

CANADA / JUDGMENT

Allard v. Allard

2023 BCSC 1823

COURT

Supreme Court of British Columbia

DECIDED

18 October 2023

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2023 BCSC 1823 Allard v. Allard

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Allard v. Allard,

2023 BCSC 1823

Date: 20231018

Docket: S230992

Registry: Vancouver

Between:

James T. Allard, Colleen Talbot and JTA Investments Ltd.

Petitioners

And

Barry Allard, Jo-Ann Allard, B.R.A. Holdings Ltd., Allard Contractors Ltd., Allard Sand & Gravel Ltd., Montcalm Aggregates Ltd., Coquitlam Concrete (1993) Limited, and Allard Air Ltd.

Respondents

Before: The Honourable Justice Matthews

Reasons for Judgment

In Chambers

Counsel for the petitioners:

M.J.J. Wagner

M.W. Pierce

Counsel for the respondents Barry Allard, Jo-Ann Allard, B.R.A. Holdings Ltd.

B.F. Morley

Place and Date of Hearing:

Vancouver, B.C.

May 30-31, 2023

Further Written Submissions:

August 26, 2023

Place and Date of Judgment:

Vancouver, B.C.

October 18, 2023

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Overview

- [1] James Allard and Barry Allard are brothers. The personal petitioners, James Allard and Colleen Talbot, are spouses. The personal petitioners and their holding company, JTA Investments Ltd., are in business with the Barry Allard and his spouse, Jo-Ann Allard, their holding company B.R.A. Holdings Ltd., and the other corporate respondents, which I will call the Allard Group. Over several years the personal parties have had disputes that have included the future of the Allard Group and the way it is operated, especially with regard to the relationship between the Allard Group and Barry Allard's sons' companies that work in the same industry. More recently, James Allard and Barry Allard have also fallen out over the failed sale of a real property asset of the Allard Group.
- [2] The petitioners seek orders that it is just and equitable that the Allard Group be liquidated and dissolved pursuant to s. 324(1)(b) of the Business Corporations Act, S.B.C. 2002, c. 57 and that the court appoint a liquidator to commence liquidation six weeks from the date of the order. At the commencement of the hearing of the petition, and to the end of the submissions made by the petitioners, Barry Allard, Jo-Ann Allard and B.R.A. Holdings Ltd. (collectively, the "Barry Allard respondents") opposed all of the orders sought. However, at the commencement of their oral submissions, the Barry Allard respondents conceded that it was just and equitable for the court to invoke the liquidation and dissolution provisions of the Business Corporations Act. They remain opposed to the appointment of a liquidator, asserting that the personal parties' Buy-Sell Agreement should be used to permit the Barry Allard respondents to purchase the petitioners' interests in the Allard Group.
- [3] The petitioners assert that the Buy-Sell Agreement provisions are not apt for this situation, particularly because one of the areas of dysfunction and deadlock involves Barry Allard's information advantage about accounting issues pertaining to the Allard Group.
- [4] On May 31, 2023, I made an order pursuant to s. 324(1)(b) of the Business Corporations Act that is just and equitable to invoke the liquidation and dissolution provisions of the Business Corporations Act. I reserved my reasons for the s. 324(1)(b) order and my decision on what relief to order pursuant to s. 324(3), including whether to appoint a liquidator or grant some other relief pursuant to s. 227(3) of the Business Corporations Act.

- [5] The petitioners and the Barry Allard respondents are equal shareholders of the Allard Group and so if liquidation and dissolution will diminish the value of their interests, it is in their best interests to fashion a way to part company that is less destructive to the value of the Allard Group than liquidation. Accordingly, at the time I made the order I suggested to counsel for the parties that if, between then and August 31, 2023, they could agree on a remedy, they could advise the court, otherwise I would proceed to issue reasons.
- [6] I have not had any advice about an agreed upon resolution. I have received the parties submissions on an appropriate liquidator if the Court determines to appoint one.
- [7] These are my reasons for my previous s. 324(1)(b) order and the relief I grant, which is to appoint Michelle Grant of PwC to be the liquidator on terms to be spoken to by the parties.

Evidence Pertaining to Justifiable Lack of Confidence, Dysfunction and Deadlock

- [8] Despite the Barry Allard respondents changing their position during the course of the hearing of the petition and agreeing that an order under s. 324(1)(b) should be made, the evidence relating to the breakdown of relations between James Allard and Barry Allard is relevant to my determination that an order invoking liquidation and dissolution and to determine what relief to order. Barry Allard's position is that the appointment of a liquidator is inappropriate because the remedy should be tailored to address the deadlock and dysfunction, and no further. In order to consider that submission, it is necessary to understand the deadlock and dysfunction.
- [9] In addition, the evidence goes to the reasons for the lack of confidence that the petitioners have in Barry Allard, and the lack of confidence that Barry Allard has in James Allard.
- [10] The evidence is contested on the inferences to be drawn from many facts where the underlying facts are not contested. In some cases, the underlying facts are also contested. Where I state evidence that has been deposed to, that is because it is not necessary for me to find a fact and/or because that evidence is contested. Where I state events as facts, that is because there is uncontested evidence those events occurred. There are limited issues on which I need to find facts. In those circumstances, I state that I am doing so.
- [11] James Allard has deposed to the truth of the statements made by his lawyer in communications that are appended to James Allard's affidavits. Barry Allard has not done the same. In some instances that difference affects how I view the evidence for reasons I will explain.
- [12] The petitioners have included evidence of settlement discussions between Barry Allard and James Allard during the period of a standstill agreement that I will discuss below. This evidence was tendered to address a position that the Barry Allard respondents took prior to their concession that an order under s. 324(1)(b) should be made. Given the Barry Allard respondents' change of position during the hearing, the purpose for which the settlement correspondence was submitted is not relevant and I have not considered it.

The Allard Group

- [13] James Allard and Colleen Talbot, on one hand, and Barry Allard and Jo-Ann Allard, on the other hand, equally beneficially own and control the Allard Group, in part through their respective family companies, JTA Investments Ltd. and B.R.A. Holdings Ltd.
- [14] The Allard Group works in the following sectors:
- a) Allard Contractors Ltd.--sand and gravel supply;
 - b) Coquitlam Concrete (1993) Limited--concrete supply;
 - c) Montcalm Aggregates Ltd.--supplies labour for Allard Contractors and is the sole shareholder of Coquitlam Concrete;
 - d) Allard Sand & Gravel Ltd.--a holding company that has shares in Montcalm and Allard Contractors;
 - e) Allard Air Ltd.--leases and subleases under-hangar spaces.
- [15] The businesses that the companies that form the Allard Group undertake were, in the main, commenced by James Allard Senior, the father of James Allard and Barry Allard. James Allard Sr. transferred a third of the shares in Allard Contractors to each of his sons in 1970. In the 1980s, the sons bought their father's remaining shares in Allard Contractors. Since then, the only shareholders in the companies that comprise the Allard Group have been the petitioners and the Barry Allard respondents.
- [16] James Allard and Barry Allard have had different roles in the Allard Group over the years. They do not agree on how to characterize those roles. Nor do they agree about their respective contributions to the success of the Allard Group. Colleen Talbot and Jo-Ann Allard are directors and shareholders of some of the companies. Neither has ever had an active role in the Allard Group.
- [17] James Allard and Colleen Talbot have two sons as do Barry Allard and Jo-Ann Allard. Each of the sons have worked for one or more of the Allard Group companies at various times.
- [18] James Allard deposed that the corporate matters of the Allard Group were addressed relatively informally between himself and Barry Allard for many years. He deposed that they had an agreement, which he considered to be bedrock of their approach to the Allard Group, that each of their respective families would share equally in the business. He described this as the "50/50 Understanding". Barry Allard disputes the evidentiary basis to which James Allard refers to as the 50/50 Understanding. Barry Allard does not deny that there was a 50/50 Understanding or depose to a different overarching understanding as to how the brothers would operate the businesses of the Allard Group.

- [19] In December 2000, James Allard and Barry Allard negotiated a Buy-Sell Agreement that addresses what will happen with the Allard Group if either of them died, became disabled, went bankrupt, divorced, was in breach of the Buy-Sell Agreement, or desired to sell their shares. They executed an addendum to the Buy-Sell Agreement in July 2001.
- [20] James Allard deposed that the first time that there was a major business decision for the Allard Group on which he and Barry Allard did not reach a consensus occurred in 2002. James Allard deposed that he had stepped back from the Allard Group due to health issues and Barry Allard sold an asset referred to as Pit G over James Allard's objections. Barry Allard asserts that the company had a fragile cash flow situation at that time and they were able to climb out of debt through that sale.
- [21] James Allard deposed that starting in about 2009, he and Barry Allard had discussions about succession and estate planning with the Allard Group's external accountants and lawyers. He deposed to protracted discussions that continued over years. James Allard deposed that although they agreed on some steps, they did not reach a comprehensive agreement about the future of the Allard Group, including how their families would be involved in and/or share in the profits.
- [22] One of the succession issues was that James Allard was of the view that the Buy-Sell Agreement was inadequate in some respects, in particular on how to value the relevant companies' shares. James Allard deposed that in 2012, his solicitor and the Allard Group's external accountant discussed a scenario in which Barry Allard would buy out James Allard at that time, instead of waiting for one or the other's death to trigger the Buy-Sell Agreement.
- [23] James Allard deposed that around 2012, he started asking questions and raising concerns about the interactions between Allard Group companies and West Coast Bulk Cement Transport Inc. and Pacific Reach Concrete Ltd., , companies owned and operated by Barry Allard's sons in the same industry. James Allard's concerns about the relationship between these companies and the Allard Group were part of the negotiations over the years.
- [24] Barry Allard deposed that the relationship between him and James Allard became increasingly fractured when James Allard started spending more time at the Allard Group offices in Coquitlam in approximately 2013. Barry Allard deposed that the source of the disputes was that James Allard wanted to take money out of the companies while he did not. He deposed that he had a better picture of their financial well-being.
- [25] The discussions continued without resolution. James Allard deposed that in 2013, he and Barry Allard continued these discussions through their lawyers including that the discussions were in the form of demands from litigation lawyers on some issues. James Allard deposed that in 2014 and 2015, he and Barry Allard also had multiple meetings where they addressed matters directly. In June 2015, they engaged in mediation with Michael Carroll, K.C. which did not result in a resolution. The discussions continued through 2016-2018, including continuing with Mr. Carroll and outside financial advisors. In 2018, James Allard and his family members on one hand, and Barry Allard and his family

members on the other hand, executed a standstill agreement set to expire on April 30, 2019, in which they agreed to not commence litigation relating to their various disputes while the standstill agreement was in place. The standstill agreement was extended 11 times. It expired without extension on March 31, 2021.

- [26] Barry Allard does not agree with the characterization of uninterrupted years of disputes. He deposed that they were disputing between 2014-2017, and then they were not disputing but were rather trying to come up with an estate plan between 2018-2021. He deposed that they were in dispute again in early 2021 when he learned about what he alleges were secret discussions that James Allard was having with others about an asset, the Parksville Pit property, held by one of the companies in the Allard Group.
- [27] Between 2018 and 2021, they were operating under the standstill agreement by which they each agreed to not sue each other. In my view, the fact that they were not suing each because they had a standstill agreement does not equate to a period of no disputes. It was a period during which they each agreed to not resort to litigation to resolve the disputes. There is no evidence that they agreed on the matters that were the basis for the disputes.
- [28] While they do not agree on some of the background to the disputes, they do agree that there are three major areas of disagreement:
- a) the Parksville Pit property;
 - b) West Coast Bulk and Pacific Reach;
 - c) access to information leading to a demand for a forensic audit.
- [29] These points of dispute are interrelated. For organizational purposes, I will address them under their respective headings.

The Parksville Pit Property

- [30] James Allard deposed that around 1990, he negotiated a deal for Allard Group to purchase 80 acres of land near Parksville. He deposed that he initially arranged to purchase it himself because Barry Allard was opposed to the purchase, but Barry Allard eventually came to the view that it was a good investment and so James Allard permitted Allard Contractors to purchase it. He deposed he did so because of the 50/50 Understanding. James Allard deposed that between the time of the purchase, and about 2003, the Parksville Pit was mined, earning about \$1 million dollars of royalties for the Allard Group.
- [31] James Allard deposed that starting in around 2000, he has been working on rezoning the Parksville Pit property so that it can be sold for development purposes. He worked on these efforts with HBR Consulting Inc., with a view to having HBR purchase the property and redevelop it.

- [32] Barry Allard deposed that in 2015, James Allard told him that he had found a purchaser for the Parksville Pit property, HBR. In 2016, HBR signed an option to purchase the property for \$6 million. James Allard deposed that at that time, the appraised value of the property was \$2,040,000. The option was extended several times, each time with HBR paying Allard Contractors a sum in consideration of the extension.
- [33] Barry Allard deposed that in December 2020, James Allard told him that there were problems with the deal and that they needed to drop the purchase price of \$6 million to \$4 million. Barry Allard deposed that he thought James Allard was acting in the best interests of Allard Contractors and agreed to the price reduction and to move the date of sale up from June 30, 2021 to March 31, 2021.
- [34] In his affidavit, James Allard explained that the \$6 million deal was only an option to purchase. He deposed that in conjunction with the \$4 million dollar offer, the purchaser wanted an appraisal. The appraisal came in at just over \$4 million. He deposed that he discussed all of this with Barry Allard and they agreed to reduce the price to achieve a purchase and sale agreement at an earlier date than the existing option to purchase would expire.
- [35] James Allard deposed that in January 2021, he learned that the potential to rezone to the alternate zoning was not likely to be achievable in the near future.
- [36] Barry Allard deposed that in February 2021, he was looking for information about the option. He searched through boxes labelled "Parksville" in James Allard's office. He found notes of meetings that referred to the ability of James Allard and his sons, Daniel Allard and Martin Allard, to "buy in". After finding these notes, Barry Allard instructed his litigation lawyers to write James Allard and to assert that James Allard had an undisclosed conflict because he was promoting Allard Contractors to sell the property at a \$2 million reduction from the option price while he was secretly negotiating to be involved in its development after the sale. The letter threatened to bring a derivative action to prosecute James Allard, HBR Consulting and unidentified others for appropriation of a corporate opportunity and advised that Barry Allard was not prepared to complete the sale to HBR because he believed that there was a secret deal.
- [37] James Allard responded through his counsel, denying that there was a secret deal. In his affidavit in this petition, he deposed that the \$6 million option to purchase was premised on HBR being able to rezone the Parksville Pit property. By the time of the price reduction, which was in conjunction with a purchase and sale agreement, not just an option to purchase, the possibility of rezoning to the most desirable zoning for development was not achievable. Another form of rezoning was not likely achievable.
- [38] James Allard also deposed that over the many years he had been working with HBR and its principal to try to rezone and sell the Parksville Pit property, he and HBR had various conversations about financing options. The options had included whether Allard Contractors would consider vendor financing, which he had discussed with Barry Allard. He

had also introduced the HBR principal to another business associate, whom he knew was looking for real estate investment opportunities. James Allard deposed that the principal of HBR raised the prospect of James Allard or his sons investing personally in the acquisition and development of the property. James Allard deposed that Barry Allard also had discussions with the principal of HBR about such options and with the business acquaintance investor that James Allard had introduced to the principal of HBR. Barry Allard deposed that he spoke to both of those gentlemen about whether James Allard would be investing in the property. Barry Allard did not depose that he spoke to him about whether he would invest in the property.

- [39] Meanwhile, HBR communicated that it was going to have trouble closing because it did not have sufficient financing. It raised the possibility of James Allard and Barry Allard going in on the deal and/or an extension on the closing date. Barry Allard was not prepared to agree to either. HBR also communicated that it had been advised that Barry Allard was intent on stopping the transaction from closing at any cost and so HBR was not continuing to pursue financing. Barry Allard denied he had said that or words to that effect.
- [40] The purchase and sale did not complete. Allard Contractors advised the purchaser that it was treating its failure to complete as a default and terminating the agreement. HBR took the position that it would be claiming return of the deposit and to be reimbursed for improvements it had made to the lands over the years, but also proposed a limited partnership with Barry Allard and James Allard to develop the property.
- [41] James Allard deposed that Barry Allard refused to consider this option and stated that the deposit should be kept and the property marketed. James Allard deposed that Barry Allard refused to cooperate to obtain an appraisal for the purpose of marketing the property.
- [42] HBR made a further proposal to purchase the property later in 2021. James Allard deposed that Barry Allard would not accept assurances from HBR and from James Allard's lawyer that James Allard and his family members were not involved in the deal but demanded sworn statements from James Allard and the principal of HBR on that topic.
- [43] In March 2022, HBR commenced a Supreme Court of British Columbia claim against Allard Contractors pertaining to the Parksville Pit property.
- [44] During the course of the litigation, James Allard tried to hold a directors' meeting to pass a resolution to, among other things, have the Parksville Pit property appraised. The meeting did not occur because, through their lawyers, they agreed to stipulate that James Allard voted in favour and Barry Allard voted against the resolution. James Allard proceeded to have it appraised on his own volition. The appraised value as of May 17, 2022 was \$4,725,000. Barry Allard points to evidence of development plans showing that subdivided lots could be sold for amounts that total over \$40 million. James Allard deposed that those projections are based on favourable rezoning which has not occurred and development costs of over \$15 million.

- [45] James Allard deposed that he believes that Barry Allard's position on the Parksville Pit property was an attempt to leverage an advantage in the broader disputes that he and Barry Allard were having and which were, by early 2021, seemingly intractable. James Allard deposed that there was no corporate opportunity for him to appropriate. He deposed that if the many discussions he had with HBR's principals about financing options had led to an opportunity that he wanted to pursue, he would have talked to Barry Allard about it. James Allard deposed that he believes that Barry Allard was trying to manufacture that James Allard was in the type of conflict that Barry Allard and his sons were in, with divided loyalties to the Allard Group because of West Coast and Pacific Reach.

West Coast and Pacific Reach

- [46] West Coast and Pacific Reach are companies owned by Barry Allard's sons. West Coast is Ben Allard's company. It is in the business of hauling cement and fly ash. Pacific Reach is Patrick Allard's company. It is in the business of pumping concrete. In addition to running these businesses, Barry Allard's sons have senior management positions with the Allard Group.
- [47] James Allard deposed that prior to his nephews commencing these companies, he had proposed that the Allard Group get into the adjunct businesses of hauling fly ash and pumping concrete, but Barry Allard refused to entertain the ideas. James Allard's view is that Barry Allard refused to permit the Allard Group to get into these lines of business, and then set up his sons to have such businesses, in contravention of his duty of loyalty to the Allard Group.
- [48] James Allard deposed that the Allard Group's dealings with West Coast and Pacific Reach are not in the best interest of his family's interest in the Allard Group. He deposed that the dealings are contrary to the understanding between himself and Barry that both families would always benefit equally from the Allard Group. He deposed that Barry Allard's sons' focus is on their own companies, which is in conflict with their duties to the Allard Group as senior management employees. He also deposed that it is his view that Barry Allard has diverted major corporate opportunities to his sons and that he permits them to use the Allard Group resources to benefit West Coast and Pacific Reach.
- [49] Barry Allard deposed that James Allard only began accusing West Coast of taking a corporate opportunity in 2013, three years after Ben Allard started up West Coast, when the disagreements between James Allard and Barry Allard were increasing. Barry Allard deposed that James Allard did not want to get into the concrete pumping business.
- [50] Barry Allard deposed that James Allard was always aware of what West Coast was doing, and that James Allard knows that West Coast has benefited the Allard Group through price differentials on cement. However, as I will relate, there are issues on which James Allard has asked for specifics of the arrangements as between West Coast and the Allard Group that Barry Allard has refused to address.

- [51] James Allard deposed that on one occasion, he saw an employee of one of the Allard Group companies driving an Allard Group truck to which a West Coast bulk trailer was hooked up. He deposed that he asked the employee why. He deposed that the employee replied that he was not at liberty to say but eventually said that West Coast was using it to haul cement to a customer. James Allard instructed his lawyer to write to Barry Allard's lawyer about it. Barry Allard does not address this incident in his evidence when he deposed that "[James Allard] was always aware of exactly what West Coast was doing".
- [52] James Allard deposed that in 2012, he discovered that one of the Allard Group companies, Coquitlam Concrete, had guaranteed financing for West Coast to purchase a cement bulker truck. He deposed that when he confronted Barry Allard about it, Barry Allard said it was a mistake and arranged for the guarantee to be released. Barry Allard did not address this matter in his affidavit.
- [53] James Allard deposed that Pacific Reach pumps cement for the Allard Group's customers. James Allard deposed that this is disadvantageous to the Allard Group because it could arrange for the pumping service through a business that provided a discount rate for the Allard Group and could then charge the going rate to the customer. Barry Allard disputes that the Allard Group has lost this opportunity to Pacific Reach, because Pacific Reach provides the same profit opportunity to the Allard Group but for every customer, not just one customer.
- [54] James Allard deposed that drivers employed and paid by Coquitlam Concrete haul cement and fly ash for West Coast. James Allard deposed to concerns that the rates that West Coast pays for the drivers are not in line with market value and do not compensate for the fact that Coquitlam Concrete has payroll expenses such as WCB, CPP and EI payments for those drivers. Barry Allard disputes. In 2016, his counsel advised that Allard Group drivers were charged to West Coast at rates that included their wages and benefits. James Allard is not satisfied that this is the case and has provided detailed evidence as to why he is not satisfied.
- [55] James Allard also deposed that Allard Group companies provide overhead and administrative services to West Coast and James Allard has tried, but cannot determine whether West Coast pays for these services. Barry Allard disputes this. He deposed that "every service" that the Allard Group performs for West Coast or Pacific Reach are billed to them and paid for by them. Barry Allard asserts that they make money on mechanics by charging West Coast and Pacific Reach more than they pay for them.
- [56] As I will relate below, James Allard's concerns about whether there is appropriate invoicing and payment as between the Allard Group and West Coast has been justified by two discoveries. The first pertains to three quarters of a million dollars of receivables owing West Coast and Pacific Reach to the Allard Group in August 2022. The second pertains to information provided by Barry Allard's lawyer, in January 2023, that West Coast and Pacific Reach were not billed for accounting services provided by the Allard Group in a timely way but rather, years would pass between invoicing for such services.

- [57] The issues pertaining to Allard Group employees being contracted out to West Coast has also infected the Allard Group's negotiations with its union. James Allard, concerned about these issues, inserted himself into the communications with the Allard Group's collective bargaining lawyers. James Allard proposed that the drivers who were doing West Coast work be transferred to West Coast payroll and that separate collective bargaining be undertaken by West Coast about them. He deposed that Barry Allard would not agree to these instructions. The outside collective bargaining lawyers communicated that they could not negotiate with competing sets of instructions.
- [58] The issues pertaining to West Coast and Pacific Reach are related to a broader category of issues which is whether James Allard has access to information about the Allard Group in a manner that is symmetrical to what Barry Allard enjoys.

Access to Information

- [59] James Allard deposed that in 2012 and 2013, he asked Barry Allard to disclose to himself and Colleen Talbot information about contracts or agreements between West Coast and any Allard Group company or between Pacific Reach and Allard Group companies but Barry Allard did not provide the requested information.
- [60] James Allard deposed that his concerns about West Coast and Pacific Reach were subsumed in the broader negotiations including during the period of the standstill agreement. He deposed that by early 2021, he did not believe they would resolve their issues and he and Colleen Talbot were not longer prepared to continue to waive their rights of audits of the companies that comprise the Allard Group.
- [61] In 2021, James Allard became concerned that the Allard Group had accounts receivable relating to West Coast that were not being kept current, but he could not determine if there were overdue invoices in the monthly information he was receiving. He asked his son, Daniel Allard, who is employed by the Allard Group, to make inquiries. He deposed that he determined that as of July 2022, the combined amounts owing from West Coast and Pacific Reach to the Allard Group were \$700,000 and the Allard Group was not charging West Coast or Pacific Reach interest on these amounts.
- [62] James Allard instructed his counsel to write a letter to Barry Allard alleging that Barry Allard, Ben Allard and Patrick Allard were in conflicts of interest with regard to their roles at the Allard Group and West Coast and Pacific Reach. He also demanded information pertaining to past dealings, measures to be put in place to ensure proper corporate approvals and disclosure pertaining to the what the Allard Group was paying West Coast and Pacific Reach for hauling and pumping services as well as the labour costs issues. Barry Allard's counsel replied that the \$700,000 would be remedied soon. Barry Allard did not provide the detailed information sought. His counsel asserted that the Allard Group benefited from its relationship with West Coast and Pacific Reach because they provided services which were complementary to the businesses of the Allard Group.

- [63] By August 2022 the balance owing on the receivables was \$750,000. James Allard, through his lawyer, demanded that they be brought up to date by August 31, 2022. By August 30, 2022, the receivables were reduced to less than \$10,000.
- [64] On September 8, 2022, James Allard sent an email to the Allard Group's controller, Paul Battistel, asking a series of questions relating to how the Allard Group companies set rates of compensation for services provided to West Coast and Pacific Reach and the like. Mr. Battistel answered some questions with some level of detail. For other questions, he referred James Allard to Barry Allard for the information, stating that the question did not relate to an area of Mr. Battistel's responsibility.

Fallout of the Disputes

- [65] There has been fallout to the Allard Group in several aspects including banking and financing, the HBR litigation, and corporate governance.

Banking - Signatories and Financing

- [66] James Allard deposed that over the years, the Allard Group had different banking arrangements for different companies. He deposed that some companies required the signature of two officers on cheques to bind the company, and others required one. He deposed that in 2014, the Allard Group's external accountants recommended requiring two signatories for all companies. James Allard deposed that he pressed to make that change in part because one of the Allard Group companies had guaranteed West Coast's financing, but Barry Allard did not agree.
- [67] James Allard deposed that Barry Allard frequently signed documents on behalf of James Allard and Colleen Talbot. He deposed that on more than one occasion, he told Barry Allard, including through written communications from his lawyer, that Barry Allard is not permitted to sign on behalf of himself or Colleen Talbot. James Allard deposed that Barry Allard responded that he signed cheques as part of the regular way that the Allard Group had done business for forty years and it was not going to change. Barry Allard also took the position that those issues were resolved in some of the discussions in the 2015-2016 timeframe. James Allard disagrees. He deposed that these banking issues have become part of the discussion for a global resolution of all issues, a resolution which has not occurred.
- [68] James Allard deposed that in 2021, he began talking to the Allard Group's banks about these issues. He requested online access to the Allard Group's HSBC accounts, which had to be addressed through the Allard Group's administrator of online access, the controller Mr. Battistel. James Allard deposed that Barry Allard raised concerns about this because Mr. Battistel was responsible for managing the banking and having additional online access users would create risk for him. Eventually, James Allard was given "read only" access.

- [69] In the spring of 2022, one of the banks with which some Allard Group companies deal, HSBC, inquired about the year end financial statement for two of the companies. James Allard advised the HSBC officer that there were disputes between him and Barry Allard as a result of which James Allard and Colleen Talbot were not prepared to sign off on the financial statements. I will review the evidence about disputes over the form of financial statements and audits below.
- [70] James Allard deposed that in June 2022, he proposed that they have a signatory from each family for the two companies that did not already require two signatories. In response, Barry Allard's counsel raised the issue of the fact that James Allard and Colleen Talbot had not signed off on the financials. The banking signatory issues with HSBC were not resolved and ended with joint stipulations that the parties held a directors' meeting which resulted in stalemated votes.
- [71] In August 2022, HSBC advised that two of the companies were in contravention of the credit agreements with HSBC because signed financial statements had not been provided. James Allard deposed that he attended a meeting between the HSBC officer and Barry Allard during which the matter was not resolved but also during which the HSBC officer stated that HSBC would not be getting between Barry Allard and James Allard.
- [72] HSBC subsequently advised that if it did not have signed financial statements by August 31, 2022, it would cancel the credit facilities. On September 1, 2022, HSBC advised that it would continue the credit facilities for a six-month period on certain conditions, one of which was that the dispute on signing authorities be resolved.
- [73] That matter spun into a further round of communications between lawyers and accusations by James Allard that Barry Allard was inappropriately unilaterally communicating with HSBC. Ultimately, Barry Allard and Jo-Ann Allard signed corporate resolutions for two signature requirements on HSBC banking.
- [74] James Allard deposed that, through his lawyer, he sought to have the two signature requirement changes made for the Allard Group's other banks, RBC and Scotiabank. Barry Allard's lawyer responded that he saw no reason to change the status quo with RBC, which was one signature on an account for Allard Contractors. James Allard deposed that his lawyer pressed Barry Allard's lawyer for a clear response, one way or the other, regarding the banking response for both RBC and Scotiabank but did not receive a response.
- [75] As of the time this petition was set for hearing, the Allard Group had not provided HSBC with the outstanding financial statements and HSBC was considering whether to continue to extend its deadline for financial statements.

HBR Lawsuit

- [76] As I have set out above, the dispute between James Allard and Barry Allard over the Parksville Pit property was part of a sequence of events that resulted in HBR commencing a lawsuit against Allard Contractors for reimbursement of funds it asserts it expended improving the property.
- [77] James Allard deposed that there were options to address HBR's inability to close, including extensions or agreeing to a vendor mortgage (which Barry Allard had previously been agreeable to). There was a subsequent, much higher offer from HBR that James Allard wanted to accept and which he asserts would have avoided the litigation. Barry Allard refused to entertain it unless James Allard made document production supported by an affidavit on the topic of whether he was behind the scenes on that offer. Instead, James Allard's lawyer and HBR gave assurances from that neither James Allard nor any members of his family were involved. Barry Allard did not accept those assurances.
- [78] James Allard deposed that once the litigation was commenced, he met with Allard Contractors' lawyer for the purpose of providing the lawyers with information about the claim. He deposed that he asked Barry Allard to provide the lawyers with documents that James Allard thought were relevant to the issues but Barry Allard refused.
- [79] James Allard deposed that in July 2022, he sought, through his counsel, for Allard Contractors' defence counsel in the HBR litigation to provide advice on the claim. At that time, HBR had made yet another offer to purchase the Parksville Pit property, which offer presumably included terms that would have concluded the litigation. James Allard deposed that Barry Allard was opposed to accepting the offer because of his view that the property was worth a lot more than the offer. James Allard deposed that Barry Allard's views were based on an estimate that assumed the property would be re-zoned and developed. James Allard deposed that rezoning was no longer likely and if it occurred, the development would cost many millions of dollars. Barry Allard asserted the best strategy was to resist the lawsuit.
- [80] Allard Contractors' litigation counsel advised that he would not provide advice on matters of dispute between the shareholders. James Allard deposed that he thought the litigation could be settled but he agreed to instruct Allard Contractors' counsel to prepare a response to civil claims so that the claim did not go undefended.
- [81] James Allard deposed that in October 2022, HBR made a further offer. James Allard deposed that he and Barry Allard have been unable to discuss it.

Corporate Governance

- [82] James Allard deposed that over the years, they had audits done of the companies at some times and not others, depending on the circumstances. James Allard deposed that regardless of the nature of the review that resulted in financial statements, he, Barry Allard and Paul

Battistel, would meet with the external accountants to make the various representations they needed to finalize the financial statements. James Allard deposed that through this process, and through receiving the information that the others gave to the accountants, he received enough information to certify to the accuracy of the financial statements once they were finalized up to 2010.

- [83] In 2013, when the 2012 financial statements were ready, James Allard and Colleen Talbot prepared memos with questions that they required be answered before signing off on the financial statements. They did not receive responses to the questions. James Allard deposed that due to his unresolved concerns, he and Colleen Talbot advised Barry Allard and the external accountants that they were not prepared to waive their rights to audited financial statements.
- [84] James Allard deposed that in March 2013, he met with Barry Allard to discuss a shareholders dividend that had been proposed. He deposed that Barry Allard told him that he would block the dividend unless James Allard and Colleen Talbot stopped demanding answers to their questions about West Coast and Pacific Reach and agreed to waive their rights to audited financial statements. James Allard deposed that he replied in the negative to those demands. The dividend was not paid out.
- [85] James Allard deposed that in 2014, he instructed his lawyer to write to the external accountants and advise that they should not act on instructions from Barry Allard in respect of the Allard Group without ensuring that James Allard was aware of the instructions and agreed to them.
- [86] These issues, and communications with accountants by James Allard's lawyers, continued in 2015 and 2016.
- [87] James Allard deposed that during the pendency of the standstill agreement they were negotiating on a broad range of issues into which the issues pertaining to auditing the financial statements were subsumed. He deposed that he and Colleen Talbot did not waive audits while the standstill agreement was in place, but did not press for them either.
- [88] James Allard deposed that in early 2021, he told Barry Allard and the external accountants that he and Colleen Talbot required audits and that Barry Allard opposed this. The external accountant told James Allard that he felt like "the pig in the middle".
- [89] James Allard deposed that he was not provided with information that the controller was providing to the external accountants during the preparation of 2021 financial statements. He deposed that in December 2021, he and Colleen Talbot met with the external accountants and told them that they were not waiving their audit rights.

- [90] In June 2021, James Allard attempted to convene a directors' meeting of Allard Contractors to consider an offer that HBR made on the Parksville Pit property. This was an offer subsequent to the purchase and sale agreement between HBR and Allard Contractors that Allard Contractors had terminated when HBR did not close. Barry Allard's lawyer advised James Allard's lawyer that the exercise of a directors' meeting would be pointless because the vote would result in a stalemate.
- [91] On April 29, 2022, James Allard gave notice that he was calling a meeting of the Allard Contractors board of directors to vote on resolutions to retain an appraiser with regard to the Parksville Pit and in relation to the HBR litigation. Barry Allard took the position that an appraiser was not needed at that time, and there was no point in holding a directors' meeting because it was known which way Barry Allard would vote. Eventually, the lawyers for both brothers agreed to stipulate that the meeting had occurred and that James Allard had voted in favour and Barry Allard had voted against the resolutions.
- [92] James Allard deposed that when he attempted to change the banking arrangements with HSBC pertaining to some of the companies in the Allard Group to provide two signatories, he and Colleen Allard gave notices of directors' meetings to pass resolutions in that regard. The brothers' respective lawyers agreed to stipulate that the meetings had been held with James Allard and Colleen Talbot voting in favour and Barry Allard and Jo-Ann Allard voting against the respective resolutions.
- [93] Throughout 2022, there was a lot of back and forth, mostly through lawyers, sometimes with the external accountants. These communications concerned the form of the financial reporting, James Allard's access to accounting information held at the Allard Group premises, and James Allard's requests to Allard Group employees for accounting reporting on various issues.
- [94] As I have set out above, the failure to have signed financial statements caused some of the Allard Group companies to be offside their commitments to HSBC. Barry Allard deposed that HSBC has required cash equivalent security, as a result of which the Allard Group has pledged GICs and other instruments totaling \$1.55 million. Barry Allard deposed that if James Allard would sign the financial statements or agree to compilation (unaudited) financial statements, that money would not be tied up.
- [95] In August 2022, the Allard Group's external accountants indicated that given the difference of views between James Allard and Barry Allard, the accountants would defer to the lawyers to advise them as to what obligations the company had to undertake audits. The external accountants advised that they could not proceed with any engagement until James Allard and Barry Allard had come to an agreement.
- [96] There then followed a series of communications in which Barry Allard, through his lawyer, accused James Allard of refusing to follow the external accountants' advice. The inference to be drawn from that and from the communications from the external accountants was a suggestion that targeting specific transactions for an audit or having a forensic audit might

be some things that Barry Allard and James Allard could agree upon. James Allard asked the accountant for details of what that would entail but no details were provided. Barry Allard, through his lawyer, refused to answer whether he would agree to audits, but finally said that Barry Allard was open to a variety of options short of full audits.

- [97] In September 2022, James Allard sent Barry Allard draft resolutions pertaining to various Allard Group companies appointing auditors, other than the existing Allard Group auditors, for various years including 2021.
- [98] Discussions about auditors and types of audits continued in September and October. One proposal was to have a limited number of fully audited years with forensic audits of areas to be focussed on. James Allard's lawyer prepared a proposal. Barry Allard's lawyer described it as "absurd", and stated that there would be no forensic audits, and the audits would be those to which shareholders are entitled under the Business Corporations Act.
- [99] In October 2022, the external accountants advised that they could prepare compilation financial statements for HSBC and for the purpose of filing corporate tax returns, although there was no tax owing and so no penalties if the corporate tax returns were not filed. James Allard deposed that Barry Allard told him that Barry Allard could, on his own, sign the engagement letter for a compilation financial statement, and he intended to do so. James Allard deposed that he did not reply to this but later in the day wrote to the external accountants advising that he did not agree to it. Barry Allard, through his lawyer, took the position that James Allard had agreed to Barry Allard engaging the external accountants to prepare compilation financial statements.
- [100] In the course of communications about this, James Allard's lawyer advised Barry Allard's lawyer that James Allard was prepared to bear the cost of a forensic audit in the first instance leaving open the question of reimbursement for it. Barry Allard's lawyer agreed to a forensic audit on the basis that James Allard paid for it and his entitlement to reimbursement be only if the audit uncovered fraud or conduct tantamount to fraud.
- [101] Discussions about preparation of financial documents and statutory audits to satisfy banking requirements continued through November and December 2022. In mid-December 2022, Barry Allard's lawyer advised that Barry Allard would put no conditions on his consent to a forensic audit other than that James Allard had to agree to pay for the forensic audit and that it would be done by a different firm than the firm performing the statutory audit. James Allard arranged for a forensic audit for the following week.
- [102] The following week Barry Allard's lawyer wrote asking for details about the forensic audit including the engagement letter, stating that they expected that Barry Allard and Jo-Ann Allard would be provided with the report. Barry Allard's lawyer also advised at that time that the forensic auditors did not have permission to view files of financial statements and corresponding documents of West Coast and Pacific Reach that were on Allard Group computers. These were files generated by the Allard Group's controller Mr. Battistel. The explanation as to why these files should be excluded was that they were "clearly

confidential" and that "Paul Battistel performs accounting services for each of West Coast Bulk and Coquitlam Concrete. Coquitlam Concrete invoices those companies for Paul's services".

- [103] Leaving aside the irony of this communication, given the information that James Allard had been seeking about services that Allard Group employees were providing to West Coast and Pacific Reach, there is no explanation as to why these documents were being stored on Allard Group computers or why Barry Allard, who is an officer of Allard Group companies but not West Coast or Pacific Reach, was asserting West Coast and Pacific Reach's confidentiality over those files. A few days later, Barry Allard's lawyer advised that the company servers had been shut down for the Christmas holidays so the audit would have to wait until the new year.
- [104] Communications then ensued as to whether Barry Allard was then placing conditions on the forensic audit when he had previously said he would not place conditions on it other than James Allard was to pay for it and that it be done by a different firm than the statutory audit. In addition, James Allard deposed that locks had been changed to certain offices in the Allard Group premises and so he asked for keys to those offices.
- [105] On January 10, 2023, Barry Allard's lawyer wrote to James Allard's lawyer and explained that inherent in the agreement for a forensic audit was that it be transparent and that involved three conditions: that the accountants attend during regular business hours, that their identity be disclosed, and that any reports be provided to Barry Allard and Jo-Ann Allard. The letter ended with Barry Allard reserving the right to add more conditions. James Allard agreed to two of the three new conditions but not the third. The forensic auditors attended but were not permitted to access the premises. In subsequent correspondence from his lawyer, Barry Allard refused to permit the forensic audit, stating there was no agreement to have one and he would consider it a trespass if the forensic auditors attended.
- [106] On January 20, 2023, three days after the last correspondence from Barry Allard's lawyer denying any agreement to a forensic audit and characterizing any attempt as a trespass, Barry Allard's lawyer wrote to James Allard's lawyer to alert him to a "recent discovery" that accounting work conducted by Coquitlam Concrete and Allard Contractors for West Coast and Pacific Reach had not been invoiced based on a "long established practice to invoice West Coast and Pacific Reach for several years at once". Barry Allard's lawyer stated that Barry Allard did not direct or approve of the delays.
- [107] Not surprisingly, James Allard does not accept that this was a recent discovery nor that Barry Allard had no involvement in invoicing delays. Barry Allard has not deposed, in his affidavit, that the statement that he did not direct or approve the lack of timely invoicing for accounting services is true. He did not depose whose recent discovery it was, and how. He does not depose as to why this practice was established and by whom.

- [108] The facts stated in the "recent discovery" communication lack inherent believability. The recent discovery cannot be squared with the late-imposed condition by Barry Allard that the forensic auditors not be permitted to access files created by the controller of the Allard Group for West Coast and Pacific Reach for which West Coast and Pacific Reach had been invoiced by Coquitlam Concrete. There is no evidence about the reasons for the lack of invoicing and especially why just a few weeks earlier Barry Allard's lawyer stated that accounting services provided by Allard Group companies were invoiced to West Coast and Pacific Reach and paid by them. There is no evidence from Mr. Battistel about the practice that it not be invoiced promptly and why that was a "recent discovery".
- [109] Notwithstanding the three quarter of million dollars of receivables and the practice to not invoice accounting services to West Coast and Pacific Reach for several years at a time, in his affidavit, Barry Allard deposed that "[w]e make sure that West Coast covers all of its costs" and that it is "just not accurate" to say that the Allard Group carries the overhead of Pacific Reach and West Coast because "every service that the Companies perform for West Coast or Pacific Reach are billed and paid for by those companies". That statement is inaccurate if it is meant to convey that West Coast and Pacific Reach were invoiced in a timely manner and required to pay in a timely manner for the overhead and administrative services they received from the Allard Group. I do not accept Barry Allard's evidence on this point.
- [110] When the "recent discovery" communication is considered with the evidence that neither Mr. Battistel nor anyone else provided evidence about how three quarters of a million dollars of receivables owing from West Coast and Pacific Reach accumulated without a plan for repayment until James Allard learned of it and demanded payment, James Allard's concerns that there are improper financial transactions between the Allard Group, West Coast and Pacific Reach are made out.
- [111] During late 2022 and early 2023, the statutory audit was supposed to be proceeding. However, on February 1, 2023, the statutory auditors advised that they could not proceed given that James Allard and Barry Allard had not been able to agree to the source documentation to be relied upon in the audit. It is understandable that James Allard continued to question the reliability of the Allard Group's internal accounting for the purposes of preparation of financial statements.
- [112] Counsel for Barry Allard, in the "recent discovery" communication, stressed that Barry Allard had not directed nor approved the years-long delays in invoicing West Coast and Pacific Reach for accounting services. Yet, just weeks earlier, the Barry Allard's lawyer stated that the accounting services were invoiced. Because of this, I cannot place weight on the unconfirmed hearsay in the communications which Barry Allard's lawyer wrote.

Invocation - Whether it is Just and Equitable to Make an Order

Legal Principles

[113] Section 324 of the Business Corporations Act empowers the court to order that a company be liquidated and dissolved in certain circumstances. Despite a court concluding that it is just and equitable to liquidate and dissolve a company, it may be that relief other than appointment of a liquidator will follow. I will refer to these two aspects of the court's authority as the invocation for liquidation and dissolution, and the relief.

[114] With regard to invocation, s. 324(1) provides as follows:

324 (1) On an application made in respect of a company that is a financial institution by the superintendent, or made in respect of a company, including a company that is a financial institution, by the company, a shareholder of the company, a beneficial owner of a share of the company, a director of the company or any other person, including a creditor of the company, whom the court considers to be an appropriate person to make the application, the court may order that the company be liquidated and dissolved if

- (a) an event occurs on the occurrence of which the memorandum or the articles of the company provide that the company is to be liquidated and dissolved, or
- (b) the court otherwise considers it just and equitable to do so.

[115] The petitioners seek an order pursuant to s. 324(1)(b) on the basis that there is persistent deadlock and dysfunction, the fault for which is not one-sided.

[116] The "just and equitable" provision has been interpreted as permitting a broad discretion which is applied more liberally in the case of family businesses: *Weisstock v. Weisstock*, 2023 BCCA 352 at para. 49; *Vivian v. Firth*, 2012 BCSC 517 at paras. 64 and 66; and *J & A Properties Ltd. v. De Angelis*, 2020 BCSC 1254 at para. 36. The discretion recognizes that the individuals behind the corporation have rights, expectations and obligations: *Weisstock* at para. 45, citing *Ebrahimi v. Westbourne Galleries Ltd.*, [1972] 2 All E.R. 492 at 496, [1973] A.C. 360 (H.L.) at 500 (per Lord Wilberforce).

[117] The exercise of the discretion must take into account and respect the parties' reasonable expectations. It is appropriately exercised where the disharmony is such that it can be inferred that the parties, at the time they formed their business association, would have regarded the circumstances that are extant at the application for invocation as terminating or repudiating the relationship: *Petersen v. Hawley*, 2022 BCCA 169 at para. 14 [*Petersen CA*]; *Weisstock* at para. 46, citing *Animal House Investments Inc. v. Lisgar Development Ltd.* (2007), 87 O.R. (3d) 529 (S.C.J.) at para. 57, *aff'd* (2009), 237 O.A.C. 261 (Div. Ct.).

[118] In decisions such as *Petersen CA* at para. 28; *Weisstock* at para. 47; and *Vivian* at para. 68, the courts have described four categories of circumstances giving rise to the conclusion that it is just and equitable to invoke liquidation:

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.

[119] This case focusses on justifiable lack of confidence between the parties and deadlock.

[120] With regard to justifiable lack of confidence, where both parties or camps have misconducted themselves, the court is not required to determine who bears the most blame but the conduct may be relevant to whether the circumstances justify invoking liquidation: Weisstock at para. 51.

[121] Deadlock exists where there is serious and persistent disagreement on matters relating to the management or functioning of the corporation; the evidence demonstrates no middle ground on areas of dispute despite attempts at resolution; there is a breakdown of mutual trust and confidence; and refusals to meet on matters of business: Vivian at para. 70; and Petersen v. Hawley, 2021 BCSC 2348 [Petersen SC], aff'd Petersen CA, at para. 40. In summary, where the conflicts are such that there is a material risk of ongoing disagreement that could prevent the proper functioning of a business, there is deadlock.

Discussion

[122] In terms of justifiable lack of confidence, James Allard and Barry Allard each believe that the other is acting against the best interests of the Allard Group to appropriate corporate opportunities for themselves or their sons. They believe the others are conspiring with family members and outsiders. They believe there are secret deals. James Allard believes that Barry Allard has been, for years, conspiring with his sons and employees to prefer his sons' companies to the interests of the Allard Group. James Allard believes that Barry Allard has been stonewalling his requests for information in the hope that James Allard will die before he learns what has been going on. Barry Allard believes that James Allard acted with others to reduce the sale of the Parksville Pit property by two million dollars and arrange for himself and his sons to make millions participating in the development of the property after it is sold.

[123] Regardless of whether the allegations they make against each other could be proven, the evidence demonstrates that James Allard and Barry Allard each have a justifiable lack of confidence in the other.

[124] James Allard's concerns about the financial and other preferences being given to West Coast and Pacific Reach are justified by the evidence. The most striking evidence is the discovery by James Allard of the guarantee of West Coast financing, the three quarters of a million dollars in receivables owing by West Coast and Pacific Reach in August 2022, and the "recent discovery" reported by Barry Allard's lawyer that the Allard Group does not issue timely invoices for payment of accounting services provided by the Allard Group's controller but instead it is done for years at a time. As I have found above, without evidence

to the contrary, these practices could not, or should not, have escaped the attention of the controller. They appear to be evidence of commercially inappropriate and troubling internal accounting practices at the Allard Group that justify the lack of confidence deposed to by James Allard and Colleen Talbot.

- [125] These are stark examples of broader matters regarding banking, accounting, finances, human relations and labour relations, about which James Allard has demanded information for years. Barry Allard deposed that James Allard has all the information he needs or should have about all of these matters. Barry Allard's counsel has stated in many communications that James Allard cannot point to inappropriate financial transactions. The evidence undermines both of these representations, and has grievously undermined the confidence that James Allard and Colleen Talbot have in Barry Allard.
- [126] Barry Allard has lost confidence in James Allard over the sale of, and ensuing litigation over, the Parksville Pit property. The notes of meetings between James Allard and the principal of HBR demonstrated more than one discussion about matters such as percentage ownership, buy-in plans and future hypotheticals for the development of the Parksville Pit property. Given these notes and the strained relationship between the brothers, James Allard's explanation that his discussions with HBR's principal about future involvement for him and his sons went nowhere is insufficient to appease Barry Allard's concerns.
- [127] With regard to dysfunction and deadlock, I conclude that for at least a decade the parties have had serious differences. I reject Barry Allard's assertion that the parties have not been in entrenched disputes for years, but rather have been in dispute on some occasions, and then working together to restructure the businesses, and then again in dispute after he found out about Parksville. Although their differences have been subjected to numerous attempts to resolve them, the underlying issues--that each believes the other prefers their family interests to the interests of the Allard Group and will jeopardize the Allard Group--have proven to make the issues intractable.
- [128] Deadlock occurs where there is material disagreement that prevents the proper operation of the business. In this case, the distrust and conspiracy theories have spilled over to seriously disrupt corporate governance. The parties have stipulated stalemated votes instead of attending directors' meetings to debate and vote on resolutions. In the case of the sale of the Parksville Pit property, the disruption affected the operation of the business, including exposing one of the companies to litigation that might have been avoided.
- [129] In addition, the internal accounting practices of the Allard Group, at least so far as West Coast and Pacific Reach are concerned, are flawed to the point of dysfunction that has led to deadlock in the external accounting and financial reporting. Audits have not been done for years despite them not being waived. The Allard Group's bankers have threatened to cut off financing because the dysfunction has resulted in the Allard Group being offside its financing commitments, including providing financial statements. The Allard Group has had to pledge over one and a half million dollars in cash equivalents to maintain the credit.

After protracted disputes about transparency, accounting practices, the form of financial statements and audits, Barry Allard agreed to a forensic audit on two conditions which James Allard met, and then, within days, added other conditions and refused to permit the forensic auditors to access the premises of the Allard Group.

- [130] James Allard and Barry Allard communicate on many matters through their lawyers. Employees, accountants and corporate lawyers have been put in the middle and in some cases, balked at continuing until the brothers can agree.
- [131] Deadlock does not exist if it has been manufactured to obtain relief. While the Barry Allard respondents initially submitted that James Allard manufactured the deadlock, I take them to have abandoned this position when they changed their position to agree that an order under s. 324(1)(b) was just and equitable. It is clear that they continue to blame James Allard for the deadlock, but that is not the same thing as asserting that deadlock is manufactured.
- [132] In any event, the deadlock is manifestly real. The issues that triggered disagreements over accounting practices and the demands for audits are not creations of James Allard. The evidence of three quarters of a million dollars of receivables that James Allard had to demand be repaid, and the "recently discovered" practice of not issuing timely invoices for accounting services, was not manufactured by James Allard. The Parksville Pit property litigation was not manufactured by James Allard.
- [133] Another example is signatures on banking documents and other commitments. Barry Allard may be right that practicality demands that he be able to unilaterally sign cheques and other documents. But James Allard and Colleen Talbot have asserted their rights to co-sign because of mistrust. The mistrust has created a situation where the legalities and practicalities are clashing to cause deadlock and dysfunction. This is not manufactured.
- [134] I conclude that there is deadlock and dysfunction rendering it just and equitable to invoke the liquidation provisions of the Business Corporations Act.

Relief

- [135] The petitioners' preferred relief is an order appointing a liquidator to affect dissolution. They also raise the possibility of an auction for sale, which they say is not desirable because of information asymmetry concerns, which I will address below. They raise the possibility of a shotgun offer but do not seek it as relief.
- [136] The Barry Allard respondents assert the appropriate method to remedy the deadlock is to require the application of the Buy-Sell Agreement mechanisms. They do not endorse an auction or a shotgun offer structure.
- [137] I will address the two options that were the subject of the substantive submissions, appointment of a liquidator to affect dissolution and use of the Buy-Sell Agreement mechanisms.

Legal Principles

[138] Once a court has determined that it is just and equitable to invoke liquidation, it should go on to consider the appropriate relief. The Business Corporations Act provides the court discretion to make orders other than appointing a liquidator and ordering the dissolution of the company. Section 324(3) provides as follows:

(3) If the court considers that an applicant for an order referred to in subsection (1) (b) is a person who is entitled to relief either by liquidating and dissolving the company or under section 227, the court may do one of the following:

- (a) make an order that the company be liquidated and dissolved;
- (b) make any order under section 227 (3) it considers appropriate.

[139] With regard to relief other than appointing a liquidator to dissolve the company, by incorporating s. 227 (3) relief, s. 324(3)(b) allows the court to make the same orders that it could make if a shareholder successfully made out oppression. Section 227(3) provides:

- (3) On an application under this section, the court may, with a view to remedying or bringing to an end the matters complained of and subject to subsection (4) of this section, make any interim or final order it considers appropriate, including an order
- (a) directing or prohibiting any act,
 - (b) regulating the conduct of the company's affairs,
 - (c) appointing a receiver or receiver manager,
 - (d) directing an issue or conversion or exchange of shares,
 - (e) appointing directors in place of or in addition to all or any of the directors then in office,
 - (f) removing any director,
 - (g) directing the company, subject to subsections (5) and (6), to purchase some or all of the shares of a shareholder and, if required, to reduce its capital in the manner specified by the court,
 - (h) directing a shareholder to purchase some or all of the shares of any other shareholder,
 - (i) directing the company, subject to subsections (5) and (6), or any other person, to pay to a shareholder all or any part of the money paid by that shareholder for shares of the company,
 - (j) varying or setting aside a transaction to which the company is a party and directing any party to the transaction to compensate any other party to the transaction,
 - (k) varying or setting aside a resolution,

- (l) requiring the company, within a time specified by the court, to produce to the court or to an interested person financial statements or an accounting in any form the court may determine,
- (m) directing the company, subject to subsections (5) and (6), to compensate an aggrieved person,
- (n) directing correction of the registers or other records of the company,
- (o) directing that the company be liquidated and dissolved, and appointing one or more liquidators, with or without security,
- (p) directing that an investigation be made under Division 3 of this Part,
- (q) requiring the trial of any issue, or
- (r) authorizing or directing that legal proceedings be commenced in the name of the company against any person on the terms the court directs.

[140] Liquidation and dissolution have been described as "drastic remedies" and remedies of "last resort": *Esposito v. Esposito*, 2022 BCCA 51 at para. 30 [*Esposito CA*]. 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; and *Paulson v. Dogwood Holdings Ltd.*, [1990] B.C.J. No. 2281, 1990 CarswellBC 1798 (S.C.).

[141] In *Antonov v. Gill*, 2022 BCCA 256 at para. 26, the Court of Appeal described the discretion to use s.227(3) to provide relief other than liquidation and dissolution as "very broad". At para. 28, Justice Butler, for the Court, explained that given the catch-all language of "any interim or final order it considers appropriate" before the list of orders at (a) through (r), there is no merit to the suggestion that by not including a matter in that list, the legislature did not intend the court to have that specific power. The list is illustrative not exhaustive.

[142] The factors that serve as guideposts to determining relief are that the relief should be fair, should go no further than necessary to rectify the deadlock, may only vindicate the reasonable expectations of the parties in their capacity as corporate stakeholders, and must take into account the general corporate law context: *Antonov* at paras. 45-46, citing *Wilson v. Alharayeri*, 2017 SCC 39 at paras. 48-57. These factors must be applied in a flexible manner, taking into account the facts of the case: *Wilson* at paras. 56-57, cited with approval in *Esposito CA* at para. 31.

[143] Notwithstanding the broad discretion and the flexible approach, it is not necessary or appropriate for a court to consider options that have not been put forward by the parties even though they might be within the court's discretion: *Esposito CA* at paras. 45-46.

[144] In *Esposito v. 304768 B.C. Ltd.*, 2021 BCSC 961 [Esposito SC], like in this case, the parties agreed that a s. 324(1)(b) order was just and equitable. They did not agree on the remedy. Like in this case, there were only two remedies put forward: one was liquidation and dissolution, and the other was that the companies would repurchase the petitioner's interest at fair market value based on an independent valuator, without adjustment for any tax burden or benefit. The chambers judge held that liquidation and dissolution was the most appropriate means to break the deadlock: Esposito SC at para. 30. At the appeal, the appellant argued that the chambers judge had erred in not considering remedial options other than those proposed by the parties because in failing to do so, the chambers judges did not arrive at a remedy that went no further than necessary to break the deadlock. Justice Voith rejected that the chambers judge ought to have considered options other than those put forward by the parties. The court should focus on the finite remedial options that the parties advance: Esposito CA at paras. 45-46.

[145] I will describe the Buy-Sell Agreement and the evidence of the parties in relation to it. Following that, I will make a determination of the relief to be granted by considering the positions of the parties in relation to the four Wilson guidelines.

The Buy-Sell Agreement

[146] The Buy-Sell Agreement was made in 2000 between Barry Allard, Jo-Ann Allard, James Allard and Colleen Talbot. The parties executed an addendum to it in July 2001.

[147] James Allard and Barry Allard disagree about how involved James Allard was in drafting the Buy-Sell Agreement. Barry Allard asserts that James Allard was instrumental in drafting the Buy-Sell Agreement and on instructing the lawyer who drafted it. Barry Allard asserts that it is only during the last ten years that James Allard told him that he was not happy about the Buy-Sell Agreement. James Allard asserts that the Buy-Sell Agreement was prepared at Barry Allard's request, and that he did not receive independent legal advice on the final version of the agreement.

[148] I do not need to resolve this because the issue is not whether the Buy-Sell Agreement is an enforceable agreement to resolve this dispute. No party to this petition has submitted that it has been triggered.

[149] The Buy-Sell Agreement defines a "Retiring Party" as either Barry Allard, or James Allard, in the event that person:

- a) becomes mentally or physical disabled or suffers from an infirmity that he is unable to resume and continue work activities for 24 months;
- b) is declared bankrupt or makes an assignment into bankruptcy;
- c) becomes subject to an order in a family proceeding requiring his shares be transferred, charged, encumbered, attached, seized or sold; or

d) is in breach or default of the provisions of the Buy-Sell Agreement.

[150] In the event that either of them becomes a Retiring Party, the other shall buy out the Retiring Party's shares, and the spouse of the other shall buy out the Retiring Party's spouse's shares.

[151] The agreement provides a method of valuing the shares. The parties were to agree to the value of the shares from time to time and to record the agreed upon value. If that was not done within two years of the event triggering the party becoming a Retiring Party, the parties were to agree on a chartered business valuator and if they could not agree, each would choose a business valuator "who in turn shall choose a third business valuator".

[152] The Buy-Sell Agreement provides that the buyout price shall be the fair market value of the shares, in the event that the trigger is disability. In the event that the trigger is bankruptcy, marital breakdown or default, the buy out price is 75% of fair market value.

[153] The terms of the buyout are 10% paid by closing, and a promissory note for the remainder plus interest at prime, payable in nine equal annual consecutive instalments starting one year after closing. Security for the unpaid balance are the shares to which the unpaid balance relates. The Retiring Partner and his spouse shall resign as directors and officers on closing but those documents are held in escrow with the shares pledged as security. The Retiring Partner and his spouse retain their voting rights on the shares until the payment period has concluded.

[154] In the event of death, the Buy-Sell Agreement provides for the surviving brother to collect certain insurance policies held by companies that form the Allard Group, to have the shares of the deceased brother and his spouse valued in accordance with the provisions for valuation that apply to disability, bankruptcy, marital breakdown or default, and to apply the insurance proceeds to the fair market value. The remainder of the fair market value shall be paid by 10% on closing and in five equal annual consecutive instalments starting one year after closing. The Buy-Sell also provides for the sons of the deceased shareholder to exercise an option to buy non-voting shares in Allard Group companies and voting shares in the holding company of the deceased shareholder, so long as the option is exercised within five years from the date of death or disability or age 65 of the surviving brother, whichever is earlier. I understand that both Barry Allard and James Allard are over age 65, so these options are no longer in play.

[155] The Buy-Sell Agreement provides that if either James Allard or Barry Allard wishes to sell his shares, he must first offer to sell them to the other at the fair market value determined in accordance with the provisions pertaining to disability, bankruptcy, marital breakdown or default. It does not provide the same for the shares owned by the spouses of James Allard or Barry Allard. The rights of first refusal only apply to the sale of shares that James Allard owns or the sale of shares that Barry Allard owns.

- [156] Both brothers deposed that the Buy-Sell Agreement, and some means of Barry Allard buying out James Allard, was discussed as part of the years of succession planning negotiations. The fact that James Allard was unhappy with the Buy-Sell Agreement was part of those negotiations. That does not lead to a conclusion that the Buy-Sell Agreement would not be enforceable if it was triggered. It has not been triggered by the present circumstances.
- [157] The Barry Allard respondents have not stipulated which provisions of the Buy-Sell Agreement should apply, including whether it is the provisions that provide for payment of 75% or 100% of the value, or whether the payments are to occur over 10 years or six years. I do acknowledge that one paragraph of the written submissions references "nine equal payments" which I can infer is a reference to the provisions that requirement payment over ten years, however, that is far from taking a position as to what specific provisions should apply. The Barry Allard respondents have also not stated that the Buy-Sell provisions should be applied to compel Colleen Talbot to sell, and Jo-Ann Allard to purchase, the shares owned by Colleen Talbot.

Fairness

- [158] The fairness principle is not amenable to formulaic exposition but must be assessed on a case-by-case basis having regard to all of the circumstances: Antonov at para. 49, citing Wilson at para. 52.
- [159] The Barry Allard respondents assert that the Buy-Sell Agreement will achieve the corporate divorce that the petitioners want and that they agree is necessary, because James Allard wants to sell his interest in the Allard Group and Barry Allard wants to buy it. The Barry Allard respondents assert that use of the Buy-Sell Agreement mechanism is fair because the parties previously agreed to it.
- [160] The lack of specificity of how the Buy-Sell Agreement would be applied is an obstacle to concluding that it would be a fair remedy that will resolve the deadlock in a manner that is consistent with the expectations of the parties.
- [161] If the premise on which Barry Allard's fairness submissions is partially based, that James Allard wants to sell his shares, is correct, then the Buy-Sell Agreement would apply to provide Barry Allard the option to purchase James Allard's shares. James Allard has not taken the position that he wants to sell his shares. I also note that those provisions would not provide for a full corporate divorce, because they do not deal with Colleen Talbot's shares, as discussed in more detail below.
- [162] The Barry Allard respondents also submit that liquidation and dissolution is not fair because it will reward James Allard for manufacturing the deadlock. This submission conflates the two steps of invocation and relief in the application of s. 324 and s. 227 of the Business Corporations Act. In their submissions as originally framed when they opposed a s. 324(1)(b) order, the Barry Allard respondents took the position that there was no true

deadlock, only deadlock manufactured by the petitioners to invoke the liquidation and dissolution provisions. Had I accepted that, then a s. 324(1)(b) order would not be possible. When the Barry Allard respondents changed their position to agree that an order under s. 324(1)(b) was appropriate, it was no longer possible for them to maintain that the deadlock was manufactured. At any rate, for the reasons I have set out above, the deadlock is not manufactured. It is real, pervasive, has resisted resolution and has accelerated.

- [163] The main argument that the Barry Allard respondents makes is that liquidation and dissolution is not fair to them, and the Buy-Sell Agreement mechanism is fair, because otherwise James Allard will "get away" with his attempt to have a future stake in the Parksville Pit property. This position is related to the outstanding litigation between HBR and Allard Contractors.
- [164] Despite Barry Allard's justified lack of confidence in James Allard on this matter, it is not immediately apparent how liquidation and dissolution furthers James Allard "getting away" with the secret deal that Barry Alleges that James Allard tried to make. The sale to HBR did not go ahead. By the time that occurred, Barry Allard was apprised of the information he relies on to assert the secret deal. HBR has sued over what it says are improvements to the property over the years it was working on having it rezoned. The brothers do not agree on how to address that lawsuit, one of many instances of deadlock. But the sale collapsed so there is nothing "to get away with" on that front.
- [165] If the Buy-Sell Agreement mechanism is utilized, the Barry Allard respondents will eventually own the shares of the company that owns the Parksville Pit Company and the contingent liability, the values of both of which would presumably be taken into account in the valuation of the shares. If the remedy is liquidation and dissolution, the litigation will be resolved through trial or settlement by the liquidator and will affect the net value of the liquidated assets. While the Barry Allard respondents may prefer to control the litigation and pay for the right to do that through a contingent liability in the Buy-Sell Agreement context, that does make it fairer to use the Buy-Sell Agreement. In my view, the essence of this argument is that because of what James Allard did during the negotiations for sale of the Parksville Pit property, fairness dictates that the Court employ the Barry Allard respondents' choice of remedy to redress the deadlock.
- [166] That is not the meaning of fairness. Fairness does not entail the Court redressing alleged attempted wrongs that have not been the subject of factual findings.
- [167] There is a presumption that a liquidator will be even handed as between the shareholders as an officer of the Court: Petersen CA at paras. 34-36. While liquidation and dissolution will not afford Barry Allard control over the litigation and the Parksville Pit property, that does not make it less fair. The liquidator will be fair, and if necessary, can seek directions from the Court in doing so.

- [168] The petitioners assert that the information asymmetry that exists means the use of the Buy-Sell Agreement will be unfair to them. The evidence demonstrates that for years, James Allard and Colleen Talbot have asked for answers to questions pertaining to West Coast and Pacific Reach and have raised issues as to the reliability of the internal accounting procedures and documents. A feature of the deadlock pertaining to financial statements and the audit is that James Allard and Colleen Talbot do not agree that in producing financial statements, whether after audit or in compilation form, the auditors can rely on the internal accounting done by the controller.
- [169] Based on the evidence on this petition, I am satisfied that there is an information asymmetry that likely continues to exist and which Barry Allard has refused to adequately address. The West Coast and Pacific Reach receivables and the January 2023 "recent discovery" are examples of things that James Allard became aware of only after he pushed and pressed.
- [170] The Court cannot reliably conclude that a business valuator will be able to address the information asymmetry around financial issues based on the current state of the internal accounting. An audit might address some or all of that concern. A forensic audit would likely go further. However, neither has occurred and neither is provided for in the Buy-Sell Agreement.
- [171] The Barry Allard respondents point to the provisions of the Buy-Sell Agreement that provide that the business valuator will be "given access to and copies of such documents as it shall request" and shall "consider any written representations which either James or Barry makes." These tools do not address the concerns that the internal accounting documents are not reliable, and that James Allard does not have the ability to make representations about information he does not have.
- [172] During the course of the hearing, in response to questions from the Court, counsel for the Barry Allard respondents advised that the Court could include a forensic audit to precede the Buy-Sell Agreement as part of a tailored remedial order. However, the Barry Allard respondents did not submit that there should be a forensic audit. Had the Barry Allard respondents proposed a buyout remedy that included first remedying the information asymmetry, the Court could consider the suitability of that approach to resolve the deadlock. The Court is not in a position to fashion remedies that have not been proposed and been the subject of evidence as to their feasibility.
- [173] Barry Allard also submitted that it is fair for him to continue to own and run the Allard Group as a going concern given that it is an active operating businesses. However, this submission does not necessarily accord with fairness because it is not supported by evidence that makes it fairer for him to be the buyer and James Allard the seller. The premise is not in the evidence, it is based on Barry Allard's preference and the inference he draws from James Allard seeking liquidation and dissolution. In *Mostyn v. Schmiing*, 2011 BCSC 275 at para. 27, citing *Vallée v. Pickard*, 2007 CarswellOnt 159, 28 B.L.R. (4th) 149 (Ont.

S.C.J.), at paras. 46-50, the court explained that inherent in a relationship between two equal shareholders is the intention that neither party obtain advantage or preference over the other, except by mutual agreement. I also note that liquidation and dissolution does not foreclose the possibility that either Barry Allard or James Allard could buy the companies' assets back themselves.

- [174] Lastly, there is insufficient evidence before the court regarding Barry Allard's financial situation. An assessment by the court of whether Barry Allard can afford to buy out James Allard, whether over six years or ten, is necessary to assess whether the remedy is appropriate and fair in the circumstances.

Relief that Goes No Further than Necessary to Rectify the Deadlock

- [175] I agree with the Barry Allard respondents that the mechanism in the Buy-Sell Agreement will allow the Allard Group to continue as a going concern as opposed to ending the business as it currently exists, and in that regard, are preferable if they can break the deadlock and dysfunction.
- [176] The valuation and escrow provisions apply no matter what triggers the Buy-Sell Agreement, and so I presume the Barry Allard respondents are asserting that they will be used. However, those provisions of the Buy-Sell Agreement cannot be used to completely resolve the deadlock for at least two, and perhaps three, reasons.
- [177] The first is that there is no specific mechanism that the Court can conclude will permit the business valuator to address the deadlock pertaining to information asymmetry in order to value the companies as addressed above.
- [178] The second problem is that the Buy-Sell Agreement provides for either a six year or ten year buyout payment period. At the commencement of that period, the selling shareholders resign as directors. Accordingly, matters that have been deadlocked by stalemated directors' votes will be resolved, except for the companies for which Colleen Talbot and Jo-Ann Allard are directors for reasons I discuss below.
- [179] During that period the sold shares are pledged by the purchasing shareholders back to the selling shareholders as security and held in escrow. The selling shareholders retain the voting rights. As the evidence demonstrates, over the last two years the petitioners and the Barry Allard respondents have not been able to have non-deadlocked shareholder votes on matters which should be straightforward, such as appointing auditors. That deadlock will not be resolved by the Buy-Sell Agreement during the pendency of the buyout period because the petitioners will still have the right to vote their shares. The Buy-Sell Agreement will perpetuate this for six to ten years.
- [180] A third potential problem with the Buy-Sell Agreement relates to the fact that the Barry Allard respondents have not specified which provisions apply. The triggers of disability, bankruptcy, marital breakdown, default and death do not apply. Leaving aside whether

James Allard wants to sell, if he did, that would trigger Article 8, right of first refusal. Under Article 8, the right of first refusal only applies to the shares that James Allard owns. Colleen Talbot would remain a shareholder. Colleen Talbot and Jo-Ann Allard have created deadlocks in the companies that they control. Accordingly, the use of the right of first refusal provisions would not completely resolve the deadlocks.

- [181] The Barry Allard respondents submit that liquidation and dissolution is not an apt tool to resolve the deadlock over the Parksville Pit Property, because it will allow James Allard to get away with the improper secret deal he was negotiating. They submit that the Buy-Sell Agreement will resolve the deadlock because Barry Allard will be the sole decision-maker and will address matters as he sees fit.
- [182] For the reasons expressed above, I do not agree that liquidation and dissolution will allow James Allard "to get away with" anything. I do agree that if one of the two brothers, and his spouse, are in control of the decision-making, the deadlock about the Parksville Pit property will end. That is accomplished by the Buy-Sell Agreement so far as decisions of directors are concerned.
- [183] A liquidator would be empowered to settle the litigation or defend it at trial which would also break the deadlock, albeit with more drastic outcome than permitting the Allard Group to remain a going concern.

Reasonable Expectations

- [184] The concept of reasonable expectations is objective and contextual. It depends on the facts of the specific case, the relationships at issue, and the entire context, including the fact that there may be conflicting claims and expectations: *BCE Inc. v. 1976 Debentureholders*, 2008 SCC 69 at paras. 61-62.
- [185] The Buy-Sell Agreement was drafted and executed before the problems that have plagued these brothers arose.
- [186] I return to the lack of specificity in the position of the Barry Allard respondents as to which provisions should apply. The Buy-Sell Agreement makes clear that different consequences will apply depending on why the Buy-Sell Agreement was triggered. Disability or death result in 100% of the value being paid. Bankruptcy, marital breakdown or default result in 75% being paid. The Buy-Sell Agreement does not say why, and there is no evidence on that. Accordingly, the Court cannot assess how the parties' expectations on the present circumstances would align with 75% or 100% of the fair market value. The Barry Allard respondents have not acknowledged that issue and have not made any submissions on it.
- [187] The same is true as to whether the buyout period is six years or ten years.

- [188] The lack of specificity may be because there is no obvious place in the Buy-Sell Agreement for these circumstances unless one of the brothers wanted to sell and triggered the right of first refusal provisions. On its face, the Buy-Sell Agreement was not crafted to otherwise resolve deadlock and dysfunction due to inability to agree. It was drafted to deal with circumstances where either Barry Allard or James Allard was disabled, in bankruptcy, in marital breakdown, in default of the agreement, or dead.
- [189] Similarly, there is no ability to assess what the parties' expectations would be for a payout period if the present circumstances were the trigger.
- [190] More fundamentally, the Buy-Sell Agreement is evidence that James Allard and Barry Allard gave thought to what circumstances would trigger a forced sale of the shares from one to the other and did not include circumstances other than disability, bankruptcy, marital breakdown, default and death.
- [191] In Petersen CA at para. 33, the Court of Appeal observed that where there are equal shareholdings in deadlocked camps and no shareholders' agreement that addresses such circumstances, if the shareholders had been asked at the outset what should happen in the event of a deadlock, they would likely say the assets should be sold and the company be wound up.
- [192] That analysis applies to this situation.

The General Corporate Law Context

- [193] None of the parties made submissions specific to this factor.

Disposition

- [194] While use of the Buy-Sell Agreement mechanism would be a more precise way to accomplish a corporate divorce and allow the Allard Group to continue as a going concern, there is too little specificity and certainty about how it would operate, it might not resolve the deadlock on matters that require resolutions of Colleen Talbot or Jo-Ann Allard as directors, it would not resolve any matters that require shareholder resolutions, and the buyout provisions are too long. Those problems affect the fairness and reasonable expectation factors. The consideration of the factors as a whole favours liquidation and dissolution.
- [195] At the closing of the hearing, it seemed possible that the new position advanced by the Barry Allard respondents during the hearing might cause the parties to focus on the appropriate relief to address the deadlock, when previously they had been focussed on whether a s. 324(1)(b) order was appropriate. Accordingly, I advised counsel of the anticipated timing for these reasons so that they could consider agreeing on relief while the matter was under reserve. I also directed that in the event they did not agree, they should each make submissions on who a liquidator should be.

[196] The parties advised that they agree that if I appoint a liquidator, it should be Michelle Grant of PwC, LLP. I am satisfied that Ms. Grant has appropriate qualifications and experience. I appoint her liquidator of the Allard Group companies.

[197] In making submissions about Ms. Grant, the petitioners also sought the opportunity to speak to particulars of the liquidator's powers, responsibilities and remuneration, and to costs. I direct the parties to make arrangements through Scheduling to appear before me to address those matters.

"Matthews J."

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