

KING'S BENCH FOR SASKATCHEWAN

Citation: 2024 SKKB 55

Date: 2024 03 28
File No.: QBG-SA-01175-2020
Judicial Centre: Saskatoon

BETWEEN:

HATTIE CAROLINA HOLMES

PLAINTIFF

- and -

JUSTANOTHER FARM LTD.

DEFENDANT

- and -

JUSTANOTHER FARM LTD. and BEVERLY GREENAN

PLAINTIFFS/
DEFENDANTS BY COUNTERCLAIM

- and -

HATTIE CAROLINA HOLMES and BRUCE MORRISON

DEFENDANTS/
PLAINTIFFS BY COUNTERCLAIM and
THIRD PARTY CLAIM

- and -

KEVIN GREENAN

DEFENDANT BY THIRD PARTY CLAIM

Counsel:

Clayton B. Barry
Randall T. Klein, K.C.

for Hattie Carolina Holmes and Bruce Morrison
for Justanother Farm Ltd., Beverly Greenan
and Kevin Greenan

FIAT
March 28, 2024

ROTHERY J.

[1] This consolidated action consists of an action commenced by Hattie Carolina Holmes [Hattie] against Justanother Farm Ltd. [JAF] for payment of outstanding monies owed to her from JAF for grain. The amount of the outstanding debt is disputed by JAF.

[2] The second action, commenced by JAF and Hattie's daughter, Beverly Greenan [Beverly], pertains to the characterization of certain class "D" shares of JAF held by Hattie. JAF and Beverly allege Hattie owns these shares as bare trustee for Beverly and the shares are to be transferred to Beverly upon Hattie's death. As well, JAF and Beverly allege that there is an agreement that JAF would farm the S ½ of the S ½ of 24-29-27-W3 during Hattie's lifetime on a crop share agreement, and upon Hattie's death that land would be transferred to Beverly.

[3] Bruce Morrison [Bruce] is the executor of Hattie's late husband's estate. Bruce and Hattie defended the claim brought against them by JAF and Beverly, and filed a counterclaim against JAF, Beverly and her husband, Kevin Greenan [Kevin], as a third party, alleging that Hattie is entitled to now redeem her class "D" shares in JAF. Hattie denies that Beverly is entitled to receipt of the land on her death. Hattie and Bruce allege that JAF, Beverly and Kevin have been oppressive, unfairly prejudicial to, and/or have disregarded the interests of Hattie and her late husband's estate. They also allege that JAF, Beverly and Kevin have engaged in conspiracy against them.

[4] Several applications were brought by JAF and Hattie in December 2023, which resulted in my unpublished fiat dated January 3, 2024. Besides making rulings on certain issues regarding disclosure, Hattie sought a declaration as to her rights as a shareholder pursuant to the provisions of *The Business Corporations Act, 2021*, SS 2021, c 6 [SBCA]

[5] Paragraphs 20-25 of the unpublished fiat of January 3, 2024, states:

[20] Hattie also seeks the following relief in her application originally returnable October 5, 2023, stated as follows:

3. A declaration pursuant to sections 13-8 and 13-9 of *The Business Corporations Act, 2021*, S.S. 2021, c. 6 [SBCA] that Hattie Carolina Holmes [Hattie] is entitled to attend the annual meeting of the shareholders and to vote on the waiver or appointment of an auditor for JAF.

[21] Counsel for Hattie submits that the provisions of *The Business Corporations Act, 2021*, SS 2021, c 6 [SBCA], is clear and unequivocal that all shareholders of a corporation are entitled to vote at the annual meeting on the resolution to not appoint an auditor on an annual basis. Counsel refers to ss. 13-8 and 13-9 of the SBCA, which states:

13-8(1) Subject to section 13-9, shareholders of a corporation shall by ordinary resolution, at the first annual meeting of shareholders and at each succeeding annual meeting, appoint an auditor to hold office until the close of the next annual meeting.

(2) An auditor appointed pursuant to section 9-5 is eligible for appointment in accordance with subsection (1).

(3) Notwithstanding subsection (1), if an auditor is not appointed at a meeting of shareholders, the incumbent auditor continues in office until the incumbent auditor's successor is appointed.

(4) The remuneration of an auditor may be fixed by ordinary resolution of the shareholders or, if not so fixed, may be fixed by the directors.

13-9(1) The shareholders of a corporation that is not a distributing corporation may resolve not to appoint an auditor.

(2) A resolution pursuant to subsection (1) is valid only until the next annual meeting of shareholders.

(3) A resolution pursuant to subsection (1) is not valid unless it is consented to by all the shareholders, including shareholders not otherwise entitled to vote.

[22] As stated in s. 13-8(1) of the SBCA, that section is “subject to section 13-9”. Section 13-9 is the controlling section, which requires that any annual resolution to not appoint an auditor must be consented to by all shareholders.

[23] Granted, the Articles of Amendment of JAF provide the following stipulation regarding the class “D” shares:

The holders of the Class “D” shares shall not be entitled to notice of and attend any meeting of shareholders of the Corporation and no voting rights shall attach to the Class “D” shares. The holders of Class “D” shares shall, however, be entitled to vote at separate meetings of the holders of Class “D” of shares Class called “D” for any purpose for which a meeting of the holders of Class “D” shares may or shall be called pursuant to the provisions of *The Business Corporations Act*.

[24] While Hattie is not entitled to have notice of or attend JAF’s annual meeting of shareholders, JAF is required to call annual meetings of the holders of class “D” shares. These annual meetings are mandated by the *SBCA* because all shareholders must consent to the resolution not to appoint an auditor. JAF requires Hattie’s consent to the resolution not to appoint an auditor, and any such resolution must be presented to the annual meeting of the class “D” shareholders. Otherwise, the resolution is invalid.

[25] It is hereby declared that JAF is required to call an annual meeting of the class “D” shareholders for the purpose of complying with s. 13-9 of the *SBCA* and determining if Hattie consents to a resolution not to appoint an auditor.

[6] JAF now seeks leave to appeal this declaration, and brings an application before me as the King’s Bench judge to obtain leave. Counsel for JAF submits that the wording of s. 18-10 of *SBCA* means that such application for leave to appeal must be directed to the Court of King’s Bench.

[7] The former *SBCA* (RSS 1978, c B-10), which was replaced with the *SBCA* that came into force on March 12, 2023, provided at s. 242:

242 An appeal lies to the Court of Appeal from any order made by a court under this Act.

[8] Now, s. 18-10 of the *SBCA* states:

18-10 An appeal lies to the Court of Appeal from any order made by a court pursuant to this Act, with leave of a judge of that court.

[9] “Court” is defined in s. 1-2(1) of the *SBCA* as follows:

1-2(1) In this Act:

“**court**”, unless the context otherwise requires, means the Court of Queen’s Bench [now King’s Bench] and includes a judge of the court;

[10] It is clear that the court that made any order pursuant to the *SBCA* is the Court of King’s Bench. Part 18 of the *SBCA* refers to Remedies, and s. 18-6(1) of the *SBCA* states:

18-6(1) Any interested person may apply to the court for an order with respect to the following:

- (a) the operation of:
 - (i) this Act or the regulations;
 - (ii) the Corporate Registry;

...

[11] That is exactly what Hattie did. She sought a declaration of her shareholder rights and the requirement under the *SBCA* for JAF to call an annual meeting of the class “D” shareholders.

[12] But, the issue is whether the application to grant leave to appeal the decision is to be brought to a judge of the Court of King’s Bench, or to a judge of the Court of Appeal.

[13] Counsel for JAF argues that the demonstrative adjective “that” before the word “court” refers to the Court of King’s Bench. However, the ordinary meaning of “that” refers to something that is further or less immediate. Oppositely, “this” refers to something that is the nearer or more immediate. Within the structure of s. 18-10 of the *SBCA*, “this” refers to the Court of King’s Bench; “that” refers to the less immediate court referred to in the sentence. The less immediate court is the Court of Appeal.

[14] The ordinary meaning of the word “that” in s. 18-10 of the *SBCA* is also

in keeping with the dictionary meaning of the word. See, for example, the *Shorter Oxford English Dictionary*, 6th ed, Oxford University Press, 2007.

[15] Therefore, leave to appeal this decision must be brought before a judge of the Court of Appeal. This application brought before me must be struck, without costs.

A.R. ROTHERY J.