

CANADA / JUDGMENT

0081092 B.C. Ltd. (Re)

2024 BCSC 2402

COURT

Supreme Court of British Columbia

DECIDED

6 December 2024

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2024 BCSC 2402 0081092 B.C. Ltd. (Re)

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

0081092 B.C. Ltd. (Re),

2024 BCSC 2402

Date: 20241206

Docket: S232641

Registry: Vancouver

In the Matter of section 325 of the Business Corporations Act, S.B.C. 2002,

c. 57 as amended

and

In the Matter of 0081092 B.C. Ltd. in Liquidation

Before: The Honourable Justice K. Loo

Oral Reasons for Judgment

Counsel for Ernst & Young Inc. (outgoing liquidator):

W.L. Roberts

A. Paczkowski

Counsel for MNP Ltd. (incoming liquidator):

J. Bradshaw

A. Mojtahedi

Counsel for Edward Callahan:

L. Herbst, K.C.

P.J. Sullivan

Counsel for Robert Callahan, Bruce Callahan, and Bruce Callahan as Trustee for the Callahan AE #3 Trust:

T. Young

Counsel for Douglas Callahan:

A.H. Sabur

Y. Gao

Place and Date of Hearing

Vancouver, B.C.

December 2, 3 and 6, 2024

Place and Date of Judgment

Vancouver, B.C.

December 6, 2024

- [1] THE COURT: This is an application advanced by Ernst & Young in this liquidation proceeding for orders relating to its replacement as liquidator by MNP Ltd. As the appointment of MNP is set to come into effect on December 11, 2024, there is significant urgency to the orders sought, and so these reasons are being delivered orally on the day of the hearing. In the event that a transcript is ordered, I reserve the right to edit the reasons for clarity and grammar, but the content of the reasons will not change.
- [2] This liquidation proceeding is one of a number of actions and proceedings of which I am seized, all relating to disputes among Ted Callahan and his brothers, Douglas, Edward, Bruce, and Robert in respect of a company, 0081092 B.C. Ltd., formerly known as Shasta Properties Ltd., and its ownership of five contiguous parcels of land on Lakeshore Road in Kelowna. These lands occupy approximately 18.5 acres and are valued at tens of millions of dollars.
- [3] In November 2020, the shareholders of the company resolved by special resolution to commence the voluntary liquidation of the company and to appoint E&Y as the liquidator to cause the liquidation of the company's assets, including the lands, while operating the company as a going concern.

- [4] Since then, E&Y has been acting in that capacity. Ms. Holly Palmer was responsible for the day-to-day carriage of the liquidation in her capacity as a senior vice president and representative of E&Y.
- [5] On November 5, 2024, notice was given of an extraordinary annual general meeting of the company's shareholders to consider, and if thought fit, to pass, a special resolution removing E&Y and appointing MNP as liquidator of the company. On November 21, 2024, Ted Callahan wrote directly to the other shareholders stating:

The proposal to appoint MNP as the liquidator of Shasta presents a significant direct conflict of interest which cannot be overlooked.

- [6] On November 22, 2024, counsel for Robert and Bruce Callahan wrote to counsel for Ted Callahan advising him, among other things, that Ms. Palmer would continue to have conduct of the liquidation at MNP.
- [7] On November 24, 2024, counsel for Ted Callahan wrote to counsel for Robert and Bruce in which he stated the following position in respect of the proposal to substitute the liquidators:

Ted Callahan's hospitality and hotel group, the Argus Group, have a long-standing and ongoing professional relationship with MNP. As you are no doubt aware, the Argus Group owns and operates several hotels in Kelowna and is the largest hotel operator in the city of Kelowna. It is well known that Marge Callahan spoke about the future possibility of a hotel on the Crown Jewel lands since our respective clients were kids. On acquisition, Ted wants to consider the potential of building a hotel on the site. MNP provides the Argus Group with substantive financial and advisory services. This includes strategic advice to the Argus Group, facilitating banking relationship and negotiating with banks for financing, the preparation of financial statements and annual tax returns, and general advice on strategic and business approaches. The Argus Group has spent over half a million dollars with MNP in relation to those services over the last couple of years.

MNP has intimate knowledge of the financial means and ability of my client, my client's relationships, and my client's strategic and business approach. It would be extremely prejudicial and a conflict of interest as well as creating the appearance of a conflict for the liquidator to have insider knowledge about my client's financial ability.

- [8] In a further letter dated November 24, counsel for Ted Callahan wrote to counsel for E&Y seeking various documents from E&Y. On November 27, 2024, the majority of the company's shareholders resolved to remove E&Y and to appoint MNP as liquidator of the company effective December 11, 2024.

- [9] The next day, on November 28, 2024, E&Y filed a notice of application and supporting materials in this liquidation proceeding. Some of the prayers for relief set out in the notice of application have been adjourned generally, and two have proceeded this week. E&Y seeks an order that MNP is substituted for E&Y as the petitioner, as well as in an amended and restated sales process document and a listing agreement.
- [10] The parties appeared briefly before me on Monday, December 2, 2024, and then on Tuesday, December 3. In the course of those two hearing days which mostly involved other matters relating to the liquidation, there was a concern expressed by counsel that Ted Callahan had expressed concerns about the appointment of MNP and that those concerns ought to be aired as part of the order substituting MNP for E&Y as the petitioner in the liquidation proceeding, and in the sales process order and the listing agreement
- [11] On Tuesday, December 3, 2024, Ted Callahan advised the Court through his counsel that he would not seek to disqualify MNP as liquidator. However, his counsel continued to express concerns about the appointment of MNP as liquidator and sought to establish that his client could reserve his rights going forward, although it was not precisely clear to the Court what rights were sought to be reserved or what his concerns were.
- [12] In that context, I directed counsel for Ted Callahan to provide a letter by the end of the day on Wednesday, December 4, setting out any concerns, grievances, or objections that Ted Callahan had to the appointment of MNP. I directed that MNP could respond to those concerns yesterday, which was Thursday, December 5, and that those concerns would be addressed today in submissions on Friday, December 6.
- [13] Counsel for Ted Callahan wrote to MNP as required on Wednesday December 4, but he did not identify any specific concerns, grievances, or objections to the appointment. Rather, his letter stated:

Mr. Callahan's position is that any order substituting should be expressly without prejudice to his ability to advance, one, any and all civil claims against MNP including but not limited to claims of negligence, breach of fiduciary duty, and breach of contract; and two, any and all regulatory proceedings relating to MNP's conduct.

- [14] On Thursday, December 5, 2024, MNP delivered an affidavit affirmed by Ms. Palmer. That affidavit does not address the position taken by Ted Callahan in his counsel's December 4 letter but, rather, it appears at least in part to be responsive to the concerns raised in the November 24 letter from Ted Callahan's counsel quoted above.
- [15] In her affidavit, Ms. Palmer deposes that she and her team do not possess any knowledge of the information gathered by MNP's private enterprise team for Ted Callahan or the Argus Group. She describes safeguards and screening measures that have been implemented at MNP to ensure that her team or any MNP personnel involved in the liquidation will not have access to any confidential information provided by Ted Callahan or the Argus Group to MNP. She deposes that those screening measures were communicated to Ted Callahan's counsel

on December 2, 2024.

[16] I note that Ted Callahan today did not make any submissions about why those measures are inadequate. He has said in correspondence that he requires more information from MNP. His counsel submitted today that the information he has sought remains outstanding.

[17] In the context of that chronology, I will now turn back to the applications before the Court. There appears to be no direct opposition to the orders sought by E&Y. Rather, both MNP and Ted Callahan have sought additional terms to be added to the Court's order.

[18] Specifically, MNP in its application response submits at paragraph 6 that:

it would be appropriate for this Court to exercise its discretion and to permanently bar and enjoin Mr. Callahan, or companies controlled by him, from advancing any suit, action, claim, or regulatory proceeding against MNP, or seeking to disqualify MNP to act as the liquidator of the Company, on the basis of an alleged conflict of interest arising, directly or indirectly, from MNP's appointment as the liquidator of the Company.

[19] MNP urges the Court to make this order on the basis that MNP ought not to have the spectre of a potential legal proceeding hanging over its head as it deals with this liquidation. However, there is no evidence before the Court that the possibility of a further legal proceeding is affecting or would affect the conduct of the litigation in any way.

[20] It is noted that no application has been advanced by MNP for an order barring Ted Callahan or any of his companies from advancing civil or regulatory claims against MNP.

[21] In support of its position, MNP has referred to section 325(2) of the Business Corporations Act, S.B.C. 2002, c. 57, which provides that on an application made in respect of a company in liquidation, the Court may, in respect of that company, make any order it considers appropriate.

[22] There is no doubt that this provision clothes this Court with broad discretion, but I have not been provided with any authority that suggests that it is appropriate for a court to bar claims advanced by a party in the future, particularly as an adjunct to an order substituting one liquidator for another, and particularly without fulsome motion materials in which that relief is expressly sought. Counsel for MNP has referred the court to a number of cases, but none of these is of assistance in determining whether I ought to exercise my discretion under s. 325 to bar future claims by Ted Callahan.

[23] For all of these reasons, I am not prepared to include the additional term in this Court's order that is sought by MNP.

- [24] As stated in the letter from his counsel on December 4, Ted Callahan submits that the orders being granted today should be expressly without prejudice to his ability to advance any and all civil claims against MNP, and any and all regulatory proceedings relating to MNP's conduct. Similarly, he states in his application response that he has raised conflict of interest issues regarding MNP's role as liquidator and reserves all rights to pursue those issues.
- [25] For reasons similar to those addressed above with respect to the terms sought by MNP, I am not prepared to include a term in the order as suggested or advocated for by Ted Callahan. There is no application by Ted Callahan, or anyone else for that matter, seeking to disqualify MNP as liquidator. There is no application advanced by him for a declaration that MNP is in a conflict of interest.
- [26] While it may be appropriate in some circumstances to grant an order subject to an application which cannot be heard but is presently before the Court, I have been provided with no authority for the proposition that it is appropriate for this Court to grant a broad declaration that an order is without prejudice to future claims and proceedings whose scope and content are entirely unknown.
- [27] In summary, I am not prepared to include the terms sought either by Ted Callahan or MNP.
- [28] In this proceeding, based upon submissions made by counsel for Ted Callahan to this Court, I view Ted Callahan to be precluded in this proceeding from raising any objections to the appointment of MNP on the basis of conflicts of interest. Apart from that, I am not prepared to make any further rulings. Anyone who seeks further insight beyond those addressed in these reasons into the positions taken and the directions made during the hearings this week will, of course, have the record. Whether the contents of that record preclude future proceedings from being advanced by Ted Callahan, either under the doctrine of issue estoppel or otherwise, will be for the presider in those proceedings to determine.
- [29] At the end of the day, E&Y has made application for orders that MNP be substituted for E&Y as the petitioner in this proceeding, as well as in an amended and restated sales process and a listing agreement. While concerns have been raised both about potential conflicts of interest by Ted Callahan and about the spectre of future claims by MNP, no one has established a conflict or any other reason on the evidence for this Court to refuse the orders sought by E&Y.
- [30] I will make the orders sought by E&Y, and the language of the orders will substantially track the language in paragraphs 2, 4, and 5 of part 1 in E&Y's Notice of Application filed November 28, 2024, without the terms sought by MNP and Ted Callahan.

"The Honourable Justice Loo"

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