("Broadway Camera") held ten percent of CCM's shares.

[17] In or about May 2012, Yinghe acquired Mo Yeung's shares in CCM, using the proceeds of a loan from Mr. Liu Sr., and thereby became a 75 percent shareholder of CCM. Mr. Chen and Mr. Liu Sr. had known each other for a couple of years, through their involvement in a real estate development in Beijing.

[18] By the summer of 2012, the Building project had entered a critical stage. At a CCM shareholders meeting and directors meeting held on June 8, 2012, it was agreed that Mr. Chen would act as chair of CCM, that he would be invested with considerable authority, and that he would not be removed as chair until the debts of

CCM had been settled. This agreement was recorded in a document titled “CCM 2012 Shareholders Meeting Resolution” (the “June 2012 Resolution”).

[19] The June 2012 Resolution also provided that it would take precedence over any previous or subsequent shareholders’ resolution and that if any shareholder transferred shares to another party, the new shareholder would be given notice of the June 2012 Resolution and must accept it.

[20] In July 2012, Mr. Liu Sr. expressed an interest in acquiring some CCM shares. Yinghe agreed to sell part of its stake, but Mr. Chen wanted to ensure that Yinghe maintained control of CCM. Yinghe planned to acquire Broadway Camera’s ten percent stake in CCM, such that it would hold 85 percent of CCM’s shares. Yinghe and Mr. Liu Sr. agreed that Yinghe would sell a 35 percent stake in CCM to Mr. Liu Sr., to be held by a company to be incorporated by Mr. Liu Sr., thereby reducing Yinghe’s stake to 50 percent, but that Yinghe would retain the voting rights to a portion of the shares transferred to Mr. Liu Sr. such that Yinghe would retain control over 55 percent of CCM’s shares. This was recorded in an agreement between Yinghe and Mr. Liu Sr. titled “Debt-Equity Swap Agreement” and dated July 15, 2012 (the “Swap Agreement”). As translated from Chinese, the Swap Agreement provides that the “voting power” Mr. Liu Sr. thereby authorized Yinghe to exercise “under any circumstances corresponding to 5 percent of the equity is irrevocable”, and that “[e]ither party may not terminate this agreement unilaterally without the consent of both parties”.

[21] The Swap Agreement also provides (again as translated from Chinese) as follows:

1. ... Party B [defined as Mr. Liu Sr. and the company he was going to register to hold the CCM shares] shall exercise rights of 30% of the equity and authorize Party A [Yinghe] to exercise the voting power corresponding to 5% of the equity. Party A shall be the exclusive agent (Party B will not issue a power of attorney and a letter of authorization on voting separately). Party B’s authorization includes:

1.1 Attending shareholder meetings on behalf of Party B;

1.2 Deciding on the business policies and investment plans of the company on behalf of Party B;

- 1.3 Examining and approving board reports on behalf of Party B;
- 1.4 Electing board directors on behalf of Party B;
- 1.5 Exercising voting power on behalf of Party B on items where shareholders meeting and resolutions are required in accordance with relevant laws or the articles of the Company.

2. Party B shall agree with Party A regarding all matters reviewed at ccm's shareholder meetings, sign relevant legal documents in time, recognize and perform ccm articles, shareholder and board resolutions, agreements, and contracts made before this Agreement. If Party B violates any of the terms of this agreement, Party B shall pay Party A CAD500,000, the discount given by Party A to Party B for equity purchasing, to compensate for Party A's loss and other financial losses sustained by Party A.

[22] The Swap Agreement was executed before the incorporation of Run Guo. After Run Guo was incorporated, Mr. Liu Sr., on behalf of Run Guo, executed a document dated August 30, 2012 and titled "Shareholder Voting Authorization Letter" (the "Authorization Letter"). The Authorization Letter states that the authorization is given "in accordance with the Swap Agreement", and it contains the following clause (as translated from Chinese):

Run Guo Holdings Ltd. hereby commits irrevocably that it authorizes a proxy appointed by Yinghe to exercise 5% out of 35% of the voting power of CCM, that the principal shall not give specific instructions to the proxy regarding voting, and the proxy shall vote at his/her discretion, including but not limited to attending CCM shareholder meetings, drafting and amending the Articles of the company, electing board directors, General Manager, signing relevant meeting documents, etc., and that Run Guo shall exercise 30% of the voting power. This Authorization Letter shall be valid until CCM's claims and debts are fully settled.

[23] According to a second translation, the last sentence of the clause quoted above reads: "The term of this proxy authorization letter shall expire when the CCM debt and the claim for such debt have been cleared off". Nothing turns on the difference in the wording of the translations of that sentence.

[24] Unlike the Authorization Letter, the Swap Agreement did not expressly provide that it would terminate or cease to be valid upon payment of CCM's debts.

[25] The Swap Agreement and Authorization Letter were disclosed to the then shareholders of CCM at a meeting on September 20, 2012, including Yi Teng and

Dasmart. This was documented in special resolutions of CCM (the “September 2012 Resolution”) that provided, in part, that Run Guo had issued the Authorization Letter by which Yinghe would exercise Run Guo’s “voting power corresponding to 5% of the equity of CCM while [Run Guo] shall exercise the voting power corresponding to 30% of the equity of CCM”; that “Yinghe has 55% of the voting power of CCM in total”; that “the special resolutions had been approved unanimously by the shareholders and directors”; and changes “must be unanimously approved by 100% of the shareholders and all directors”.

[26] On October 1, 2012, Yinghe transferred 35 percent of the equity in CCM to Run Guo, and on November 26, 2013, Yinghe acquired ten percent of the equity in CCM from Broadway Camera. The shareholders’ proportionate interests in CCM have been stable since that time, as follows: Yinghe holds 50 percent; Dasmart holds five percent; Yi Teng holds ten percent; and Run Guo holds 35 percent.

[27] CCM operated its affairs with Mr. Chen as chair until 2023.

[28] On March 20, 2023, an annual general meeting of the shareholders of CCM was convened and a series of decisions were made, including removing Mr. Chen as chair and director. Mr. Chen and Yinghe did not attend the meeting. They say they did not have notice of it.

[29] Yinghe then filed a petition to have Mr. Chen restored as director and chair. That petition was heard by Justice Stephens on December 18, 2023. Justice Stephens found that the CCM Board did not authorize the March 20, 2023 meeting and that it was called unlawfully. Among other things, he declared that the March 20, 2023 meeting was invalid and that Mr. Chen continued to be a director of CCM and chair of the Board, and he directed that CCM hold an annual general meeting by the end of March 2024. Justice Stephens’ decision is under appeal.

[30] CCM then called the AGM for March 4, 2024. On February 27, 2024, Yinghe delivered a proxy, generally in the form contemplated by CCM’s articles, appointing Mr. Chen to vote 1,000 CCM shares held by Run Guo. The proxy had been signed



on Run Guo's behalf by Yinghe. Accompanying the proxy was a letter from Yinghe's counsel and a copy of the Swap Agreement, which was presented as authority for Yinghe to sign the proxy on Run Guo's behalf. The next day Yinghe provided a copy of that proxy to Run Guo, again relying on the Swap Agreement as authority.

[31] On February 29, 2024, counsel for Run Guo responded and, among other things, took the position that the proxy was invalid because it "was not signed by Run Guo (or its authorized representative) nor being authorized to sign by Run Guo (or its authorized representative)", denied that Run Guo was bound by the Swap Agreement, and advised that Run Guo was not even aware of the Swap Agreement. Enclosed with the letter was a revocation of the proxy signed by Mr. Liu Jr., as a director of Run Guo.

[32] The AGM originally scheduled for March 4, 2024 was adjourned and ultimately held on March 28, 2024. On that day, Yinghe delivered another proxy appointing Mr. Chen to vote 1,000 CCM shares owned by Run Guo (the "Proxy") that had been signed by Yinghe. Mr. Liu Jr. acted as chair of the AGM. During or just prior to the meeting, Mr. Liu Jr., on behalf of Run Guo, delivered a second revocation of proxy purporting to revoke the Proxy (the "Revocation"). The Revocation had been signed by Mr. Liu Jr. in his capacity of director of Run Guo. Then, in his capacity of chair of CCM, Mr. Liu Jr. held that the Revocation was valid and that Run Guo could vote the 1,000 shares in question.

[33] There was little discussion at the AGM about the Proxy or the Revocation. The minutes of the meeting disclose that Mr. Liu Jr. simply noted that, pursuant to the articles of CCM, "every proxy may be revoked by an instrument in writing ... provided it is signed by the corporation or its duly-appointed representative" and that the Revocation "fulfils this requirement".

[34] It is Run Guo's position, as relayed through an affidavit of Mr. Liu Sr., that neither Mr. Liu Sr. nor Run Guo intended to grant Yinghe voting rights "irrevocably and/or indefinitely". In his affidavit, Mr. Liu Sr. deposes that the Swap Agreement and the Authorization Letter were drafted by Mr. Chen, and he notes that the

Authorization Letter expressly provides that it expires when the CCM debt has been cleared off. Mr. Liu Sr. deposes that this was a reference to “third party debts incurred by CCM during the construction of the [Building]”, and that at the time the Authorization Letter was signed “Mr. Chen wished to manage the financing obtained from third parties to construct the [Building]”.

[35] There is no dispute that CCM’s construction debts in relation to the Building project have been repaid. CCM’s financial statements for the year ending September 30, 2023 disclose liabilities of \$19,595,865. More than \$18 million of that amount represents amounts owing to shareholders. The balance relates to professional services unrelated to the construction and GST.

**Positions of the Parties**

[36] Yinghe’s position may be summarized as follows:

- The Swap Agreement binds Run Guo and, pursuant to it and/or the Authorization Letter, Yinghe had the right to sign and deliver the Proxy to vote the CCM shares in question.
- Mr. Liu Jr. acted in a manner that was contrary to the Act and the articles of CCM when he signed the Revocation on behalf of Run Guo and/or then, as chair of CCM, refused to permit Yinghe to vote the shares at the AGM. Specifically, Yinghe submits that the Revocation was not in accordance with articles 9.13 and 9.5 “which required that the revocation be signed by Run Guo’s representative, which pursuant to the Swap Agreement was Yinghe and Mr. Chen”. In addition, Yinghe submits that the Swap Agreement was a “pooling agreement” as contemplated in s. 175 of the Act and, as I understand the argument, it was a breach of the Act and/or the articles for Mr. Liu Jr. to sign the Revocation on behalf of Run Guo and/or, as chair of CCM, to determine that the Revocation was valid, in the face of this “pooling agreement”. In the circumstances, Yinghe argues that the relief it seeks should be granted pursuant to s. 228(3) of the Act.

- Alternatively, Mr. Liu Jr. acted in a manner that was oppressive or unfairly prejudicial to Yinghe when he signed the Revocation on behalf of Run Guo and then, as chair of CCM, found that the Revocation was valid despite the Swap Agreement, the Authorization Letter, the September 2012 Resolution, and the Proxy. Specifically, Yinghe submits that it reasonably expected it would be able to vote the shares in question at the AGM in accordance with the Swap Agreement, and that expectation was violated by Run Guo's breach of the Swap Agreement (by Mr. Liu signing the Revocation on Run Guo's behalf) and Mr. Liu's conduct at the AGM (in determining that the Revocation was valid).

[37] Run Guo's position may be summarized as follows:

- The Authorization Letter provides that it expires when the CCM debt has been paid, this is a reference to the construction debt, the construction debt has been paid, and the Authorization Letter is no longer valid. Run Guo's position on the ongoing effect of the Swap Agreement is not entirely clear, but it emphasizes that the Swap Agreement expressly provides that voting power is to be exercised in accordance with CCM's articles. In any event, by its conduct, Yinghe waived its right to rely on any voting rights conferred by the Swap Agreement or the Authorization Letter.
- Yinghe has not established any breach of the Act or articles that could give rise to the relief it seeks pursuant to s. 228. CCM's articles govern the issuance and revocation of a proxy. The Proxy was invalid because it did not comply with the articles and, alternatively, the Revocation was valid because it did comply with the articles. Specifically, the Proxy failed to comply with article 9.7 because Mr. Liu Jr., Run Guo's sole director, did not appoint Mr. Chen or Yinghe as proxy holder for the AGM, and it failed to comply with article 9.10 because it was signed by Mr. Chen on behalf of Run Guo without Run Guo's authorization. In contrast, the Revocation was valid because article 9.12 provides that "every proxy may be revoked by an instrument in

writing” and, consistent with article 9.13, the revocation was signed by Mr. Liu Jr. as Run Guo’s sole director. Run Guo submits that the Swap Agreement is not a pooling agreement as contemplated by s. 175 of the Act, because under a pooling agreement each shareholder retains their voting rights but agrees to exercise them in a specific way.

- The amended petition does not raise the claim of oppression. In any event, there is no evidence that could establish oppression. Specifically, the petition does not articulate what subjective expectations were allegedly violated and Yinghe has not provided evidence of what its expectations were. Accordingly, no relief can be granted under s. 227 of the Act.

[38] CCM’s position may be summarized as follows:

- It takes no position on the validity of the Swap Agreement or the Proxy.
- Yinghe has not established any breach of the Act or articles that could give rise to the relief it seeks pursuant to s. 228 of the Act. CCM’s articles govern the revocation of a proxy. If the Proxy was valid, it was validly revoked by the Revocation, which complied with the articles.
- The amended petition does not plead any allegations of fact or law in support of the oppression claim and, accordingly, no relief may be granted under s. 227 of the Act. Alternatively, the oppression claim must fail because Yinghe has another remedy, specifically an action for breach of the Swap Agreement; there is no evidence of Yinghe’s subjective expectations; the expectation that Yinghe would be able to vote the shares in question at the AGM was not reasonable given that CCM was obliged to act in accordance with its articles; and/or even if Yinghe’s expectations were reasonable, the impugned conduct concerns the chair of CCM acting in accordance with CCM’s articles and that cannot be characterized as wrongful, oppressive, or unfair.

**Issues**

[39] Despite the submissions advanced on behalf of Yinghe and Run Guo about the construction and effect of the Swap Agreement and the Authorization Letter, whether the Swap Agreement binds Run Guo as a pre-incorporation contract that Run Guo adopted, whether Yinghe waived any voting rights conferred by the Swap Agreement or the Authorization Letter, and the validity of the Proxy, it is not necessary for me to reach definitive conclusions about these matters to fairly adjudicate this proceeding.

[40] At the AGM, Yinghe was not prevented from voting the shares in question on grounds that the Swap Agreement, the Authorization Letter, or the Proxy were ineffective, not binding, or invalid. Yinghe was prevented from voting the shares because the Revocation was determined to be valid. The conduct that is alleged in the petition to give rise to a remedy under the Act is Run Guo's issuance of the Revocation and Mr. Liu Jr.'s determination, as chair of CCM, that the Revocation was valid. The questions that have to be answered are:

1. Has Yinghe established that Mr. Liu Jr. acted in a manner that was contrary to the Act or the articles of CCM when he signed the Revocation on behalf of Run Guo and/or when, as chair of CCM, he determined that the Revocation was valid, and, if so, what if any remedy is warranted under s. 228 of the Act?
2. Does the petition set out the material facts and law with sufficient particularity to fairly adjudicate the oppression claim?
3. Has Yinghe established a basis for the granting of relief under s. 227 of the Act?

**Analysis**

**Did Mr. Liu Jr. act in a manner that was contrary to the Act or the articles of CCM when he signed the Revocation on behalf of Run Guo and/or when, as chair of CCM, he determined that the Revocation was valid?**

[41] Before a remedy can be granted under s. 228 of the Act, it must be established that there has been a contravention of the Act or articles, or that such a contravention is about to occur.

[42] I am not persuaded that there has been any contravention of the Act or the articles of CCM, or that any such contravention is about to occur.

[43] As noted, Yinghe submits that the Revocation was not in accordance with articles 9.13 and 9.5 “which required that the revocation be signed by Run Guo’s representative, which pursuant to the Swap Agreement was Yinghe and Mr. Chen”. However, CCM’s articles do not require that the revocation be signed by Yinghe or Mr. Chen.

[44] Article 9.5 provides, in material part, as follows:

9.5 If a corporation that is not a subsidiary of the Company is a shareholder, that corporation may appoint a person to act as its representative at any meeting of shareholders of the Company, and,

(a) ...

(b) if a representative is appointed under this Article,

(i) the representative is entitled to exercise in respect of and at that meeting the same rights on behalf of the corporation that the representative represents as that corporation could exercise if it were a shareholder who is an individual, including, without limitation, the right to appoint a proxy holder, ...

[45] Assuming that the Swap Agreement and/or Authorization Letter effectively appointed Yinghe to act as a representative of Run Guo at the AGM in accordance with article 9.5, then Yinghe had the right, under article 9.5(b)(i), to appoint a proxy holder to vote Run Guo’s shares in CCM.

[46] Of course, whether the Swap Agreement and/or Authorization Letter effectively appointed Yinghe to act as a representative of Run Guo at the AGM in accordance with article 9.5 is an open question. Although I do not need to answer that question, I observe that the Authorization Letter, which on the record before me was drafted by Mr. Chen, expressly provides that it is valid until CCM's claims and debts are fully settled, implying that is invalid thereafter. I also observe that although the Swap Agreement clearly evidences an intention for Yinghe to retain the voting rights to a portion of the CCM shares ultimately transferred to Run Guo such that Yinghe would retain control over 55 percent of CCM's shares, it is less clear about whether it was intended to have the effect of appointing Yinghe to act as Run Guo's representative as contemplated in article 9.5 of CCM's articles. In this regard, I note that the Swap Agreement provides that:

**Party B's** authorization includes:

- 1.1 Attending shareholder meetings on behalf of Party B;
- 1.2 Deciding on the business policies and investment plans of the company on behalf of Party B;
- 1.3 Examining and approving board reports on behalf of Party B;
- 1.4 Electing board directors on behalf of Party B;
- 1.5 Exercising voting power on behalf of Party B on items where shareholders meeting and resolutions are required in accordance with relevant laws or the articles of the Company.

[emphasis added]

[47] In referring to "Party B" in the opening words of this section, did the parties intend to make clear that Party B [effectively, Run Guo] was authorized to do all the things listed? Given Yinghe was retaining voting power over only some of the CCM shares to be owned by Run Guo, would it make sense to authorize Yinghe to do all of those things to the exclusion of Run Guo? If it was necessary to determine whether the Proxy was valid, these questions may have to be answered.

[48] I return to the validity of the Revocation. Again, assuming that the Swap Agreement and/or Authorization Letter effectively appointed Yinghe to act as a representative of Run Guo at the AGM in accordance with article 9.5, then Yinghe had the right, under article 9.5(b)(i), to appoint a proxy holder to vote Run Guo's

shares in CCM. However, it does not follow that any such appointment could only be revoked by Yinghe. Yinghe has not identified any provision of the Act or articles that provides as such.

[49] To the contrary, article 9.12 provides that “[s]ubject to Article 9.13, **every** proxy may be revoked by an instrument in writing ...” and article 9.13 provides that if the shareholder for whom a proxy holder is appointed is a corporation (as it is here) such an instrument “must be signed ... by the corporation (in this case Run Guo) **or** by a representative appointed for the corporation under Article 9.5” [emphasis added]. This wording makes clear that a revocation is effectively issued by either the corporation that is the shareholder or by a representative appointed for the corporation under article 9.5. The articles simply do not provide that if a representative appointed for the corporation under article 9.5 signs a proxy then the proxy may only be revoked by an instrument in writing signed by that representative.

[50] Similarly, CCM’s articles do not provide that a proxy may not be revoked if the revocation of it would amount to a breach of contract. In other words, even if the Swap Agreement and/or Authorization Letter were construed as prohibiting Run Guo from revoking the appointment of a proxy holder appointed by Yinghe to vote Run Guo’s shares in CCM, article 9.13(b) would permit Run Guo to do just that. An agreement among shareholders does not render invalid an exercise of power permitted by a company’s articles; if an action or decision is taken that is valid under the articles but contrary to such an agreement, liability may flow for breach of contract, but that does not invalidate the action or decision: *CIPC (Ocean View) Limited Partnership v. Churchill International Property Corporation et al*, 2006 BCSC 1127 at paras. 32 – 38.

[51] Mr. Liu Jr. was Run Guo’s only director at the material time. He signed the Revocation on behalf of Run Guo. Article 9.13(b) expressly permitted him to do that. In his capacity of chair of the AGM, Mr. Liu Jr. was bound by CCM’s articles: s. 19 of the Act.



[52] As noted, Yinghe also submits that the Swap Agreement was a “pooling agreement” as contemplated in s. 175 of the Act and, as I understand the argument, it was a breach of the Act and/or the articles for Mr. Liu Jr. to sign the Revocation on behalf of Run Guo and/or, as chair of CCM, to determine that the Revocation was valid in the face of this “pooling agreement”. Run Guo did not identify any particular provision of the Act or articles that it says was breached in this regard.

[53] Section 175 of the Act provides:

**Pooling Agreements**

**175** Two or more shareholders may, in a written agreement, agree that when exercising voting rights in relation to the shares held by them, they will vote those shares in accordance with the terms of the agreement.

[54] As Run Guo submits, under a s. 175 pooling agreement each shareholder retains their voting rights but agrees to exercise them in a specific way. Yinghe’s focus has been on the assertion that, pursuant to the Swap Agreement, it had the right to vote some of Run Guo’s shares in CCM, not that Yinghe and Run Guo each retained their voting rights but agreed to exercise those rights in a particular manner.

[55] However, even assuming the Swap Agreement was a pooling agreement as contemplated by s. 175, Run Guo has not identified any provision of the Act or articles that would be breached in the event that Run Guo breached the Swap Agreement. In other words, I have not been directed to any provision of the Act or articles that provides, or implies, that a proxy may not be revoked if the revocation of it would amount to a breach of a pooling agreement.

[56] For these reasons, Yinghe has not established a breach of the Act or articles of CCM that could give rise to the relief it seeks pursuant to s. 228 of the Act.

**Does the petition set out the material facts and law with sufficient particularity to fairly adjudicate the oppression claim?**

[57] As discussed, Yinghe asks the Court to grant the relief sought in the petition pursuant to its power to grant a remedy for oppression under to s. 227 of the Act, which provides, in material part:

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 ... 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 ... make any interim or final order it considers appropriate, including an order

...

(e) appointing directors in place of or in addition to all or any of the directors then in office,

(f) removing any director,

...

[58] In *Wolverton Pacific Partnership v. Triple F Investments Ltd.*, 2022 BCSC 1074 at paras. 74 and 75, Justice Brongers distilled the essential elements of a claim for an oppression remedy from *BCE Inc. v. 1976 Debentureholders*, 2008 SCC 69 [“BCE”] and *1043325 Ontario Ltd. v. CSA Building Sciences Western Ltd.*, 2016 BCCA 258 [“1043325”]. I adopt his summary, but find it helpful to reorganize it slightly for the purpose of determining whether the amended petition adequately raises the oppression claim.

[59] The first question is whether there is an alternate route for redress for the claim advanced. Relief under s. 227 is unlikely to be available if the petitioner has another clear remedy, such as in contract, tort, or debt: *1043325* at para. 53.

[60] A remedy under s. 227 is available where a petitioner establishes that their reasonable expectations were violated in a manner that falls within the terms “oppressive” and “unfairly prejudicial” as used in s. 227. If the allegedly oppressive or unfairly prejudicial conduct is not generally susceptible to correction by other forms of redress, then the following, fact-specific, analytical framework is applied:

1. has the applicant identified their subjective expectations;

2. if so, has the applicant established that these expectations were reasonable in all the circumstances;
3. if so, were these reasonable expectations violated in a manner that was “oppressive” or “unfairly prejudicial”; and
4. if so, what remedy should be granted in the circumstances?

[61] I emphasize that the applicant must identify their subjective expectations and establish that those expectations are reasonable. Whether an expectation is reasonable is objective but depends on “the facts of the specific case, the relationships at issue, and the entire context, including that there may be conflicting claims and expectations”: *BCE* at para. 62.

[62] From the submissions made orally and in writing at the hearing, the oppression claim is alleged to arise from the AGM, which was held on March 28, 2024. On behalf of Yinghe, it is submitted that Yinghe reasonably expected it would be able to vote the shares in question at the AGM in accordance with the Swap Agreement, and that expectation was violated by Mr. Liu signing the Revocation on Run Guo’s behalf which breached the Swap Agreement, and Mr. Liu’s conduct at the AGM in determining that the Revocation was valid.

[63] To bring a petition proceeding, the petitioner must file a petition in Form 66 and each affidavit in support: Rule 16-1(2) of the Supreme Court Civil Rules. Form 66 requires the petitioner to set out the material facts on which the petition is based in part 2, and any rule or other enactment relied on, as well as a brief summary of any other legal bases on which the petitioner intends to rely in part 3.

[64] Part 2 of the amended petition contains a one paragraph overview, a background section setting out facts concerning CCM’s incorporation and business; circumstances surrounding the creation of the Swap Agreement and the Authorization Letter (which is referred to in the amended petition as an “irrevocable proxy”); the evolution of the shareholders’ dispute resulting in the hearing before Justice Stephens in December 2023; the proxy issued by Yinghe on February 27,

2024; the position advanced on behalf of Run Guo on receiving that proxy; and an attempt by Run Guo to delay the AGM. The fact that Yinghe delivered the Proxy on March 28, 2024, which is the proxy that was revoked by the Revocation, is not mentioned in the amended petition. The only reference to the AGM held on March 28, 2024 is in the overview section which reads:

Yinghe possesses an irrevocable proxy from Run Guo to exercise voting power on behalf of Run Guo at CCM's annual general meeting. Run Guo purported to revoke this irrevocable proxy before the CCM annual general meeting on March 28, 2024. Run Guo's sole director, Liu Jr., acted as the chair of the AGM and held that the irrevocable proxy had been revoked.

[65] There is no allegation in the amended petition that Yinghe or Mr. Chen had any particular subjective expectation in relation to voting the shares in question at the AGM or what that expectation was. There is no allegation that this subjective expectation was reasonable and no outline of the material facts that Yinghe asserts in support of a finding that the expectation was reasonable. There is no allegation that the conduct of Mr. Liu Jr. in signing the revocation on Run Guo's behalf or, as chair of the AGM, determining at the AGM that the revocation was valid, was oppressive or unfairly prejudicial.

[66] Part 3 of the amended petition commences with paragraph 39, the opening sentence of which reads:

The petitioners plead and rely on sections 175, 186, 227(3)(e) and (f), 228, and 229 of the *Business Corporations Act*, S.B.C. 2002, c. 57 (the "Act").

[67] Part 3 goes on to set out s. 228 and to refer further to ss. 186 and 175. It then provides:

- a brief summary of the legal bases asserted for the allegation that Run Guo is bound by the Swap Agreement and the Authorization Letter;
- a brief summary of the legal argument concerning the construction of the Swap Agreement;

- a brief summary of the legal basis asserted for the allegation that the “proxy” is valid (presumably the one issued by Yinghe on February 27, 2024, as that is the only one mentioned in Part 2), which includes references to articles 9.5, 9.12, and 9.13; and
- a section that refers to the court’s jurisdiction to grant relief under s. 228 for contravention of the Act or articles and s. 229 for a corporate mistake (relief under s. 229 was not pursued at the hearing), and finally provides that “Yinghe is also entitled to relief under s. 227(3)”.

[68] There is no reference anywhere in the amended petition to s. 227(2) of the Act, which sets out the grounds for an oppression remedy, and there is no outline or reference to the essential elements of a claim for an oppression remedy. Indeed, the amended petition does not contain any of the words expectation, oppression, oppressive, or unfairly prejudicial.

[69] Neither CCM nor Run Guo substantively addressed the oppression remedy in their responses to the amended petition. However, each of them put Yinghe on notice that they considered the amended petition inadequate to raise a claim for an oppression remedy. In this regard, CCM’s response to petition provides:

In respect of the section 227(3)(e) and (f), no allegations of fact or law in respect of the application of these sections are pleaded in the petition. The petitioner cites these sections of the Act without pleading any relevant facts or seeking any orders pursuant to them. Accordingly, the respondents have no notice of the claims allegedly giving rise to relief under these sections and the court cannot grant any such relief, if sought by the petitioner, without permitting the respondents an opportunity to respond to the particularized allegations engaging these sections.

Run Guo’s response to petition provides:

Yinghe seeks to rely on s. 227(3)(e) and (f) which are remedies that the court may order in an oppression proceeding. This is not an oppression proceeding, nor has Yinghe provided any evidence to establish oppression and therefore s. 227(3)(e) and (f) are inapplicable.

[70] Despite receiving these responses, Yinghe did not further particularize the amended petition, either informally through correspondence or by seeking to further amend the petition.

[71] Yinghe argues that the amended petition as drafted provided adequate notice of the oppression claim, and submits that the expectation in question (that Yinghe would be able to vote the shares) emerges clearly from it. Yinghe points out that neither respondent sought an adjournment to respond to the particularized allegations underlying the oppression claim as set out in Yinghe's written submission (delivered at the commencement of or shortly before the hearing).

[72] I will deal with the adjournment issue first. The respondents had to prepare for the hearing on the basis of the amended petition. They made known their position about the adequacy of the amended petition to support an oppression claim in their responses to petition. In the absence of any further particularization of the oppression claim, either informally or through an application to amend, it was reasonable for them to assume that Yinghe would rest on the amended petition. It was not for them to seek an adjournment.

[73] The real question is whether the amended petition provides a sufficient foundation upon which to grant a remedy for oppression. In my view, it clearly does not.

[74] Similar to a Notice of Civil Claim, a petition is intended to give fair notice of the case to meet. The amended petition did not give that fair notice in relation to the oppression claim. The respondents are not to be left to guess at or speculate about how the petitioner will, ultimately, define the issues. As discussed below, in this case the affidavits listed in part 4 of the amended petition did not fill in the gaps in respect of the oppression claim. Typically, a party with deficient pleadings is given an opportunity to amend but, as mentioned, Yinghe did not apply to amend despite being put on notice of the position being taken by CCM and Run Guo about the adequacy of the amended petition.

[75] Counsel for CCM advised that if she had received proper notice of the oppression claim, she would have had Mr. Liu Jr. swear an affidavit explaining why he concluded, at the AGM, that the Revocation was valid. Given the contextual nature of the inquiry and, in particular, the need to consider the significance of competing claims, I agree that such evidence would have been relevant, particularly in relation to assessing the reasonableness of the expectation that Yinghe relies on its submissions.

[76] In addition, CCM's other shareholders, Yi Teng and Dasmart, did not file responses to the amended petition despite being served. Their decision not to respond was informed by the content of the amended petition. Had they received proper notice of the oppression claim, they may have responded and tendered evidence of the relevant context.

[77] For these reasons, I have concluded that the oppression claim is not adequately raised by the amended petition and, accordingly, relief under s. 227(3) is not available to Yinghe. However, given that Yinghe, CCM, and to a limited extent Run Guo, all made substantive submissions concerning the oppression remedy at the hearing, I have decided to address it in substance in case I am wrong about that.

**Has Yinghe established a basis for the granting of relief under s. 227 of the Act?**

[78] For the reasons that follow, I have concluded that Yinghe has failed to establish a basis for relief pursuant to s. 277 of the Act.

[79] The dispute between the parties is fundamentally a question of contract. Yinghe can seek damages and injunctive relief in an action for breach of the Swap Agreement. The Swap Agreement itself provides for liquidated damages of \$500,000 for its breach. Although an action for breach of contract would not permit the undoing of the resolutions made at the AGM, those resolutions do not appear to have any irreparable consequences. The result of them is that MNP remained CCM's auditor, and the composition of the Board of Directors did not change. If Yinghe was successful in a claim for injunctive relief in a contract action, Mr. Chen would be in

the position of controlling CCM. In addition, from February 29, 2024, Yinghe had clear notice that Run Guo was denying the validity of the Swap Agreement and held the view that under CCM's articles it could revoke a proxy signed by Yinghe. In the circumstances, Yinghe could have commenced an action for breach of contract and immediately sought interlocutory injunctive relief to prevent Run Guo from issuing the Revocation.

[80] Yinghe has not identified its subjective expectations or set out the factual foundation for asserting that they were reasonable in the affidavit material it relies on.

[81] Yinghe submits that I can infer Mr. Chen's subjective expectations and find that they were reasonable from the documents, particularly, the Swap Agreement, the Authorization Letter, and the September 2012 Resolution, considered together with the February 27, 2024 letter from Yinghe's counsel to CCM and the February 28, 2024 letter from Yinghe's counsel to Run Guo, each of which asserted the right to issue a proxy pursuant to the Swap Agreement, and the fact that Yinghe sought to rely on the Proxy at the AGM.

[82] Even if I was able to infer, from the above, that Mr. Chen subjectively expected that Yinghe would be able to vote the shares in question, the record does not support the conclusion that such an expectation was reasonable. Again, as discussed in *BCE* at paras. 70 – 88, the exercise is fact specific. There are several aspects of the evidence, taken together, that prevent me from concluding, on a balance of probabilities, that an expectation that Yinghe would be able to vote the shares at the AGM was reasonable. These include:

- The Swap Agreement expressly contemplates that “voting power” will be exercised in accordance with the articles. Mr. Liu Sr. has deposed that Mr. Chen drafted the Swap Agreement. Mr. Chen has not denied that he drafted it, he has not explained why he did not take steps to amend the articles to align with his view of the effect of the Swap Agreement, and he has



not explained why it was reasonable for him to expect the chair of CCM to disregard the articles of CCM pertaining to the revocation of proxies.

- The Authorization Letter expressly provides that it is only valid until the debt is paid. Mr. Liu Sr. has deposed that Mr. Chen drafted this document as well and that this was a reference to the construction debt. Mr. Chen has not denied that he drafted the Authorization Letter or that the reference to “debt” meant the construction debt (which the undisputed evidence establishes has been paid). Mr. Chen has not explained why the Authorization Letter contains this express termination provision and the Swap Agreement does not.
- Mr. Liu Sr. has deposed that, to his knowledge, the first time Mr. Chen or Yinghe raised the existence of the Swap Agreement or Authorization Letter, or sought to rely on either, was the February 27, 2024 letter from Yinghe’s counsel to CCM, and prior to this Yinghe never sought to exercise any of Run Guo’s voting rights. Mr. Chen has not disputed any of this or explained why it was not necessary for Yinghe to rely on these documents or exercise the voting rights in question prior to the spring of 2024. In the circumstances, there is no evidence of past practice that would suggest the alleged expectation was reasonable.
- After receiving the February 29, 2024 letter from Run Guo’s counsel and the revocation enclosed with it, Mr. Chen would have been aware that Run Guo had a conflicting expectation. Mr. Chen has not explained why he reasonably expected Mr. Liu Jr., as chair of CCM, to permit Mr. Chen’s or Yinghe’s expectations to prevail over Run Guo’s expectations.

[83] In the circumstances, it is not necessary to proceed any further in the analysis. Yinghe has failed to establish the foundation required for relief to be granted under s. 277 of the Act.

**Conclusion**

[84] The petition is dismissed. If it is necessary to speak to costs, the parties may contact Supreme Court Scheduling to arrange a date for a hearing. Otherwise, as the successful parties, CCM and Run Guo shall have their costs.

“Warren J.”