KING'S BENCH FOR SASKATCHEWAN

Citation: **2024 SKKB 121**

Date: **2024 06 24**
Docket: QBG-SA-00235-2022
Judicial Centre: Saskatoon

BETWEEN:

PAMELA EGGER, CHERYL EGGER, DEAN EGGER, KYLE EGGER, R. TODD EGGER, EGGER HOLDINGS LTD., ROGER EGGER and CHUAN NG

Applicants

- and -

ROBERT WAISMAN, MARTIN HECTOR, ARLAINA WAISMAN, ARLAINA WAISMAN FAMILY TRUST, GLORIA WAISMAN, H & H HOLDINGS LTD., HOWARD WAISMAN, JOANNA HECTOR, ROBERT HECTOR, WAISMAN INVESTMENTS LTD., RON WALDMAN, 628656 SASKATCHEWAN LTD., 101046655 SASKATCHEWAN LTD., 101048495 SASKATCHEWAN LTD. (General Partner for 101048495 Saskatchewan Limited Partnership), 101050436 SASKATCHEWAN LTD., 101072099 SASKATCHEWAN LTD., 101085299 SASKATCHEWAN LTD. (General Partner for 101085299 Saskatchewan Limited Partnership), PROSPECT PROPERTIES INC. (General Partner for "Moose Jaw Days Inn Limited Partnership"), and VICTORIA PARK MOTOR INN LTD.

Respondents

Counsel:

Douglas C. Hodson, K.C.	for the applicants
Kevin C. Mellor	for the respondents

JUDGMENT
June 24, 2024

SCHERMAN J.

Introduction

[1] The applicants ask for an award of costs on a solicitor-client basis, or on such other enhanced basis as I may direct. The applicants say solicitor-client costs in the order of $300,000, are justified, *inter alia*, by scandalous, outrageous or reprehensible behaviour on the part of the respondents. In the alternative, they ask for a substantially enhanced discretionary award of costs, having regard to the factors identified in Rule 11-1(4) of *The King's Bench Rules* applicable to such a discretionary award.

[2] The respondents' position is none of the actions of the respondents in the litigation support an award of solicitor-client costs and that the appropriate award of costs should be normal party-party costs.

Background Facts

[3] Around 2000, Martin Hector [Hector], Robert Waisman [Waisman], Chuan Ng [Ng] and Roger Egger [Egger] undertook ventures of building, owning and operating hotels in Saskatchewan. Through eight distinct operating companies [Operating Companies] they developed, owned and operated eight distinct hotels. Ng and Egger, who were resident in Saskatchewan, had the active role of managing the ventures, while Hector and Waisman provided capital. Each of Hector, Waisman, Ng and Egger, through respective companies or family trusts, owned 25% of the shares of each of the eight Operating Companies. In this decision, I use their surnames as including their companies and/or family trusts.

[4] In my November 18, 2022, decision in *Egger v Waisman*, 2022 SKKB 249, I provided the following "Summary of the history of conflict between the parties and their proceedings before the Court":

Summary of the history of conflict between the parties and their proceedings before the Court

[3] In 2010 the Waisman/Hector shareholders advised the Egger/Ng shareholders they were not interested in developing new hotel projects with the Egger/Ng shareholders and wished to sell the existing hotels or their interests therein. By 2015 the Waisman/Hector shareholders were expressing dissatisfaction with their financial return on their investments.

[4] In 2016 they commenced oppressive conduct proceedings against the Egger/Ng shareholders. This and some 11 subsequent court proceedings are notable for the nature and extent of wrongdoings alleged and demonstration of the increasingly toxic nature of the relationship between the parties.

[5] On the eve of trial the parties settled the oppressive conduct proceeding brought by the Waisman/Hector shareholders on terms that included an agreement to negotiate a "Modern Shareholders Agreement" by October 31, 2018. They failed to subsequently negotiate such an agreement.

[6] The conflict continued with the Waisman/Hector shareholders making an allegation of theft and wanting a third party manager to be appointed to replace the management that has been thereto performed by an Egger/Ng entity or entities.

[7] At a June 26, 2020 combined board meeting of the operating corporations, the Waisman/Hector directors sought to appoint Hurst Hospitality Inc. [Hurst] as a third party operator of the hotels. A motion to that effect was made and approved by majority vote of the two Waisman/Hector directors. Roger Egger, the, Egger family director, was not at the meeting due to illness. Chaun Ng objected to the motion being made, given the absence of Roger Egger, and he voted against the motion.

[8] With the Egger/Ng shareholders and directors taking the position that the vote was invalid, the Waisman/Hector shareholders again brought oppressive conduct proceedings, seeking various relief including removal of Roger Egger and Chaun Ng from the boards of the operating corporations. The Egger/Ng shareholders in turn made an application that the operating corporations be liquidated.

[9] By an August 11, 2021 decision in respect of these applications [2021 SKQB 215], Bardai J. ordered the parties to engage in negotiations for the appointment of a third party manager, but dismissed the balance of Waisman/Hector applications for relief, including their request that Roger Egger and Chaun Ng be removed as directors of the operating corporations. At para. 40 of his decision, he found that the behaviour of the Waisman/Hector faction in taking advantage of the absence of Roger Egger from the June 26, 2020

meeting was oppressive. He also dismissed the Egger/Ng application for liquidation without prejudice to it being brought back before the court at a later date.

[10] At an October 8, 2021 meeting the boards of the operating corporations passed the following resolutions:

We move that Hurst Hospitality Inc. be appointed as the manager of all the Operating Companies effective and completed by January 1, 2022. After twelve months of continuous operation by the third party manager, the parties will start on January 1, 2023 the negotiation for a division and/or sale of all operating companies to be completed by no later than March 1, 2023.

It is significant to note that this resolution was passed in the context of Bardai J. having ordered they negotiate the appointment of a third party manager.

[11] Subsequent to the October 8, 2021 meeting there were disputes between the factions with respect to what were proper minutes of the meeting and with respect to the form of the above resolution. The Waisman/Hector faction wished to send a signed copy of the entire resolution, as quoted, to Hurst. The Egger/Ng faction's position was that only the first sentence of the combined resolutions should be sent to Hurst and that it was contrary to the interests of the shareholders and operating corporations to share with Hurst, the information respecting the potential division and/or sale of the operating corporations found in the second sentence thereof.

[12] On November 4, 2021, the Waisman/Hector shareholders brought the 11th application this Court has seen from the parties, seeking an order appointing Hurst as the manager of the operating corporations. The application included a 190-page affidavit of Howard Waisman, who had replaced his now 92-year-old father as a director, in which he states that "The applicants have been systematically oppressed by the respondents and bring this application to stop the oppression and prevent further oppression". The application was subsequently abandoned, apparently conceding Egger/Ng shareholders never disputed that Hurst had been appointed manager by the October 8, 2021 resolution.

[13] Hurst took over the management of the hotels on January 1, 2022 as per the October 8, 2021 resolution to that effect.

[14] On March 9, 2022, the present Egger/Ng applicants filed the application now to be decided by me.

[15] This application was not heard until October 19. In a May 9, 2022 fiat Danyliuk J. ordered timelines for steps to be taken in preparation including a direction that cross-examination of Pamela Egger and Chaun Ng on their affidavits, as sought by counsel for the Waisman/Hector faction, were to be completed by June 19, 2022. Such

cross-examination did not occur. In an October 6, 2022 fiat, Gerecke J. ordered that such cross-examination was to take place on October 14 and or 15 and briefs of law to be filed by noon October 17 so the present application could be heard on October 19.

[16] The applicants' position is that the relief it seeks is appropriate and necessary because the ongoing history of conflict between the parties and what has transpired since the October 8, 2022 resolution demonstrates that the Waisman/Hector faction will not negotiate a process to divide or sell off the operating corporations, as was the intent of the October 8, 2021 resolution.

The respondents' application to strike applicants' affidavit evidence and the applicants' complaints with respect to the respondents' affidavits

[17] The Waisman/Hector application asks the Court to strike out all or portions of some 92 paragraphs of the affidavits of Pamela Egger, Chaun Ng and Roger Egger, which collectively total 226 paragraphs over 55 pages. Their stated basis is that the paragraphs offend the criteria for admission of affidavit evidence by reason of being:

(1) argument

(2) speculation/opinion

(3) hearsay

(4) repetitive or redundant

(5) vexatious/inflammatory/malicious

(6) irrelevant; or

(7) improper reply.

[18] The applicants have not brought an application to strike; but in their brief of law say that the May 2, 2022 affidavit sworn by Howard Waisman of 242 paragraphs over 63 pages and 78 exhibited documents of 1168 pages should be disregarded by the Court because much of that affidavit is evidence that is irrelevant and/or hearsay. They specifically identify some 66 paragraphs of that affidavit they say contain irrelevant or hearsay evidence that should not be considered.

[19] At the outset of counsels' submissions I observed that it appeared to me that much of the objected to information on both sides was not relevant or at most of marginal relevance to the issues I have to decide. I commented that if I were to make seriatim decisions, with reasons, for each of the 158 particularized objections I would likely have to devote weeks making the individual decisions regarding which objections were sustained or rejected and provide reasons therefor.

> [20] I then asked counsel what they wished me to do – make seriatim decisions on what objected to affidavit evidence was admissible and then hear argument on the substantive issues – or did counsel want me to proceed to the fundamental issues and decide those issues utilizing only such evidence as I concluded was relevant and properly admissible, without providing detailed analysis and reasons on admissibility. Both counsel advised that they wanted me to take the latter approach.
>
> [21] In his decision Bardai J. concluded, as I do here, that:
>
> a. there has been a breakdown of civility, respect, confidence and trust between the two groups;
>
> b. there is significant acrimony and tensions are running high;
>
> c. there is no internal mechanism in unanimous shareholders agreements or in the operating corporations articles or bylaws to resolve director or shareholders' deadlock.
>
> [22] Further, Bardai J. stated as follows at para. 60:
>
> > The Waisman Group has devoted volumes of material to tracing the historic financial affairs of the Operating Companies, much of which predates the Settlement, all in an effort to show mismanagement and prove a need for new management. Much of this evidence is not particularly helpful. ...
>
> The same has occurred here in Howard Waisman's 63-page affidavit.
>
> [23] Given the undisputable fact that the parties' relationship is one of long term conflict and a complete breakdown of civility, respect and trust, much of the evidence the Waisman/Hector group presents is simply irrelevant. Whatever the full history of their relationship, what is relevant on the application before me is evidence relating to the specific application before me. The question now comes down to whether on a go-forward basis there is any reasonable prospect that the parties can cooperate on the decisions to be made or whether they are essentially deadlocked.
>
> [24] In his decision Bardai J. concluded that he was not satisfied the parties had yet reached the stage of deadlock and expressed the hope that with the measures that he was ordering the parties would be able to come to agreements. Accordingly, he dismissed the Egger/Ng liquidation application, but without prejudice to it being brought back at a later date. [Emphasis in original]

[5] In my decision, I found the parties were involved in a longstanding and intractable conflict, and there effectively existed a deadlock between the parties making it just and equitable to make an order that brought the conflict to an end. At

paragraph 56, I ordered a process for the sale of the Operating Companies. Following this decision, the parties agreed to a consent order that resulted in the Hector and Waisman shares in four of the then remaining original eight Operating Companies (two having previously been sold) being transferred to Egger and Ng and their shares in the remaining two Operating Companies being transferred to Hector and Waisman along with payment of equalization payment.

[6] My decision provided that the parties could bring any cost issue back before me for determination.

[7] The following background facts are among those relevant for consideration as regards the Egger/Ng application for an award of solicitor-client costs in respect of the proceedings before me:

a. The settlement agreement entered into in 2018, on the eve of trial of the Hector/Waisman action (QBG-SA-01372-2016, Judicial Centre of Saskatoon) stipulated in Clause 2.1 that the Operating Companies pay to the plaintiffs "a sum not to exceed $950,000 supported by paid invoices for professional fees incurred by or on behalf of the Plaintiffs (Applicants) relating to this litigation" and in Clause 2.2 to the Defendants "a sum not to exceed $120,000 supported by paid invoices for professional fees incurred by or on behalf of the Defendants (Respondents) relating to this litigation." (See Exhibit D to the March 2, 2022, affidavit of Chuan Ng.)

b. In the applications before Bardai J. (as he then was), both parties sought solicitor-client costs, albeit those claims for solicitor-client costs were not granted (*H&H Holdings Ltd. v Ng*, 2021 SKQB 215).

c. In the applications of both sides leading to my November 18, 2022,

decision they respectively sought an award of solicitor-client costs.

The Law Respecting Entitlement to Solicitor-Client Costs

[8] *Siemens v Bawolin*, 2002 SKCA 84, [2002] 11 WWR 246 [*Siemens*], is the leading authority on the availability of solicitor-client costs in Saskatchewan. At paragraph 118, Jackson J.A. writing for the Court stated the guiding principles as follows:

> [118] These are the principles, relevant to this appeal, which I take from my review of the above authorities:
>
> 1. solicitor and client costs are awarded in rare and exceptional cases only;
>
> 2. solicitor and client costs are awarded in cases where the conduct of the party against whom they are sought is described variously as scandalous, outrageous or reprehensible;
>
> 3. solicitor and client costs are not generally awarded as a reaction to the conduct giving rise to the litigation, but are intended to censure behaviour related to the litigation alone;
>
> 4. notwithstanding point 3, solicitor and client costs may be awarded in exceptional cases to provide the other party complete indemnification for costs reasonably incurred.

[9] Counsel for Egger/Ng argues that this is indeed an exceptional case on various grounds and that the conduct of Hector and Waisman related to or within the litigation was at a minimum reprehensible. Counsel for Hector and Waisman says:

a. this is not an exceptional case;

b. the conduct of his clients should not properly be viewed as any of scandalous, outrageous or reprehensible;

c. there was no behavior by his clients related to the litigation that merits censure; and

d. normal party-party costs are appropriate.

[10] While *Siemens* is often interpreted and applied as creating a very high bar for the award of solicitor-client costs, it is significant that there, the Court of Appeal upheld the trial level decision awarding solicitor-client costs. The Court, applying the above-noted guiding principles, stated as follows:

> [119] Turning back to the trial judge's reasons for awarding solicitor and client costs, these were her reasons:
>
> > [262] I have found that the defendant, Kaspar Bawolin, deceived Viola Siemens and misappropriated her property in breach of his fiduciary duty to her. The plaintiff, Viola Siemens, has been put to enormous cost to determine what became of her property. At the time of the contempt application in 1996 the plaintiff had already incurred over $50,000 in solicitor client costs, including disbursements. Clare Heagy's account alone will be in excess of $37,000. Justice to Viola Siemens requires indemnification for these costs, incurred entirely due to the dishonest and reprehensible conduct of the defendant, Kaspar Bawolin, in his breach of fiduciary duty to her. In addition, the trial of this action consumed almost four full weeks. Throughout the proceedings prior to the trial and at trial Kaspar Bawolin provided convoluted, confusing, inconsistent and dishonest evidence. This plaintiff shall have costs against Kaspar Bawolin on a solicitor and client basis.
>
> [120] Thus, the trial judge awarded solicitor and client costs on two primary bases:
>
> 1. to provide complete indemnification for costs reasonably incurred for a breach of fiduciary duty;
>
> 2. to punish Kaspar Bawolin for providing "convoluted, confusing, inconsistent and dishonest evidence" prior to and during the trial.
>
> [121] Both of these bases are defensible in law. There is precedent for completely indemnifying the injured party where a breach of fiduciary duty has occurred, particularly where, as was the case here, no order for punitive damages has been made. There is also precedent for the second reason which goes to the heart of the trial process and is the more usual basis upon which solicitor and client costs are awarded.

The Law Respecting Awarding Costs on a Discretionary Basis and Enhanced Costs

[11] As stated at paragraph 98 of *Siemens*, "We are, whether we characterize

the costs as party and party or solicitor and client costs, dealing with a discretionary order." An award of costs, regardless of how those costs are characterized, is always discretionary.

[12] As Popescul C.J. stated in *Saskatchewan Regional Council of Carpenters, Drywall, Millwrights and Allied Workers v Saskatchewan Labour Relations* Board, 2013 SKQB 209, 422 Sask R 12:

> [11] Fourthly, the purpose of awarding costs includes:
>
> - the traditional objective of partially indemnifying the successful party;
> - the efficient and orderly administration of justice;
> - to encourage settlements, to defer frivolous actions and defences;
> - to discourage unnecessary steps in litigation; and
> - to sanction unreasonable or vexatious behaviour.

[13] Thus, costs can be awarded on a continuum from no cost to party-party costs, through enhanced costs and ultimately full indemnity by an award of solicitor-client costs. At all times in the continuum and subject to exercising its discretion judicially, "the court has discretion respecting the costs of and incidental to a proceeding or a step in a proceeding and may make any direction or order respecting costs that it considers appropriate." The scope of its discretion and what the court may consider are stated in Rule 11-1 extend to making any direction or order respecting costs that the court "considers appropriate".

[14] Examples of the continuum and scope of the court's discretion include:

- *Mayer Holdings Inc. v Mayer Estate*, 2001 SKQB 322, where the court held that while the conduct was not "reprehensible, scandalous or outrageous", yet the plaintiff's case had such little merit that the

defendant should be entitled to be reimbursed to an extent greater than only his assessed costs.

- *First Choice Capital Fund Ltd. v First Canadian Capital Corp*., 2000 SKQB 581, 202 Sask R 161, where the court held that in a complex and convoluted lawsuit with many unique aspects, it is inappropriate to utilize that generic tariff designed to provide some certainty regarding costs in "ordinary" lawsuits.

- *Jones v Jones*, 2021 SKQB 34, where, in what the judge describes as a straightforward estate consisting of land and cash which should have been a simple estate to administer, one party litigated multiple issues, made allegations of theft and other misconduct such that the court held it was one of those rare and exceptional cases where solicitor-client costs were appropriate.

[15] In *Wanhella v Calvert*, 2013 SKQB 319, 429 Sask R 47 [*Wanhella*], the court provided the following guidance on the impact of the Foundational Rules of this court on litigants need to conduct themselves:

> [20] As a final note, the court's new Rules have recently come into force, including the foundational rules. The beneficiaries ought to review same. I remind the parties and their counsel of their duty to bear in mind the time and cost of litigation, and the concept of keeping such time and cost proportionate to the matters actually in issue. The foundational rules are not nominal or aspirational. The foundational rules are overarching statements of principle which will strongly influence and guide the manner in which litigation is to be conducted in this Province. It is the expectation of the court that they be considered in each case and that counsel and the parties conduct themselves in accordance with same. Continuing to object to every step the administrator takes may be a course of action replete with pitfalls for such a party. Failure to do so will not be without consequences.

What costs do I assess as properly payable?

[16] Egger and Ng's position is that they should be awarded solicitor-client costs of $305,371.75, being the amount of invoices they received and paid for legal fees and disbursement incurred by them between November 2021 and April 2023 to obtain the liquidation order they did. The applicants say the respondents' conduct in opposing the relief they sought was scandalous, outrageous or reprehensible for the following reasons:

> 17. The following grounds, among others, support an award of solicitor-client costs against the Hector/Waisman Shareholders:
>
> (a) commencing proceedings for the ulterior purpose of holding the Egger/Ng Shareholders' "feet to the fire" and attempting to leverage the proceedings against the Egger/Ng Shareholders in management of the Operating Companies;
>
> (b) filing lengthy affidavit evidence of moot and/or irrelevant matters after prior admonishment by the Court;
>
> (c) improperly attempting to relitigate matters previously determined by the Court;
>
> (d) making unsubstantiated allegations of "trickery", and insinuating that the Egger/Ng Shareholders were involved in theft from the Operating Companies, fraud, and misappropriation;
>
> (e) improperly, falsely and repeatedly alleging that Pamela Egger, a practicing lawyer, engaged in unprofessional conduction, despite the fact there was no factual or legal basis to do so;
>
> (f) prolonging and delaying the proceedings, at significant increased cost to the Egger/Ng Shareholders, by erroneously responding to the application as if it were seeking an oppression remedy (which it was not), rather than the just and equitable relief clearly set out in the Originating Application;
>
> (g) failing to abide by Court-ordered timelines and causing delay of proceedings and increased cost by bringing a last-minute application for cross-examination.

> (h) failing to abide by the Court-ordered timeline for completion of the division of the Operating Companies;
>
> (i) taking steps in the proceedings that were unnecessary to delay resolution of the claim and/or to cause the Egger/Ng Shareholders to incur costs, including the unnecessary cross-examination on the affidavits of Chuan Ng and Pamela Egger;
>
> (j) abandoning unnecessary applications after putting the Egger/Ng Shareholders to the cost of responding;
>
> (k) advancing positions wholly devoid of merit; and
>
> (l) such further and other grounds as will be set out in the brief of law filed by the Egger/Ng Shareholders in support of this application.

[17] They say that even if the respondents' conduct did not qualify as being scandalous, outrageous or reprehensible, nonetheless, solicitor-client costs are appropriate in this case because it is one of those exceptional cases where it is appropriate to provide the other party complete indemnification for costs reasonably incurred. It says that what makes this so includes the following:

a. the Operating Companies were worth tens of millions of dollars;

b. the litigation between the parties extended over a decade, with a history of both sides seeking legal costs on a solicitor-client basis in the proceedings that preceded this one;

c. following the Bardai J. decision that Hector and Waisman continued to justify their actions on bases that had already been rejected and deemed improper by Bardai J.;

d. as found by me, the conflict between the parties was very likely to continue and sale of or liquidation of the assets of the Operating Companies was just and equitable in the circumstances; and

e. the resolution of more than a decade of litigation would not have occurred but for Egger and Ng bringing their application to liquidate.

[18] No issue is raised by the respondents that counsel's invoices were not received and paid by the applicants nor challenges to the reasonableness of the billings as between solicitor and client. Rather, Hector and Waisman simply say that the appropriate fees would be the normal taxable costs on a tariff basis, in the order of $15,000. They say an award of solicitor-client or enhanced costs is not appropriate for the reasons noted in paragraph 9 above.

My Analysis and Conclusion

[19] While I agree that the conduct of Hector and Waisman in the proceedings before me may fall short of being categorized as scandalous or outrageous, I do find their conduct, within the confines of the applications before me, to be unreasonable and reprehensible. The following definitions of reprehensible are provided by the following respected and widely used dictionaries:

a. *Oxford English Dictionary*: "deserving of reprehension, censure or rebuke";

b. *Cambridge Dictionary*: "deserving blame, recognized as bad"; and

c. *Merriam-Webster Dictionary*: "worthy of or deserving reprehension".

[20] The actions of Hector and Waisman in this proceeding are worthy of and deserving of censure or rebuke.

[21] The Foundational Rules are clear. Parties are directed by Rule 1-3 to refrain from filing applications and taking proceedings that do not further the purpose and intention of the Rules, including to identifying the real issues in dispute and facilitate the quickest means of resolving the claim at the least expense. This necessarily

makes filing unnecessary affidavits, not focusing on the real issue in dispute and generally taking actions that are contrary to the objective of resolving the claim with the least expense as matters meriting censure. As Danyliuk J. said in *Wanhella*, the Foundational Rules are not nominal or aspirational. The Foundational Rules are overarching statements of principle which will strongly influence and guide the manner in which litigation is to be conducted in this Province. It is the expectation of the court that they be considered in each case and that counsel and the parties conduct themselves in accordance with same.

[22] The Egger and Ng application was for a division of the Operating Companies between the parties and appropriate equalization payments or liquidation of the Operating Companies pursuant to ss. 207 and 234 of *The Business Corporations Act*, RSS 1978, c B-10 (subsequently amended effective March 12, 2023, by *The Business Corporations Act, 2021*, SS 2021, c 6), on the grounds that it was just and equitable. They say that in the context of the history of litigation between the parties and the inability of the parties to give effect to the Bardai J. orders, the respondents unreasonably and reprehensively:

a. treated the application as an oppression application;

b. brought an application to strike extensive portions of the affidavits filed by the applicants in support of the application;

c. filed extensive affidavits in response to the application, the great bulk of which were:

   i. reiteration of evidence they had previously been told by Bardai J. was unhelpful; and

   ii. repeated unsubstantiated allegations of theft on the part of Egger and Ng and of unprofessional conduct on the part of Pamela Egger;

d. sought and obtained leave to cross-examine the Egger and Ng affiants which provided no evidence to support their position in opposing the application before the court;

e. delayed the hearing of the Egger and Ng application which was filed on March 9, 2022, and not heard until October 19, 2022.

f. after my decision of November 18, 2022, and the parties agreeing on consent orders for the division of the Operating Companies between them and associated timelines (the Consent Orders of February 3 and April 19, 2023) Hector and Waisman applied to amend such consent orders, which application I dismissed.

[23] The fact that I find the behaviour of Hector and Waisman within the proceedings in the subject action was reprehensible does not mean that a full indemnity by means of an award of full solicitor-client costs should necessarily follow. However, at a minimum it is a significant factor to consider in request of the alternate request for enhanced costs.

[24] Distinct from the issue of whether solicitor-client costs should be awarded on the basis of scandalous, outrageous or reprehensible behaviour in the course of the proceedings is the issue of whether an award of solicitor client costs is justified by reason that the proceeding is, on the fourth *Siemens* grounds, one of those exceptional cases where complete indemnification for the costs reasonably incurred by the successful party should be provided.

[25] The application I heard and decided was preceded by more than a decade of dispute and hard fought litigation, failure to give effect to their own October 2018 settlement agreement and subsequent oppression conduct proceedings by both parties against the other.

[26] Throughout these proceedings the parties consistently sought solicitor-client costs against the other. Hector and Waisman effectively obtained a significant measure of such indemnity under the terms of settlement agreement of October 2018 which required the Operating Companies pay the some $950,000 of professional fees that had been incurred by or on behalf of them in the proceedings to that date. Since Egger and Ng are 50% owners of the Operating Companies, this effectively meant that the Egger and Ng paid 50% of the Hector and Waisman's legal fees of some $950,000 and Hector and Waisman paid 50% of the Egger and Ng legal fees of some $120,000 of the proceedings to that date.

[27] The liquidation application before me was a complex matter. It was an application that required significant research, analysis and preparation to bring. Significant efforts were expended by Egger and Ng's counsel in well-researched and presented submissions before me. Given the history of inability of the parties to themselves solve their disputes and come to a just and equitable solution by agreement, the proceedings and the result obtained was equally of benefit to both parties. Thus, it can be said, and I so find, that this is an exceptional case because the application and proceedings brought and prosecuted by Egger and Ng achieved a result that equally benefitted both the Egger and Ng entities and the Hector and Waisman entities. I conclude this is one of those exceptional cases that justifies indemnity on a solicitor-client basis or, at a minimum, on an enhanced costs basis. Hector and Waisman should pay one half of the costs incurred by Egger and Ng to obtain the result they did because the expenditure of those costs benefitted Hector and Waisman equally.

[28] In addition, the costs decision should appropriately factor in the impact of those aspects of the Hector and Waisman conduct in the proceedings that I view as reprehensible and thereby increased the solicitor-client costs incurred by Egger and Ng in achieving a result, of benefit to both sides. This similarly can be done on an enhanced costs basis and is a decision to be made on a discretionary basis.

Conclusion and Orders

[29] Considering all of:

a. this is an exceptional case in part related to the fact that the result obtained as a result of the Egger and Ng application equally benefitted both factions;

b. my further conclusion that those aspects of the Hector and Waisman conduct in the proceedings that I view as reprehensible increased unnecessarily the solicitor-client costs incurred by Egger and Ng in achieving a result, of benefit to both sides; and

c. those factors to be considered in a discretionary award under Rule 11-4, including, without limitation, the:

   i. complexity and result of the proceedings;

   ii. the importance of the proceeding in bringing an end to the conflict; and

   iii. the conduct of Hector and Waisman in the proceedings;

I find that an appropriate enhanced costs award, in favour of Egger and Ng is 75% of the $305,371.75 of the solicitor-client costs they incurred with MLT Aikins in respect of all proceedings herein, prior to the application for solicitor-client costs decided herein. I arrive at this conclusion starting from my conclusion at paragraph 28 that Hector and Waisman obtained equal benefit from the proceedings and thus should bear an initial 50% of Egger and Ng's solicitor-client costs. Then, as regards the remaining 50% of the Egger and Ng solicitor-client costs, I find that it is appropriate that Hector and Waisman indemnify Egger and Ng for 50% thereof by reason of the reprehensible conduct of Hector and Waisman in the court of opposing the application brought. This

reprehensible conduct significantly contributed to the complexity of the proceedings and the solicitor-client costs incurred by Egger and Ng.

[30] With respect to the application for solicitor-client or enhanced costs before me, Egger and Ng shall be entitled to their taxable costs of their application on the basis of three times Column Three of the Tariff of Costs. I make this award of increased Tariff-based costs due to the complexity of the costs issues brought before me.

"B. Scherman" J.
B. SCHERMAN