

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Castilloux v. Mitchell*,
2024 BCSC 1985

Date: 20241030
Docket: S96543
Registry: Nanaimo

Between:

**Daniel Castilloux, and Daniel Castilloux in his capacity as trustee of the Dan
Castilloux 2018 Family Trust**

Petitioners

And

**David Mitchell, Howard Mitchell Holdings Ltd., Slow Loris Holdings Ltd.,
Mitchell Press Limited, Howard Mitchell, Linda Mitchell, Lisa Mitchell, Joanne
Potter, Stephen Mitchell, 238736 B.C. Ltd., The Mitchell Family Trust and
Mitchell Digital Limited**

Respondents

Before: The Honourable Mr. Justice Baird

Reasons for Judgment

Counsel for the Petitioners:

D. Roelants

Counsel for Respondents, David Mitchell,
Howard Mitchell Holdings Ltd., Slow Loris
Holdings Ltd., Mitchell Press Limited and
Mitchell Digital Limited:

P. Roberts, K.C.

No other appearances

Place and Dates of Hearing:

Nanaimo, B.C.
February 22, 2024 &
May 21, 2024

Place and Date of Judgment:

Nanaimo, B.C.
October 30, 2024

INTRODUCTION

[1] On October 5, 2022, Daniel Castilloux filed this petition proceeding against the respondents David Mitchell, Mitchell Press Limited, and its affiliated companies (“the companies”) seeking relief under ss. 324 and 227 of the *Business Corporations Act*, S.B.C. 2002, c. 57 (the “BCA”). On December 15, 2022, Associate Judge Dick ordered the addition as a petitioner of “Daniel Castilloux in his capacity as trustee of the Dan Castilloux 2018 Family Trust”.

[2] On August 14, 2023, by consent, I ordered the present hearing to determine the limited question of whether Mr. Castilloux is entitled to a remedy under s. 324(1)(b) of the *BCA* liquidating the companies. I also ordered the addition as respondents of various members of the Mitchell family, along with the Mitchell Family Trust and 238736 B.C. Ltd., as they have an interest in the petition as shareholders. Mr. Castilloux has since filed amended pleadings better articulating the factual and legal basis upon which he seeks a liquidation order.

BACKGROUND

[3] Mitchell Press Limited is in the commercial printing business. It is a private corporation established in 1928 by David Mitchell’s grandfather. It operates out of a 64,000 square foot facility on a property located at 8328 Riverbend Court in Burnaby, B.C. which is presently valued at well over \$20 million. It has 109 employees, most of them unionised. For many years the business was run by David Mitchell’s father, Howard Mitchell, who, along with his spouse, Linda, owned substantially all of its shares until a 2017-2018 corporate restructuring that I will discuss in a moment.

[4] In 1990, at age 23, Mr. Castilloux married Joanne Mitchell, Howard and Linda Mitchell’s daughter. Howard Mitchell brought Mr. Castilloux into the company and sent him to university to learn business management and the science of printing. Over the years Mr. Castilloux rose through the ranks and eventually occupied senior management positions. He and Joanne Mitchell separated in 2010 and later

divorced, but this did not affect his position or status at Mitchell Press. He continued working closely with Howard and David Mitchell, always as a salaried employee.

[5] In 2000, Howard Mitchell resolved to wind up the company, apparently because of ongoing conflicts with its employees' union. Mr. Castilloux persuaded him not to do this. Thereafter he and David Mitchell were given more responsibility for running the company as Howard Mitchell gradually relinquished control to them and eased into retirement. Mr. Castilloux claims to have been the *de facto* manager of the business from that point forward and says that David Mitchell played only a minor role. David Mitchell disagrees, saying that he and Mr. Castilloux were jointly engaged in running Mitchell Press, first as co-managers, then co-chief operating officers, and eventually co-presidents.

[6] In 2017 the company was restructured into five separate corporate entities: Howard Mitchell Holdings Ltd.; Slow Loris Holdings Ltd.; Mitchell Press Limited; Mitchell Digital Limited; and AB Riverbend Holdings Ltd. The main corporate assets continued to be the printing business and the valuable Burnaby property on which it operates. In 2017-2018, Howard Mitchell made a gift of most of the companies' shares to his children and to Mr. Castilloux, who then transferred the bulk of his holdings to the Dan Castilloux 2018 Family Trust for "the benefit of himself, his children, and his children's children." The respondents point to this transfer as evidence that Mr. Castilloux never expected to liquidate his shares, but intended to pass them to his heirs. In my view, given the intervening changes in his circumstances that are the focus of this petition, as well as the broad discretionary powers reserved to him by the terms of the trust indenture, this is not a material point.

[7] Until March 2022 Mr. Castilloux and David Mitchell were the only directors of the companies. To this day each of them controls 37.6 percent of the equity shares in all of them. The remaining 24.8 percent are held by David's siblings, Stephen Mitchell (9.4 percent), Joanne Mitchell (9.4 percent), and Lisa Mitchell (6 percent). Mr. Castilloux and David Mitchell between them own all of the voting shares in

Howard Mitchell Holdings Ltd., which in turn owns all of the voting shares in the other companies. In what must, I think, have been a carefully considered decision, Howard Mitchell gave 99 of the 200 voting shares in Howard Mitchell Holdings Ltd. to his former son-in-law, Mr. Castilloux, and 101 to his natural son, David Mitchell.

[8] After this reorganisation, Mr. Castilloux took on the role of CEO and David Mitchell that of President of Mitchell Press. The preponderance of evidence shows, however, that it was Mr. Castilloux who then effectively ran the printing business. David Mitchell had interests elsewhere, it seems, and was content to leave day-to-day operations of this corporate mainstay to the acumen, experience and judgment of his former brother-in-law. Mr. Castilloux claims in 2018 to have single-handedly rescued the company from insolvency by implementing cost-reduction measures, including a renegotiation of the contract with its unionised employees resulting in annual savings of \$500,000. David Mitchell says that he supported these measures and deserves some of the credit for their success, but Mr. Castilloux denies this.

[9] At the heart of this dispute, in fact, is Mr. Castilloux's claim that David Mitchell contributed almost nothing to the company's operations before and after receiving the gift of shares from his father. It is clear that David Mitchell's alleged failure to pull his weight at Mitchell Press became a source of growing resentment for Mr. Castilloux. His grievances burst to the surface at a meeting on November 9, 2020, when he gave David a dressing down in front of the company's CFO, Jim Mann. According to Mr. Mitchell, Mr. Castilloux accused him of "doing basically nothing for 28 years", and said that he was tired of "carrying" Mr. Mitchell and doing all the work. He alleged that Mr. Mitchell treated the business as a "birth right" and told him that he needed to shoulder more of the burden. Mr. Mitchell walked out of the meeting, describing Mr. Castilloux's criticisms, amongst other things, as a "pre-planned attack", "mean spirited", a "diatribe", and "character assassination".

[10] Mr. Castilloux later apologised, but not in terms that David Mitchell thought sincere or adequate. After staying away from the plant for a week or so, he gave Mr. Castilloux notice that he was resigning as an employee and officer of the

company effective February 28, 2021. The evidence establishes that both before and after his departure, Mr. Mitchell accepted that Mr. Castilloux should enjoy autonomy in his everyday decision-making at Mitchell Press, but of course this did not alter the fact that he had become a substantial owner and the controlling director of the companies. His ongoing expectations, expressed repeatedly and directly to Mr. Castilloux, included that he should be advised and consulted about large expenditures, major management decisions, key personnel changes, and the like. He also expected that Mr. Castilloux would act responsibly in the company's best interests and in accordance with his fiduciary duties as CEO. In my view these were reasonable expectations.

[11] A secondary source of conflict at Mitchell Press had come along in March, 2020 with the onset of the Covid-19 pandemic. David Mitchell alleges, and other employees have confirmed, that Mr. Castilloux refused to comply with the company's policies, put in place by his own management team, adopting public health mandates enacted to contain the spread of the virus. These policies included mask-wearing and social distancing. Mr. Castilloux repeatedly told his managers and employees that the mandates were part of a government conspiracy to expand executive powers and eradicate their civil liberties. Rather than comply with them, he stopped coming into the plant except occasionally, and when he did he either refused to wear a mask, or wore one without covering his nose, or wrapped his face in a scarf. He proposed as a "perfect solution" that he should remain at home, and communicate electronically with employees on a limited basis by means of a computer tablet affixed to a pole. Mr. Mitchell considered this behaviour absurd, impractical, and insulting to all the employees who were following the rules and keeping the company afloat in difficult times.

[12] Mr. Mitchell alleges that, as time went on, employees and managers at Mitchell Press started to lose confidence in Mr. Castilloux. He received complaints about Mr. Castilloux's avoidance of the worksite and his failure to properly communicate with staff. I have read depositions from Mr. Mitchell and others alleging that Mr. Castilloux took to summoning employees and suppliers to meetings at his

home, and encouraging them to go unmasked while they were there. On one occasion, apparently, he conducted a meeting with the company's banker dressed in a bathrobe, offering the banker a bathrobe to wear himself. According to Mr. Gary Gunter, whom Mr. Castilloux hired to replace David Mitchell as President of Mitchell Press Ltd., this sort of behaviour did not sit well with the various employees who felt obliged to tolerate it. Mr. Gunter described Mr. Castilloux's conduct as "unprofessional", "unfair" and "embarrassing".

[13] Mr. Castilloux has claimed only recently that he stopped attending the plant, not because he thought the Covid-19 mandates were a tyrannical hoax, but because he was afraid of contracting the virus himself. I note that he made no mention of this to anyone at the time, not to Mr. Mitchell, or Gary Gunter, or anyone else who contributed evidence to the petition record. It is inconsistent with the fact, which Mr. Castilloux has not disputed, that he habitually summoned people to his house for meetings where no measures were taken to minimise the risk of infection, and instead attendees were encouraged to take no precautions at all. In my assessment, Mr. Castilloux's claim that he stayed home to protect his own health is a recently contrived justification for behaviour which would otherwise appear to the objective observer as selfish, irresponsible, and unbecoming of an executive responsible for the workplace health and safety of over 100 employees.

[14] Mr. Castilloux maintains that his relationship with David Mitchell remained polite and cordial even after the upset of the November 9, 2020 meeting with Mr. Mann, and I conclude on all the evidence that David Mitchell tried his best over many months to keep it that way. Mr. Castilloux alleges, however, that their long friendship was "destroyed" by an email he received from Mr. Mitchell on February 19, 2021, a couple of days before he was to undergo surgery to remove a growth on his neck that his doctors had warned him might be cancerous. Mr. Castilloux claims to have been worried that he would not survive the operation, and says that he implored David Mitchell to take over the leadership of Mitchell Press while he recuperated, but that Mr. Mitchell refused. During submissions Mr. Castilloux placed

significant emphasis on the alleged coldness and cruelty of this email to explain or justify his subsequent conduct.

[15] I find that Mr. Castilloux’s interpretation of this email, if sincere, is not reasonable. On a balanced and objective reading, I find that its overall message was well-intentioned, conciliatory and optimistic. Mr. Mitchell wished Mr. Castilloux a successful medical procedure and a restful and complete recovery. He expressed the hope that, once Mr. Castilloux had taken time off work and regained his health and strength, their previous productive and harmonious relationship might be restored. He confirmed his personal confidence in Mr. Castilloux as the leader of the company, and said that the best way forward would be for him to re-engage with his management team, to include them in strategic planning, to re-establish open communications with his employees, and to foster “cooperation and a healthy work environment at all levels.” He also reminded Mr. Castilloux that, as owners and directors, they had a responsibility to share all material information and work together in the best interests of the company.

[16] Mr. Castilloux’s surgery seems to have gone reasonably well. The growth on his neck was not life-threatening. I am prepared to accept, even in the absence of any medical evidence, that the operation took a toll on him – it negatively affected his vocal chords, for one thing – but I do not accept that he was forced to return to work earlier than he wanted because of David Mitchell’s refusal to take over interim management of the company. I find instead that by then he was determined to exclude David Mitchell from anything to do with the business, and after he got out of hospital he ignored or put off Mr. Mitchell’s repeated requests for a meeting to discuss the future direction of the company.

[17] On all of the evidence, I doubt that Mr. Castilloux ever asked Mr. Mitchell to resume a management role with Mitchell Press Ltd., and it seems clear enough that Mr. Mitchell did not volunteer to do so. This was because of his intention at the time to “step back” from the company, but also, I think, because he was reluctant to tread on Mr. Castilloux’s toes, and he was confident that the company’s executive team

could manage the business on their own. They had been doing so for months, after all, while Mr. Castilloux stayed at home dodging the company's Covid-19 policies. As I have said, Mr. Castilloux also hired Gary Gunter, a former Mitchell Press employee, to replace Mr. Mitchell as the company's President, presumably to do the work that he accused Mr. Mitchell of shirking. I would note, by the way, that Mr. Castilloux recruited Mr. Gunter without consulting Mr. Mitchell, and in what I consider to be an example of his deference to Mr. Castilloux's autonomy as CEO, Mr. Mitchell raised no objection when he heard about it.

[18] Mr. Gunter has deposed that, once he started at Mitchell Press, he was immediately aware that there was an ongoing conflict between Mr. Castilloux and Mr. Mitchell. He also said that because "Mr. Castilloux did not want to follow Covid-19 restrictions and mandates, and therefore was not able to attend events... I had to take on more of an outward facing 'CEO' role to ensure that Mitchell Press was represented at business meetings/events." As far as Mr. Gunter was concerned, furthermore, by late-February or early-March 2021 "it [had become] apparent that there were issues with day-to-day running of the business, as Mr. Castilloux pretty much refused to communicate with Mr. Mitchell at all." Mr. Castilloux told Mr. Gunter that the Mitchell family were "out to get him", that he was "a slave to the Mitchells", and that, without him, "David Mitchell would have nothing."

[19] Mr. Gunter's evidence confirms not only that Mr. Castilloux intentionally excluded Mr. Mitchell from all corporate decision-making, but also that he forbade members of the management team from speaking with Mr. Mitchell on pain of dismissal. According to Mr. Gunter, "Mr. Castilloux's refusal to communicate or involve Mr. Mitchell in the business was making it very difficult to do my job, as I frequently found myself in the middle of the two trying to sort things out." Mr. Gunter finally insisted on a meeting with Mr. Castilloux and Mr. Mitchell to have it out. This resulted, on April 19, 2021, in the creation of an "Expectation Document" that Mr. Gunter and Mr. Mitchell say they all agreed to, but which Mr. Castilloux claims was only discussed and not finalised. I will reproduce it here in its entirety:

Expectation Document

Below is a proposed set of guidelines regarding interaction and expectations from both Dave Mitchell and Dan Castilloux

Please note that these expectations below are not exclusive to private meetings between the two parties, and can be discussed during financial and/or other corporate designated meetings, or where Dave Mitchell is requested to attend a special meeting.

Dave Mitchell represents the balance of the minority shareholders at all these meetings or calls.

1. All hiring, firing or demoting of Executive Leadership Team, (ELT) and Senior Leadership, (SL) roles will be reviewed with Dave Mitchell and Dan Castilloux.

Executive roles are classified as:

- President
- Chief Financial Officer
- Executive Vice President

Senior Leadership roles are those roles directly beneath the above-mentioned ELT within the company organizational structure.

Currently those roles are:

- Dave Howarth - Operations Manager
- Greg Wong - Mitchell Digital Supervisor

2. All company investments over \$100K will be reviewed with Dave Mitchell and Dan Castilloux.
3. Significant future intended strategies and strategic paths will be discussed and reviewed with Dave Mitchell and Dan Castilloux, and prior to any role out to the company.
4. Financial statements will be reviewed quarterly in person with both Dave Mitchell, Dan Castilloux and the ELT.
5. The financial statements will also be delivered in a published "shareholder confidential" manner to the rest of the shareholders in a quarterly manner.
6. All financial reviews, (including annual forecasting and budget review), will be presented to Dave Mitchell and Dan Castilloux in person.

[20] I accept the evidence of Mr. Mitchell and Mr. Gunter that Mr. Castilloux expressly agreed to be bound by these expectations, all of which I find to be reasonable. Mr. Castilloux cannot have failed to appreciate that negative consequences would likely follow any failure on his part to abide by them. The totality of evidence confirms, however, that there was no subsequent change in

Mr. Castilloux's established course of conduct as the head of Mitchell Press, most notably in his continued avoidance of the workplace and his wilful failure to communicate with Mr. Mitchell about anything concerning the business.

[21] According to Mr. Gunter, in fact, it was only a few weeks after the Expectation Document was circulated that Mr. Castilloux began involving him and at least one other senior executive in secret discussions about his plan to wrest control of Mitchell Press from the Mitchell family and to "push David Mitchell out".

Mr. Castilloux went so far as to offer Mr. Gunter a 10 percent ownership stake in the company once he got control of it. He insisted that this plan was strictly confidential and "off the grid". He seemed particularly sensitive about the possibility that the company's CFO, Jim Mann, might leak information about it to Mr. Mitchell. He told Mr. Gunter that he would fire Mr. Mann immediately if this happened. In the meantime, in violation of the Expectation Document, Mr. Castilloux organised the acquisition of a \$300,000 Kodak printer for the Burnaby plant without consulting Mr. Mitchell, insisting that it was "none of his business". Mr. Gunter reported this to Mr. Mitchell over Mr. Castilloux's objections and once again, though it riled him, Mr. Mitchell acquiesced in the decision.

[22] The main reason that Mr. Castilloux repeatedly gave for declining to meet with Mr. Mitchell over many months was that he claimed to be working on a new strategic plan for the company which was not yet ready to present to him. Unaware that this plan involved Mr. Castilloux taking over Mitchell Press himself, and increasingly concerned about his erratic behaviour as CEO, which included not only his ongoing refusal to attend at the plant, and his manner of conducting business from home, but also his strange, rambling screeds written to company managers, one of its suppliers, and the head of the employees' union, Mr. Mitchell suggested that Mr. Castilloux should take a leave of absence. On February 15, 2022, he wrote an email to Mr. Castilloux which reads, in part, as follows:

Dan,

I wanted to take this opportunity to reach out to you with regards to our current situation. It's clear that our personal relationship has been damaged, and while I have always been hopeful that we could overcome this, I have

reached the point where I am not confident we can. So I now need to focus on ensuring that decisions are being made with the best interest of the company, its employees and its shareholders in mind.

I know this has been a difficult year, with relationship, financial and health issues weighing on you. The additional burden of Mitchell Press no doubt amplifies these issues.

What I know is that the executive team is stressed and frustrated by the current situation, as they're caught in the middle. This is no longer tenable, and if it doesn't change, I feel strongly that we risk losing some of them, which would be disastrous. I do believe we have easily the best team that we've ever had, and we owe it to them and the rest of the staff to provide as much support and positivity as possible.

With all of this in mind, I would like to suggest a temporary solution. I propose you take a break of at least six months and step aside as CEO. I am not suggesting you be replaced for that period, as I am very confident in the capabilities of our team and don't feel that an interim CEO is necessary. But I feel very strongly that it would be in the best interest of the company as well as your health and well-being if you did so. To be clear, I am suggesting that you maintain your salary but pass any current tasks to someone else (union negotiations, etc.) and focus on what you love – working on your house, your yard, your garden, etc. and take a bit of a mental break. While I do miss some of the day-to-day involvement, having this distance [from the company] has actually been beneficial to me, and I believe it will be even more so for you. I would be more than happy to step up my involvement in Mitchell Press as much as is appropriate and/or required, and we would both be kept in the loop and consulted as per our responsibilities as directors. I feel very strongly that this is a workable and productive plan which will ultimately benefit all parties.

[23] Though diplomatic in his choice of language, Mr. Mitchell made it clear that this proposed “solution” was not optional. As far as he was concerned, the existing situation at Mitchell Press could not continue and had to change. As usual, Mr. Castilloux did not respond to this email, and Mr. Mitchell obviously concluded that further attempts at reconciliation would be pointless. On March 7, 2022, he wrote a letter to Mr. Castilloux headed “Negotiation of Exit Package”, which reads, in part, as follows:

Dear Dan,

As you know I have been raising issues with you for almost a year regarding the way you are carrying out your duties as CEO of Mitchell Press Ltd. First of all, your actions have prevented me from carrying out my duties and responsibilities as a director. You have continuously refused to communicate with me, neither providing me with the information I require as a director of Mitchell Press Ltd, nor alleviating the concerns I have expressed with how the company is being managed. You have frustrated my efforts to enter into a

timely and productive discussion about these issues so that we can work together to fix them. As well, not only have I heard concerns regarding your performance from members of the management team, but I have had unsolicited comments and concerns about your behaviour raised by third parties. The current situation cannot continue, and I have a duty to act in the best interests of Mitchell Press Ltd.

I am writing to you in my capacity as a director of [Mitchell Press] Ltd. to let you know that absent an agreement on substantially the terms set out in this letter, I intend to pass a resolution authorizing your dismissal from employment as CEO. I believe that is what is in [Mitchell Press] Ltd.'s best interests. You would not be entitled to vote on that resolution. That said, I would much rather work together with you to come to a private, confidential agreement that allows you to exit [Mitchell Press] Ltd. with a fair compensation package and a mutually agreeable announcement to staff, customers and other stakeholders.

Dan, I take no pleasure in writing this, and frankly it has been keeping me up at night. We have been close for over 35 years and my intention over the past year was to open communication with you and establish a mutually beneficial, respectful working relationship. I think if we can come to an agreement it will be best for all involved and I hope you can enter into these discussions with a goal of leaving amicably.

[The terms of the exit offer were redacted from the copy of the letter produced for me. It continued as follows]

Please carefully consider this offer and let me know your thoughts within seven days of receiving this letter. I would appreciate if we could communicate in writing (e-mail is fine). If I have not heard from you, or if you've not offered any constructive input by that date, this offer will be off the table. I will be calling a board meeting of Howard Mitchell Holdings Ltd. for the day following that deadline in order to call an annual meeting, which is overdue, and to take the actions required for the Mitchell Press companies to move forward.

While I understand it is likely difficult to receive this letter, I trust that you will govern yourself in accordance with your fiduciary duties by refraining from any act that would contravene those duties.

[24] The recitals of the director's resolution attached to this letter were as follows:

- A. Daniel Castilloux is the Chief Executive Officer of the company.
- B. There is no written agreement governing the terms of Daniel Castilloux's employment by the company as Chief Executive Officer of the company.
- C. Daniel Castilloux in his capacity as Chief Executive Officer of the company has engaged in erratic, inappropriate, and insubordinate behaviour, including sending inappropriate correspondence to certain important stakeholders in the company and repeatedly and consistently refusing to provide David Mitchell, in his capacity as a director of the company, with information requested and required by the directors in connection with the management of the business and its affairs.

D. David Mitchell in his capacity as a director of the company, has repeatedly requested information relating to the company's business and affairs from Daniel Castilloux and has made numerous offers, by various means of communication, to meet with Daniel Castilloux to discuss the business and affairs of the company, all of which have been ignored or refused.

E. In light of his misconduct, it is in the best interest of the company to terminate the employment of Daniel Castilloux and remove him as Chief Executive Officer of the company.

[25] Mr. Castilloux took until March 18, 2022 to respond to this letter, and when he did it was only to repeat that he would not communicate with Mr. Mitchell directly, and to suggest that a mediator should be engaged to assist in negotiating the terms of his departure from the company. Mr. Mitchell expressed his willingness to do this, but before any arrangements could be made, Mr. Castilloux caused additional drama and upset by unilaterally deciding to fire the company's CFO, Jim Mann. He drafted what I think any objective observer would consider to be an odd and ill-considered termination letter which, thankfully, he circulated to Gary Gunter on March 20, 2022 before sending it off. Mr. Gunter objected to this letter in strong terms. He told Mr. Castilloux that it amounted to "gross misconduct", not only because it violated the Expectation Document requiring consultation with Mr. Mitchell about firing executives, but also, and far more importantly, because it was wholly unjustified and would prove damaging to the company.

[26] Even if I were to assume that Mr. Castilloux subjectively believed that there were admissible grounds for dismissing Mr. Mann, I find that he knew or ought to have known that he had no business making the attempt. I say this not only because he had failed to consult with Mr. Mitchell about it, but also because he was well aware that his own tenure with the company was about to end involuntarily, and his authority to make such decisions had lapsed. Far less flattering is the possibility, which I consider to be substantial, that in fact Mr. Mann had done nothing wrong, and Mr. Castilloux was merely making mischief on his way out the door. I note, in particular, that in Mr. Mann's termination letter he falsely claimed "You will be contacted by David Mitchell no later than Friday, March 25. David will have all of the arguments available to support this decision for your immediate termination." This

was pure fiction, of course, and in my view it was a calculated and deliberate provocation.

[27] Mr. Gunter sent the draft termination letter to Mr. Mitchell, who reacted immediately with a text message to Mr. Castilloux saying: “I have received a copy of your letter in which you purport to fire Jim [Mann] for cause. As you know you do not have the authority to do so. Further the letter is completely inappropriate. You are NOT permitted to fire Jim. You must NOT give him that letter. Respond to this text by 7:00 a.m. tomorrow (Monday) confirming that you understand this direction and that you will abide.”

[28] At 7:26 the following morning, March 21, 2022, having yet again received no response from Mr. Castilloux, Mr. Mitchell sent him another text message which read: “Dan, the termination letter you wrote for Jim [Mann] was not only written without authority, but also without proper advice. Your dismissing Jim, in the manner you proposed to do so, was unprofessional and would put the company at significant risk. I have made every possible attempt to be reasonable, but I cannot permit the company to be harmed further by your misconduct. You are being dismissed from your role as CEO immediately. You will receive a termination letter today. If you do not answer the door it will be left on your doorstep.”

[29] As promised, within hours Mr. Mitchell delivered a letter to Mr. Castilloux’s residence setting out his grounds for dismissing him as CEO of Mitchell Press in the following terms:

Re: Termination of Employment

Dear Dan,

Your employment as CEO of Mitchell Press Ltd. (“the Company”) is terminated for just cause effective today (the “termination date”).

As you know I have been raising issues with you for almost a year regarding the way you are carrying out your duties as CEO. You have continuously refused to communicate with me, neither providing me with the information I require as a director, nor alleviating the concerns I have expressed with how the Company is being managed. Just last week you confirmed as much in your text message to me – that you refused to communicate with me directly despite the fact that as CEO you have an obligation to report to the board of directors, and as a director you have an obligation to work with me in

managing or supervising the management of the company's business and affairs.

In addition to your refusal to properly inform me in my capacity as a director, your behaviour has been erratic and unprofessional. You have sent communications to third parties that are inappropriate and harmful to the Company. You have also refused to regularly set foot in the plant while government mandated COVID-19 safety protocols are in place and on the few occasions that you did, you failed to consistently follow the mandated safety protocols. This is a display of poor leadership and puts our managers and staff in a very uncomfortable position. As a result of your stance to not step foot in the building, you have opted to work from home, compelling employees and suppliers to come to your house to meet with you. I made it very clear to you that I felt this to be unprofessional behaviour which has made staff uncomfortable, having forced them to choose between their health and safety and their job, as they would be hesitant to challenge or disagree with their employer. Your behaviour cannot continue.

Further, you have also been unilaterally carrying out actions for which you do not have authority. The company's governance is framed by the letter of expectation that we agreed to in April 2021 [I have been referring to it as the Expectation Document]. That letter makes it clear that certain decisions could only be authorized by the board. One such example was investments of more than \$100,000. Despite this, in January 2022, you attempted to push through an investment of more than \$300,000 without discussing it with me first; I only found out about it in time to provide input because Gary Gunter informed me of it. Your actions in this regard were irresponsible and contrary to the policy we had settled in the letter of expectation.

On March 7, 2022, I delivered a letter to you warning you that unless we could enter into productive discussions about a change in leadership, I would be moving forward with your dismissal. Despite this, this past weekend you prepared to dismiss our CFO, Jim Mann, without discussing the matter with me (I again only found out because Gary told me against your wishes). As the letter of expectation makes clear the dismissal of an executive has to be reviewed by both of us. You did not have the authority to purport to fire Jim. Also, the content of your letter was unprofessional and done without proper advice (or you ignored such advice); if you had proceeded, you would have exposed the company to significant cost and risk, not only from the potential liability, but from the loss of a valuable executive.

[30] Mr. Castilloux's pleadings before the court, both as originally filed and subsequently amended, include a compensatory claim for wrongful dismissal. The respondents have an active application before the court for an order that this claim cannot be brought by petition, but only by means of an action and a conventional trial. Mr. Castilloux's response is that compensation for wrongful dismissal is a statutory remedy authorised by s. 227(3)(m) of the *BCA*, and therefore his claim for it is governed by R. 2-1(2) of the *Supreme Court Civil Rules* requiring it to be

presented and judged in its present form. The litigation of these procedural issues was adjourned by consent at the beginning of the hearing.

[31] All the same, Mr. Castilloux's claim that he was wrongfully dismissed is the principal basis upon which he seeks an order under s. 324(1)(b) of the *BCA*. It is central to the only issue that the parties have asked me to decide on this application. I agree that it is suitable for summary determination based on the record presently before me, for the simple reason that the facts of the case are perfectly clear and lead to only one reasonable conclusion: that everything set out in Mr. Mitchell's letter dismissing Mr. Castilloux was fair comment, and that his removal as an employee, officer and director of Mitchell Press Ltd. and its affiliated companies was objectively justifiable.

[32] The resulting situation is a long way from optimal, of course. Mr. Castilloux has been ousted from any involvement in a company to which he has devoted substantially all of his adult working life. He claims to be unemployed and unable to find work suited to his skills and experience. He says that he is exhausting his savings on everyday expenses, and that he has no means of realising the value of his shares in the companies. The companies' articles of incorporation prohibit the sale, transfer or disposition of his shares without David Mitchell's approval, which Mr. Castilloux says he has so far refused to grant. David Mitchell replies that Mr. Castilloux has not sought approval to sell his shares, and that he has rejected the terms of the company's offer to purchase them.

[33] This would seem to be the crux of the matter: the Mitchell family members are prepared to purchase Mr. Castilloux's shares, but not for a price that he is willing to accept. In the meantime, from 2021 to 2023, the revenues of the printing business have increased from \$13 million to \$22 million annually, but despite this growth it has operated at a loss over the same interval. David Mitchell is convinced, and the company's executives agree, that this is due to cost-management issues that can be remedied. The majority shareholders – David, Stephen, Joanne and Lisa Mitchell – claim to have decided that the best option to maximise value for everyone, including

Mr. Castilloux, would be to continue with efforts to return the business to profitability, and then to market all of its corporate assets as a going concern. They are unanimous in their determination to liquidate the companies once the books are balanced, but they are opposed to Mr. Castilloux's application to do so immediately.

SECTION 324(1)(b) OF THE BCA

[34] Section 324(1)(b) of the *BCA*, as far as it is relevant here, provides that:

324 (1) On an application made in respect of a company ... by ... a shareholder of the company... the court may order that the company be liquidated and dissolved if

...

(b) the court... considers it just and equitable to do so.

[35] In *Weisstock v. Weisstock*, 2023 BCCA 352, the Court of Appeal re-stated the purpose and application of this provision in the following terms at para. 43-52:

[43] Section 324(1)(b) of the *BCA* provides that a shareholder may apply to the court for an order that a company be liquidated and dissolved. It empowers the court to make such an order if the court considers it “just and equitable to do so.”

[44] If the court concludes that it is just and equitable to liquidate and dissolve a company, such an order does not automatically follow. Under s. 324(3), the court may either order the company to be liquidated and dissolved or make “any order under section 227(3) it considers appropriate.” Section 227(3) provides the court with the authority (and flexibility) to “make any interim or final order it considers appropriate” to remedy or end “the matters complained of.” Section 227(3) also provides a non-exhaustive list of available remedial orders.

[45] The “just and equitable” provision allows the court to impose broad and equitable considerations to the strict legal obligations that would otherwise apply to a corporation. It permits a judge to recognize that within and behind a corporation, “there are individuals, with rights, expectations and obligations” and that sometimes this “make[s] it unjust, or inequitable, to insist on legal rights, or to exercise them in a particular way”: *Ebrahimi v. Westbourne Galleries Ltd.*, [1972] 2 All E.R. 492 at 496, [1973] A.C. 360 (H.L.) at 500 (per Lord Wilberforce).

[46] The cornerstone of the just and equitable analysis is therefore the parties' reasonable expectations. In other words, liquidation is justified where an applicant “demonstrate[s] that the parties regarded, or would have regarded if they had turned their minds to it at the time of formation of the business association, the particular circumstances resulting from the disharmony to constitute the termination or repudiation of the business relationship”: *Animal House Investments Inc. v. Lisgar Development Ltd.*, 87

O.R. (3d) 529, 2007 CanLII 82794 (S.C.J.) [*Animal House ONSC*] at para. 57, aff'd 237 O.A.C. 261, 2008 CanLII 27471 (Div. Ct.).

[47] ...[H]istorically, courts have typically found it “just and equitable” to liquidate a company in one of four sets of circumstances:

1. loss of a company’s substratum;
2. a justifiable lack of confidence among the members;
3. a deadlock among the parties; and
4. the partnership analogy.

(*Petersen BCCA* at para. 28, citing Markus Koehnen, *Oppression and Related Remedies* (Toronto: Thomson Carswell, 2004) at 369–97).

[48] The authorities are clear, however, that the court’s discretion under s. 324(1)(b) is not limited to these categories. The words “just and equitable” have been described as words “of the widest significance” that confer a “broad discretion” on the court to make a liquidation order in any circumstances it considers appropriate: *Vivian* at para. 64. A categorical approach to the court’s jurisdiction is “wrong”. While categories and illustrations are helpful, “general words should remain general and not be reduced to the sum of particular instances”: *Ebrahimi* at 496 (per Lord Wilberforce).

[49] Determining what is “just and equitable” is a fact-and context-specific exercise. For example, the test may be applied more liberally in the context of a family company than a conventional commercial enterprise: *Safarik* at para. 102; *Petersen v. Hawley*, 2021 BCSC 2348 [*Petersen BCSC*] at para. 14, aff'd *Petersen BCCA*.

[50] No finding of oppression, or even wrongdoing, is necessary to ground an order under s. 324: *Petersen BCCA* at para. 28. While misconduct on the part of the applicant may be grounds to refuse equitable relief on a liquidation application, “such a determination falls within the discretion of the judge, and it is not an absolute bar”: *Petersen BCSC* at para. 61 and the authorities cited there.

[51] Where neither party comes to court with “clean hands”, “the court is not required to decipher which party bears more blame”: *Petersen BCSC* at para. 61, citing *Dia-Kas Inc. v. Virani*, 1997 CanLII 4118 (*BCCA*) at para. 22. The conduct of the parties may however be relevant to “contextualizing the conflict” and to whether the court should exercise its discretion to grant relief: *Petersen BCSC* at para. 61, citing *Mayer v. Mayer*, 2012 *BCCA* 77 at para. 208.

[52] While the words “just and equitable” provide broad discretion for the court “to intervene to relieve against an injustice or inequity”, the discretion has boundaries: *Vivian* at paras. 66–67. Liquidation and dissolution have been described as “drastic remedies” and remedies of “last resort”: *Esposito* at para. 30. The discretion to order liquidation and dissolution “must be exercised judicially, on a principled basis, and in recognition of the reluctance of the Court to interfere lightly in the internal affairs of a company”: *Vivian* at para. 67, citing *Pasnak v. Chura*, 2004 *BCCA* 221 at paras. 26–28; *Paulson v. Dogwood Holdings Ltd.*, [1990] B.C.J. No. 2281, 1990 CarswellBC 1798

(S.C.). For example, s. 324 is not a mechanism to simply allow a minority shareholder “to monetize [their] investment”: *Boffo Family Holdings Ltd. v. Garden Construction Ltd.*, 2011 BCSC 1246 at para. 156.

[36] Bearing these principles in mind, along with others mentioned below, I have decided on the totality of evidence that it would not be just and equitable to order the liquidation of the companies. I will now attempt to explain why, leaving aside the factors of loss of substratum and corporate deadlock, which are not applicable here.

GROUNDNS ADVANCED FOR LIQUIDATION

a) Inability to sell shares

[37] I find as a fact that Howard Mitchell’s generous gift of shares to Mr. Castilloux was made in honour of his valuable and long-standing contribution to the company’s success. Mr. Castilloux claims, as well, to have made specific personal sacrifices along the way, turning down more lucrative job opportunities elsewhere over the years, and voluntarily reducing his salary back in 2018 when the printing business was going through a rough patch. Now that he has been removed as an employee and director, he claims to be stuck in “shareholder purgatory”, a term coined by this court in *Ten Hoeve v. Beukens*, 2020 BCSC 1194 at para. 65. He is no longer earning a salary from the company, he can derive no income from his shares because in all of its history the business has never declared a dividend, and he cannot, practically speaking, realise their cash value unless the companies are liquidated.

[38] I agree that Mr. Castilloux’s immediate options are limited, but this alone does not make it just and equitable to order the winding up of Mitchell Press Ltd. and its affiliates against the wishes of their majority owners. Mr. Castilloux’s reasonable expectations when he received his shares were necessarily limited by the strictures in the articles of incorporation concerning their transferability, and he did not insist upon a free-standing shareholders agreement that he would be able to sell his shares if he was no longer involved in the business. He will have appreciated that David Mitchell was now the majority voting shareholder, and that in the event of any dispute between them, he would be entitled to exercise control to the extent

permitted by the articles of incorporation and the *BCA*. In the absence of an agreement otherwise, a minority shareholder cannot reasonably expect to be in the position of “vetoing” the majority’s wishes: *Petersen v. Hawley*, 2022 BCCA 169 at para. 33.

[39] The removal of a shareholder as an employee or director of a company is not a reason for ordering the company to be wound up, unless it can be shown that the removal was not exercised *bona fide*, or that the grounds for exercising the power were such that no reasonable person could think it was in the best interests of the company: *Boffo Family Holdings Ltd. v. Garden Construction Ltd.*, 2011 BCSC 1246 at para. 155. In my view, as I have already said, Mr. Castilloux’s removal was objectively reasonable and justifiable, and it was in the company’s best interests. Mr. Castilloux could not reasonably expect to be kept on regardless of how he behaved, and s. 324(1)(b) of the *BCA* is not a mechanism to allow a minority shareholder to monetise his investment: *Petersen* at para. 43, citing *Boffo* at para. 156.

b) Partnership Analogy

[40] Mitchell Press Ltd. is apparently Canada’s third largest commercial printing company. It has been in business for almost a century. It has always been a limited liability corporation with a Mitchell family member at the helm. It has the usual structure of corporate directors, officers and executives. It has an external advisory committee. Most of its employees are members of a union certified to bargain with the corporation, not with its individual officers or shareholders. Mr. Castilloux spent the majority of his time with the company as a salaried employee. He had no ownership stake until Howard Mitchell reorganised the family business just a few years ago. Mr. Castilloux’s shares were a gift. He never bought into the companies. None of his own money is locked up in them.

[41] As I have said, from the moment Mr. Castilloux took ownership of his shares in the company, he knew or ought to have known that if it came to any parting of the ways between himself and David Mitchell, the latter would control the outcome.

Mr. Castilloux himself has said that they could no longer work together. It is perfectly clear on the evidence that one of them had to go, and equally so that Howard Mitchell, by reorganising his corporate affairs in the manner discussed, had given his son the authority to decide which of them it would be. In my view, there is nothing analogous to a partnership in any of this. I recognise that within a corporation there are individuals with rights and expectations, but their rights are not limitless and their expectations must be reasonable. Mr. Castilloux was an employee of the company who, in my opinion, was justifiably terminated for cause. Other than that, his status is merely that of a minority shareholder. In the absence of oppression or malfeasance, he has no right to impose his will on the majority.

c) Justifiable Lack of Confidence

[42] A justifiable lack of confidence between the members of a company may be a factor that supports an order under s. 324(1)(b) of the *BCA: Sohi v. Best Choice Blueberry Farms Limited*, 2018 BCSC 36 at para. 92. Mr. Castilloux alleges that Mitchell Press has been mismanaged since his termination, but in the absence of a relationship between members analogous to a partnership, this is a narrow inquiry limited to dishonest business conduct by the present directorship. Mere mismanagement will not be sufficient: *Dia-Kas Inc. v. Virani*, [1995] B.C.J. No. 1747 at para. 125; *Elliot v. Sidney and Zella Clark Holdings Ltd.*, 2022 BCSC 2077 at para. 101.

[43] The various forms of mismanagement alleged by Mr. Castilloux include the acquisition of new and expensive printing equipment for the Burnaby plant, and the disposal for scrap of other equipment. He has presented evidence from various former employees who are critical of David Mitchell, the company's management team, and the direction in which they are steering the company. He relies, as well, on the undisputed fact that despite strong revenues, the business continues to post annual losses. His position, basically, is that David Mitchell will not be able to turn things around and eventually his shares will be worthless.

[44] Entirely absent from the record before me, however, is any evidence that Mr. Mitchell – or anyone else – has engaged in dishonest business conduct. I am satisfied on all of the evidence that the impugned management decisions after Mr. Castilloux was let go, whether or not they turn out to have been sound or provident, were taken in good faith with the best interests of the company sincerely in mind. They have the support of the majority shareholders. It is not for me to second-guess them. They are protected by the “business judgment rule”, which accords deference to corporate decisions provided that, as I find they do here, they fall within a range of reasonable alternatives: *BCE Inc. v. 1976 Debentureholders*, 2008 SCC 69 at paras. 40 and 99; *Dubois v. Milne*, 2020 BCCA 216 at para. 88.

d) Other Equitable Considerations

[45] I bear in mind that the words “just and equitable” provide me with a broad discretion in which, as between the parties, the concepts of fault and “clean hands” are not always determinative or even particularly influential. In the present case, however, I find that they are relevant and material. I have concluded, quite simply, that Mr. Castilloux’s conduct disentitles him from the remedy he seeks. He bears responsibility for his role in deliberately contriving a situation in which his dismissal was not only justifiable, but inevitable. It would be neither just nor equitable to grant him the drastic remedy of a liquidation order in circumstances where the conflict that he claims to have rendered it necessary was substantially of his own making. The unanimous, rational, and entirely defensible ambition of the majority shareholders to carry on with business as usual must prevail.

CONCLUSION

[46] For all of these reasons, Mr. Castilloux’s petition for an order under s. 324(1)(b) of the *BCA* is dismissed. The respondents are entitled to their costs to be assessed.

“Baird J.”