

CANADA / JUDGMENT

Bagry v. Bagry

2025 BCSC 2399

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Supreme Court of British Columbia

DECIDED

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2025 BCSC 2399 Bagry v. Bagry

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Bagry v. Bagry,

2025 BCSC 2399

Date: 20251204

Docket: S57547

Registry: Vernon

Between:

Satnam Singh Bagry

Petitioner

And

Jaspaul Singh Bagry, Gurdial Kaur Bagry, Mandeep Kaur Bagry,

The Estate of Baljit Singh Bagry, The Estate of Sarwan Singh Bagry,

Sukhwinder Kaur Bagry, Charnjit Singh Bagry

and Bagry Bros. Orchards Ltd.

Respondents

- and -

Docket: S58648

Registry: Vernon

Between:

Gurdial Kaur Bagry

Petitioner

And

Satnam Singh Bagry

Respondent

Before: The Honourable Justice Hori

Reasons for Judgment

Counsel for Satnam Singh Bagry:

S.D. Dvorak

Counsel for Jaspaul Singh Bagry, Gurdial Kaur Bagry and Mandeep Kaur Bagry:

M. Fancourt-Smith

Place and Date of Hearing:

Vernon, B.C.

April 29-30 and May 1-2, 2025

Place and Date of Judgment:

Vernon, B.C.

December 4, 2025

Introduction

- [1] The parties in these two actions are members of the same family. They are before the court to resolve a dispute between them over a family-owned business and a residence in Vernon, British Columbia.
- [2] Since the members of the family share a common surname, I will refer to them by their first names or by the names used by counsel during their submissions. I do this to make these reasons easier to understand and I mean no disrespect to the individuals by doing so.
- [3] The family operates the business through a company, Bagry Bros. Orchards Ltd. (the "Company").
- [4] The residence is located at 4110 15th Avenue, Vernon, British Columbia (the "Vernon Property"). The registered owners of the Vernon Property are Satnam Singh Bagry ("Sam") and Gurdial Kaur Bagry ("Gurdial").

- [5] The dispute between the parties comes before the court by way of two petition actions.
- [6] Action No. S57547, Vernon Registry, is a petition in which Sam seeks an order for the liquidation and dissolution of the Company on the basis that it is just and equitable to do so pursuant to the Business Corporations Act, S.B.C. 2022, c. 57 [BCA] (the "Liquidation Petition"). The respondents, Jaspaul Singh Bagry ("Jaspaul"), Mandeep Kaur Bagry ("Mandeep") and Gurdial, oppose the liquidation and dissolution of the Company. These respondents wish to continue operating the Company with Jaspaul in control of its operations. The remaining respondents in the Liquidation Petition were not involved in this hearing.
- [7] Action No. S58648, Vernon Registry, is a petition in which Gurdial seeks an order for the sale of the Vernon Property (the "Vernon Property Petition"). Gurdial also seeks the equal division of the net sale proceeds between her and Sam after an adjustment to account for occupational rent. Sam opposes the sale of the Vernon Property because it is his place of residence.

History and Background

- [8] In 1972, when he was 24 years old, Sam moved to Canada from India. His parents and his then 19-year-old brother, Tarlochan Singh Bagry ("Tom"), immigrated to Canada in 1976. Sam's brother, Nirmal Singh Bagry ("Norm"), arrived in Canada in 1980.
- [9] The family also included three additional brothers who remained in India and had little, if anything, to do with the operations of the Company. Those brothers were Sohan Singh Bagry ("Sohan"), Sarwan Singh Bagry ("Sarwan") and Mohan Singh Bagry ("Mohan").
- [10] In 1981, Tom married Gurdial and they had two children, Jaspaul and Mandeep.
- [11] In 1983, the three brothers in Canada became joint owners of the Vernon Property. The family used the Vernon Property as a communal residence. Both Sam and Gurdial, and their respective families, lived at the Vernon Property.
- [12] In 1985, the three brothers in Canada purchased a 15-acre orchard property in Vernon. The three brothers were registered owners of that property. Over time, the family's orchard holdings grew to over 100 acres. The three brothers initially held title to the orchard properties in their personal capacities.
- [13] However, on July 7, 1989, the brothers incorporated the Company and transferred the orchard properties into the Company. The family has operated the orchard business through the Company since then.
- [14] Upon incorporating the Company, the three brothers in Canada, their parents and Sohan were equal shareholders. Unfortunately for the family, in 1993 Tom, Norm and their parents died in a car crash.

- [15] As a result of the passing of these family members, their shareholdings in the Company were distributed to their heirs and Sam and Gurdial became the registered owners of the Vernon Property.
- [16] As of March 19, 1999, the Company restructured its shareholdings by passing a Directors' Resolution. The resolution provided for a series of share cancellations, share transfers and share allotments that resulted in the following share structure for the Company's common voting shares:
- a) Sam holding 37% of the shares;
 - b) Gurdial, Jaspaul and Mandeep (collectively "Gurdial's Family") holding 7% of the shares;
 - c) Sohan holding 12% of the shares;
 - d) The children of Mohan holding 7% of the shares; and
 - e) Sarwan holding 7% of the shares.
- [17] Since March 1999, Gurdial's Family has increased their shareholdings in the Company to 53% by acquiring all of the shares held by Sohan and 52% of the shares held by the children of Mohan. Sam has increased his shareholdings in the Company to 38% by acquiring 14% of the shares held by Mohan's children. Accordingly, the current shareholdings in the Company are:
- a) Gurdial's Family holds 53% of the shares;
 - b) Sam holds 38% of the shares;
 - c) Sarwan holds 7% of the shares; and
 - d) One child of Mohan holds 2% of the shares.

Sources of Conflict

- [18] The founding members of the Company treated the business as a family business. They all contributed to the business in some way, and they used the income from the business to pay the expenses of the extended family. Those personal expenses included tuition, living expenses and vehicle expenses for the children of the shareholders. There was very little formality in the operations of the Company and little, if any, financial accounting.
- [19] The Company held no annual general meetings, it prepared no annual financial statements, and most decisions were made by consensus. The Company operated in this manner throughout the time that Sam was the controlling shareholder of the Company.
- [20] Once the next generation of shareholders became involved in the Company, the way in which it conducted its business in the past conflicted with the new generation's business concepts. This conflict in the approach to the family business has led to the current conflict between Sam and Gurdial's family.

- [21] The conflict between the parties has resulted in a series of events that has all but destroyed the trust and confidence that once existed between the parties. I will mention only a few of the more significant sources of conflict below.
- [22] The parties have differing views on how and why the conflict arose. It is not necessary to reach a conclusion about the reason for the conflict. The relevance of this evidence is to show that there is a significant conflict between the parties.
- [23] Sam's views on how the conflict arose are set out in the following passages of his first affidavit filed March 11, 2022, at paragraphs 60-63:
60. Jas has been manoeuvring to gain control over the Company and its assets since 2016.
61. In March 2016, he presented a proposal to transfer the assets of the Company to "Bagry Holdings Ltd.", a company that he apparently incorporated, and which had as its shareholders Gurdial, Mandeep, Jas and me. Since there was no apparent business purpose to the transfer, and since it would have taken assets away from the Company and affect the rights of other shareholders, I refused to agree to this scheme.
62. Jas expressed anger to me over this, and beginning in 2017 Jas began acting as if he, not Gurdial, was my co-director. This was a source of ongoing friction. He frequently injected himself into management decisions, and tried to direct the use of the Company's assets for "investment opportunities" that he identified. I did not find any of these to be sensible, or in the Company's best interests. Since Gurdial typically supports her son, my rejection of his proposals began to affect my relationship with Gurdial.
63. During 2017 -- 2018, Jas and Gurdial constantly raised concerns over the management of the Company, and after Jas began acting as a de facto director, my relationship with Gurdial broke down and our management of the business became dysfunctional. It was particularly difficult to operate the business when Gurdial was never on site yet insisted that she pre-approve any expenditure, no matter how small or how urgent.
- [24] Jaspaul's views on how the conflict arose are set out in the following passages of his first affidavit filed May 27, 2024, at paragraphs 30-34:
30. At paragraph 62 of his Affidavit, Satnam dismisses the suggestions I have made for the Company as not "sensible or in the Company's best interests". However, it was my experience that Satnam simply rejected those suggestions out-of-hand, without consideration. In my view, the Company has failed to modernize its operations and failed to adapt to changes in the fruit growing market, which has negatively affected the Company's profitability. Satnam states at paragraph 68 of his Affidavit that the Company's "margins in apple production are exceedingly thin", but ignores the fact that this does not have to be the case, with proper management and reinvestment. However, Satnam has never appeared to me to consider, and to my knowledge has never investigated, my ideas to remedy this, and in my view has dismissed them without seeking to understand them.

31. Nonetheless, I continued to contribute to the Company where Satnam allowed it. For example, I found the property, negotiated the purchase, helped design the Vancouver House, and oversaw its construction all while pursuing my undergraduate studies. The property was purchased for \$297,000 and sold in 2021 for over \$2.3M.
32. Beginning in 2005 until 2015, I also presented Satnam with several multifamily residential, retail, and commercial real estate opportunities. As a finance professional, I proposed we acquire cash-flowing assets by borrowing against the orchard properties. The Company's land does not carry debt, but if we had used my strategy over this period, we would have grown with the unprecedented boom that came in the real estate market over the past 20 years. This would have come at no additional cost as the acquired assets would have paid both their own mortgages and the down payment debt taken from the orchards. Satnam dismissed many of these opportunities without spending more than a few minutes reviewing them. In hindsight, the market growth across this sector in Canada shows any investment in this strategy had the potential to multiply our current Company's value.
33. Another area in which I contributed was in coordinating travel for the Company's seasonal workers for several years. I scheduled and booked travel and negotiated transfer of workers for 20 to 24 seasonal workers each year. Often public transit was not feasible, so I picked up workers from the airport and shuttled them between Vancouver and Vernon myself. I even purchased a 7-passenger vehicle at my own personal expense to help with this transfer and never asked for compensation for my time, vehicle, or gas costs.
34. Contrary to Satnam's assertion at paragraph 63 of his affidavit, it is also not the case that I have acted as a "de facto director". Instead, and as discussed in more detail below, beginning in or around 2017, Satnam began to address director issues to me, rather than my mother, as their relationship had broken down to the point where they were no longer speaking. Satnam specifically asked me to be the middle person to their communication and handed me the Company cheque book to manage the authorization of dual signed payments.

The Vancouver Property

- [25] In 2003, the Company purchased a residential property in Vancouver (the "Vancouver Property"). Using Company resources, the family constructed a new house on the Vancouver Property that included a rental suite. The expenses related to the Vancouver Property are paid by the Company. Various members of the family have lived at the Vancouver Property from time to time, including Sam's children. However, since 2009, the Vancouver Property has been occupied by Gurdial's Family.
- [26] Sam claims that Gurdial's Family resides at the Vancouver Property rent-free and that they collect the rental income from the property for their own use. Gurdial's Family responds to this claim by alleging that Sam and his family reside at the Vernon Property rent-free and that the rental income from the Vancouver Property is used to pay property expenses.

The Surrey Property

- [27] On September 10, 2017, Sam executed an agreement for the Company to purchase a residential property in Surrey (the "Surrey Property"). Sam's intention was for his son to invest 20% in the purchase and the Company to invest 80%. The Company required financing to complete the purchase. To secure financing, the Company required Gurdial to execute the financing documents.
- [28] Gurdial claims that she was unaware of the proposed purchase when Sam initially presented her with the financing documents. She believed the financing was for an operating loan for the Company. Before she signed the final documents, she learned that the funds were for the purchase of the Surrey Property. When she learned this information, Gurdial refused to approve the financing and the purchase did not proceed.
- [29] Sam alleges that he had discussed the purchase of the Surrey Property with Gurdial before he executed the agreement. However, Sam's evidence does not establish that Gurdial agreed to the purchase in those discussions.
- [30] Sam was upset when Gurdial refused to approve the financing because he thought it was unfair that Gurdial's Family lived in a Company-owned residence but refused to accept an investment opportunity with his son.
- [31] Gurdial alleges that when she refused to approve the financing for the purchase, Sam was angry and told her to leave the Vernon Property. Gurdial left Vernon approximately six weeks later and moved to the Vancouver Property where she remains as of this hearing. Sam claims that Gurdial moved to Vancouver due to health issues and to be closer to her children.

Company Finances

- [32] The treatment of the Company's finances has become a significant source of conflict between the parties.
- [33] Historically, the Company declared the payment of wages to the children of Sam and Gurdial for tax purposes. However, the Company did not actually pay those declared wages to the children. In 2012, Gurdial discovered that the Company was paying the declared wages to Sam's children when they did little or no work for the Company. Gurdial claims that she objected to this practice because the Company was not paying wages to her children.
- [34] Gurdial alleges that prior to 2015, she co-signed all cheques issued on the Company bank account. This allowed her to monitor Company expenses. However, Gurdial claims that in 2015, Sam began issuing cheques with only his signature. When she discovered that Sam was doing so, she consulted with the bank and learned that to stop this practice, she would need to cancel cheques or close the account. Gurdial deposes that she did not take those steps because she feared that doing so would anger Sam. However, the Company instituted a process that required Sam to submit cheque requests to Gurdial with an explanation of the

expense. If satisfied that the expense was acceptable, Gurdial would issue the cheque.

- [35] In 2019, Gurdial and Jaspaul discovered that Sam had altered the payee of at least one cheque. Sam had changed the payee of the cheque from a specific individual for wages to "BMO" for \$10,000. Sam admits that he altered three cheques totalling \$60,000 to cover what he says were payments he personally made for the Company's benefit.

Competing for Control

- [36] The Company had not held a formal annual general meeting or a formal election of directors since it restructured its shareholdings in 1999. When Jaspaul became interested in the operations of the Company, he sought to have the Company convene an annual general meeting where the shareholders could elect directors. Unfortunately, Jaspaul's attempts to hold a general meeting were unsuccessful. As a result, on January 29, 2019, Jaspaul commenced a petition action for orders compelling the Company to hold a general meeting for the 2017 corporate year.
- [37] The Company held its 2017 annual general meeting on May 13, 2019, pursuant to a consent order issued in Jaspaul's petition action. Sam was able to secure proxies from the other shareholders which allowed him to control over 50% of the voting shares. By using his proxies, Sam was able to secure his re-election as one of two directors and the election of his wife in place of Gurdial.
- [38] In October 2020, Jaspaul filed another petition to compel the Company to hold its annual general meeting for the 2018 corporate year. This petition resulted in an order for the Company to hold its 2018 annual general meeting on January 29, 2021. In preparation for the 2018 annual general meeting, both Jaspaul and Sam contacted the other shareholders to gain their proxies. Jaspaul obtained sufficient proxies to gain control of the voting shares at the meeting.
- [39] Sam did not attend the 2018 annual general meeting. The directors elected at the meeting were Jaspaul and Gurdial.
- [40] Since Jaspaul and Gurdial became directors of the Company, Sam has not been involved in the operations or the decision-making process of the Company. Sam alleges that Jaspaul and Gurdial have excluded him from any involvement in the Company. Jaspaul and Gurdial claim that Sam has refused to engage with them about the Company.

Analysis

General Principles

[41] Sam applies for an order liquidating and dissolving the Company under s. 324(1)(b) of the BCA on the basis that it is just and equitable to do so. However, where it is just and equitable to liquidate and dissolve a company, s. 324(3) gives the court the flexibility to craft alternative remedies in accordance with s. 227(3) of the BCA that may be more suitable for the specific circumstances.

[42] The first question is whether it is just and equitable to liquidate and dissolve the Company.

[43] Justice Marchand (as he then was), speaking for the Court of Appeal in *Weisstock v. Weisstock*, 2023 BCCA 352 [Weisstock], acknowledged that historically courts have typically found it "just and equitable" to liquidate a company in one of four circumstances:

- a) where there is a loss of the company's substratum;
- b) where there is a justifiable lack of confidence among the members;
- c) where there is a deadlock among the parties; and
- d) where the Company operations are analogous to a partnership.

[44] However, *Marchand J.A.* held that the exercise of the court's discretion under s. 324(1)(b) is not limited to these categories. Justice Marchand held that the phrase "just and equitable" confers a broad discretion to make a liquidation order. After referring to the forgoing categories, *Marchand J.A.*, at para. 48, dismissed a categorical approach to the court's jurisdiction:

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

[45] The court in *Weisstock* set out the general principles applicable to the "just and equitable" analysis:

- a) Liquidation is justified where an applicant demonstrates that the parties regarded or would have regarded, if they had turned their minds to it when they formed the business association, the particular circumstances resulting from the disharmony to constitute the termination or repudiation of the business relationship: *Weisstock* at para. 46;

- b) Determining what is "just and equitable" is a fact and context specific exercise. The test may be applied more liberally in the context of a family company than in a conventional commercial enterprise: Weisstock at para. 49;
- c) No finding of oppression, or even wrongdoing, is necessary to ground an order under s. 324. While misconduct on the part of the applicant may be grounds to refuse equitable relief on a liquidation application, such a determination falls within the discretion of the judge, and it is not an absolute bar: Weisstock at para. 5;
- d) Where neither party comes to court with clean hands, the court is not required to decipher which party bears more blame. The conduct of the parties may however be relevant to "contextualizing the conflict" and to whether the court should exercise its discretion to grant relief: Weisstock para. 51;
- e) While the words "just and equitable" provide broad discretion for the court to intervene to relieve against an injustice or inequity, the discretion has boundaries. Liquidation and dissolution are drastic remedies and remedies of last resort. Accordingly, 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: Weisstock at para. 52; and
- f) The liquidation and dissolution of a company on the just and equitable basis is not a mechanism to simply allow minority shareholders to monetize their investment: Weisstock at para. 52.

Loss of Substratum

- [46] Sam submits that the actions of Jaspaul have stripped the Company of its foundational purpose. Sam contends that the Company was the vehicle through which the members of his family jointly participated in the family business. He submits that since Jaspaul and Gurdial took over the operations of the Company and excluded him, the Company no longer has the same purpose.
- [47] In my view, the process by which the Company operated historically does not form the foundational purpose of the Company. The family members incorporated the Company to operate an orchard business. The purpose for the Company's real estate holdings and its operations has always been to operate an orchard to generate revenue and profits. That purpose has not changed as of the hearing of the Liquidation Petition.
- [48] In the future, the foundational purpose of the Company may change from an orchard business to a property development undertaking if Jaspaul's vision for the Company prevails. However, that change has not yet occurred and I make no comment on whether such a change amounts to a loss of substratum.

Justifiable Lack of Confidence

- [49] There is no question that Jaspaul and Gurdial have lost confidence in Sam's ability to operate the Company business. Evidence of their loss of confidence in Sam is the focus of the affidavits they have filed in this application. The loss of confidence is rooted in what they perceive as Sam's failure to report regularly on the Company's financial performance and his efforts to circumvent the safeguards the Company implemented to monitor expenditures while he was a director.
- [50] In my view, Jaspaul and Gurdial have a justifiable lack of confidence in Sam. While Sam was the controlling shareholder he failed or refused to hold annual general meetings and to make financial reports to the other shareholders. Sam also admits to having altered cheques signed by Gurdial by changing the payee to cover expenses he claims he incurred for the Company.
- [51] I am also satisfied that Sam has lost confidence in the ability of Jaspaul and Gurdial to operate the Company in its best interests. Sam's loss of confidence is based on what he perceives as Jaspaul's desire to shift the focus of the Company business to land development ventures with significantly more risk than operating an orchard. It is also based on Sam's perception that Jaspaul secured control of the Company to pursue his land development vision.
- [52] I am also of the view that Sam has a justifiable lack of confidence in Jaspaul and Gurdial. Sam is 77 years old. He and his family started this family business in 1983. The business has provided the family with a source of income from orchard operations for over 40 years. Sam is concerned that a change in the business model as contemplated by Jaspaul will create a financial risk that he is not prepared to undertake.
- [53] Accordingly, I find that there is a justifiable lack of confidence as between the parties that makes it just and equitable to liquidate and dissolve the Company or to provide an alternative remedy pursuant to s. 227(3) of the BCA.

Deadlock

- [54] There is no evidence of any deadlock in the decision-making process for the Company. Sam does not allege a deadlock and does not rely upon this circumstance for the liquidation and dissolution of the Company.

Partnership Analogy

- [55] The liquidation and dissolution of a company on the partnership analogy requires the applicant to establish two factors:
- a) the existence of an undertaking that is, in substance, a partnership in the guise of a private company; and

- b) a breakdown of the mutual trust and confidence upon which the original undertaking was founded.

Vivian v. Firth, 2012 BCSC 517, at para. 80 [Vivian].

[56] The first factor to consider is whether the Company is, in substance, a partnership. The court in Vivian adopted the description of the partnership analogy made by Lord Wilberforce in *Ebrahimi v. Westbourne Galleries Ltd.*, [1972] 2 All E.R. 492 at p. 500 [Ebrahimi]:

The superimposition of equitable considerations requires something more, which typically may include one, or probably more, of the following elements: (i) an association formed or continued on the basis of a personal relationship, involving mutual confidence -- this element will often be found where a pre-existing partnership has been converted into a limited company; (ii) an agreement, or understanding, that all, or some (for there may be 'sleeping' members), of the shareholders shall participate in the conduct of the business; (iii) restriction on the transfer of the members' interest in the company -- so that if confidence is lost, or one member is removed from management, he cannot take out his stake and go elsewhere.

[57] The Company has its historical roots in a business operated by three Bagry brothers. Originally, there was no company. The business operated as a family business with each brother contributing to the operations. There is no evidence that there was any formal partnership agreement between the three brothers, but the evidence supports a conclusion that the brothers formed and operated the business based on their personal relationship as brothers.

[58] The personal relationship aspect of this business did not change when the brothers incorporated the Company. On incorporation, the brothers became shareholders, and they expanded the scope of the relationship to include their parents as shareholders. To this day, members of the Bagry family are the only shareholders in the Company.

[59] Further, members of the Bagry family have always been involved and continue to be involved in the Company operations.

[60] Accordingly, I am satisfied that the Company is, in substance, a partnership as described in *Ebrahimi*.

[61] The second factor to consider is whether there is a breakdown of the mutual trust and confidence as between the shareholders.

[62] I have already found that there is a justifiable lack of confidence as between the parties. Further, there is clearly a breakdown of mutual trust and confidence. Jaspaul and Gurdial have taken over control of the Company through their majority shareholdings. They have locked Sam out of the Company premises and will not allow him to participate in the decision-making process.

- [63] On the other hand, Sam no longer has trust or confidence in Jaspaul and Gurdial. He has a different view of what is in the best interests of the Company than Jaspaul. Sam sees the Company as continuing in the orchard business and providing a steady and reliable income to the family shareholders. He sees Jaspaul's vision for the Company as a risk that he is not prepared to take.
- [64] I expect that Sam's more conservative view derives itself from Sam's history with the business and his progressing age. At 77 years old, Sam is not likely to embrace a corporate strategy that puts his 40-year investment in the Company at risk.
- [65] In the circumstance of this case, it is not hard to find that the breakdown in the relationship between Sam, Jaspaul and Gurdial has caused the destruction of any mutual trust and confidence that may have existed between the parties. I also find that the breakdown in the relationship is not reconcilable.
- [66] Jaspaul and Gurdial submit that Sam cannot rely upon the partnership analogy because he caused the breakdown of the relationship between the parties. They submit that Sam orchestrated the breakdown of the mutual trust and confidence between them by failing to report on the Company's finances to the shareholders, failing to hold general meetings and generally using the Company as his source of income without regard for the other shareholders.
- [67] In support of their position on this issue, Jaspaul and Gurdial cite Vivian at para. 78 where the court lists examples of circumstances that have justified intervention by the courts on equitable grounds to liquidate a company. One of those circumstances referred to by the court in Vivian is "a situation where it is impossible for the partners to place that confidence in each other which each has a right to expect, and that such impossibility has not been caused by the person seeking to take advantage of it". Jaspaul and Gurdial submit that intervention by the court on equitable grounds in this case is not justified because Sam is the party who caused the loss of mutual trust and confidence.
- [68] In this case, I apply the principle expressed in Weisstock at para. 50, that "while misconduct on the part of the applicant may be grounds to refuse equitable relief on a liquidation application, such a determination falls within the discretion of the judge and is not an absolute bar." I will exercise my discretion in favour of equitable relief in this case because:
- a) the breakdown in mutual trust and confidence is so significant that there is no hope of these parties working together constructively; and
 - b) Sam is 77 years old and he should not be called upon to risk his 40-year investment in the Company if Jaspaul adjusts the focus of the business to areas of opportunity other than orchard farming.

[69] Accordingly, I find that there is a breakdown of the mutual trust and confidence as between the shareholders. Therefore, on the partnership analogy, it is just and equitable to liquidate and dissolve the Company or to provide an alternative remedy pursuant to s. 227(3) of the BCA.

Other Equitable Considerations

[70] I acknowledge that even though the Court of Appeal in *Weisstock* held that a categorical approach to the court's jurisdiction under s. 324(1)(b) of the BCA is wrong, I have considered each of the circumstances that have historically resulted in a liquidation on equitable grounds. After analyzing the circumstances by category, I concluded that it is just and equitable to liquidate and dissolve the Company. However, a more general equitable analysis, as governed by the principles outlined in *Weisstock*, leads to the same conclusion.

[71] If the parties had considered the effect of the current disharmony between the parties on the Company when the orchard business commenced, it is reasonable that they would have put a mechanism in place to resolve the problem. It is also reasonable to assume that one of the options would have been to liquidate the Company. Other options could have reasonably included the purchase of the shares of one or more shareholders.

[72] It would not be reasonable for the parties to simply carry on operating the business with the ongoing disharmony looming in the background. Reasonable people would have found a way to remedy the disharmony.

[73] In addition, I am sure that it is not unusual for a closely held family company to have a conflict when, as here, a younger generation steps in to take the company forward into the future. A younger generation will have new ideas and different goals which may clash with the way the previous generation operated. As the previous generation ages, they must make way for the ideas and goals of the younger generation.

[74] However, the previous generation of owners are entitled to recognition for their efforts in developing the business, nurturing it and having it ready for the younger generation to take over. There must be a mechanism by which the previous generation can minimize the risk of losing the value of their investment by handing it over to the younger generation.

[75] In making this observation, I am mindful of the general principle that liquidation and dissolution of a company on the just and equitable basis is not a mechanism to allow minority shareholders to monetize their investment: See above at para. 45(f). However, in the context of a closely held family corporation, the general principles may be relaxed to account for the relationship between the shareholders.

[76] When considering the just and equitable standard, the Court of Appeal in *Safarik v. Ocean Fisheries Ltd.*, 1995 CarswellBC 578 (C.A.), held, at para. 112:

Family companies are very different from non-family companies. They are different because, usually when a young man joins his father in the business, he does so trusting his father to do right by him and the father intends to do right. Thus no contracts are drawn up. It is not unusual for differences to arise as they did here, not because either father or son is dishonourable but because each sees the world through different eyes.

[77] Therefore, where there are generational dynamics present in the operation of a family company, I see no reason why the just and equitable provision in s. 324(1)(b) of the BCA could not provide the mechanism to resolve the conflicts between the family members in the C company. There is no contractual reason for denying the relief and I cannot identify any equitable grounds for doing so.

[78] Therefore, in the circumstances of this case, the foregoing factors lead me to conclude that it is just and equitable to liquidate and dissolve the Company or provide a remedy pursuant to s. 227(3) of the BCA that appropriately recognizes the interests of all shareholders.

The Remedy

[79] Having found that it is just and equitable to liquidate and dissolve the Company under s. 324(1)(b) of the BCA, I must decide whether liquidation and dissolution of the Company is the appropriate remedy. Section 324(3) of the BCA provides that if the court considers that a person is entitled to relief by liquidating and dissolving a company, the court may do one of the following:

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

[80] The remedy of liquidation and dissolution is described in Weisstock, at para. 52, as a "drastic remedy" and a remedy of "last resort". The court directs that "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."

[81] In this case, where Jaspaul and Gurdial wish to continue operating the Company and have specific goals for shifting the focus of the business to developing orchard property, I find that liquidation and dissolution of the Company is much too drastic a remedy to impose. In my view, the conflict between Sam, and Gurdial's Family can be solved by a less drastic measure that preserves the Company.

[82] Section 227(3) of the BCA provides the authority to order a variety of remedies short of liquidation and dissolution. Section 227(3)(g) and (h) provide that a court may make an order:

- a) directing the company, subject to subsection (5) and (6) of the BCA, 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; or
- b) directing a shareholder to purchase some or all of the shares of any other shareholder.

[83] In the circumstances of this case, I find that the appropriate remedy is an order directing the Company to purchase all of Sam's shares in the Company. It will be necessary for the parties to complete further steps in this process before the purchase of Sam's shares is finalized. Those steps will include a valuation of the Company.

Disposition of Sam's Shares

[84] Pursuant to s. 227(3)(g) of the BCA, the Company will purchase all of Sam's shares in the Company.

Company Valuation

[85] The value of the Company will be assessed by a qualified valuator agreed upon by the parties. If the parties cannot agree on the valuator, they have leave to apply for directions.

[86] The valuation of the Company will be assessed as of the date of these reasons for judgment.

[87] The valuation will be based on the historical use of the Company assets. It will not consider the potential development value of the Company's real estate. Sam's position in the Liquidation Petition is that he wishes to liquidate the Company because, in part, he does not wish to take the risks associated with Jaspaul's vision to change part of the Company's orchard property into a real estate development. If Sam is not prepared to take that risk, he should not be entitled to share in the enhanced value of the property based on its development potential.

[88] The parties will cooperate with the valuator by providing the information requested by the valuator to assess the value of the Company.

Tax Consequences

[89] There will be tax consequences to all parties on the purchase of Sam's shares. The parties will retain an accountant to assess those tax consequences and make recommendations on how those tax consequences may be minimized. If the parties cannot agree on an appropriate accountant, they have leave to apply for directions.

Unresolved Accounting Issues

- [90] Gurdial's Family sought the appointment of an auditor to examine the treatment of Company funds by Sam while he was in control of the Company. However, during submissions, Gurdial's Family waived their claim for the appointment of an auditor and their claim for an accounting by Sam if I ordered that Sam's interest be bought out. Therefore, there will be no order for the appointment of an auditor and no order that Sam provide an accounting of the Company funds he disbursed while in control of the Company.
- [91] Sam did not prepare or have prepared annual financial statements for the Company while he controlled the Company. He also did not report on the financial circumstance of the Company to the other shareholders in any other way while in control. However, now that he is no longer a director, he submits that Jaspaul and Gurdial have failed to provide him with financial information. As a result, he claims he is not aware of what financial actions Jaspaul and Gurdial have taken that might affect the valuation.
- [92] The evidence is that the Company has prepared financial statements for 2021 and 2022. Jaspaul deposes that the 2024 financial statements were being prepared as of May 24, 2024.
- [93] In my view, the production of the financial statements to the 2024 fiscal year should be sufficient for valuation purposes. Therefore, no further accounting is necessary.

Interim Distribution

- [94] Sam has not received any income from the Company since 2021 when Jaspaul and Gurdial were elected directors. From the with prejudice settlement offer from Jaspaul and Gurdial dated September 20, 2024, which is in evidence, it appears that Sam's interest in the Company is substantial. It is of note that the settlement offer includes an option whereby Sam would receive \$5 million from the Company to surrender his shares. Accordingly, an interim distribution is appropriate in this case.
- [95] Therefore, there will be an order that the Company pay \$100,000 to Sam as an interim payment for his shares. The payment may be made in the most tax efficient way for the Company.
- [96] The \$100,000 interim payment will be a credit to the Company on the purchase price for Sam's shares.

Further Applications

- [97] This disposition of the issues in the Liquidation Petition will require further applications to the court. Those applications may include applications to:
- a) appoint a valuator for the Company;
 - b) set a purchase price for Sam's shares;

- c) deal with tax issues;
- d) set a payment schedule; and
- e) set a completion date.

[98] In addition to the foregoing, there may be a need for further interventions by the court to complete the terms of my orders. The parties have leave to bring these applications before me.

Other Shareholders

- [99] I am mindful that there are shareholders in the Company other than Sam, Jaspaul and Gurdial. Those other shareholders did not participate in the hearing of the Liquidation Petition. However, their interests in the Company may be affected by the terms of this order.
- [100] Therefore, I will direct that Jaspaul provide a copy of my orders to the other shareholders. I also direct that notice of any further applications on the Liquidation Petition be provided to the other shareholders.

The Vernon Property Petition

- [101] In the Vernon Property Petition, Gurdial seeks an order for the sale of the Vernon Property and an equal division of the net sale proceeds between her and Sam after an adjustment for occupational rent payable by Sam.
- [102] The Vernon Property has been in the Bagry family since 1983. It served as a communal residence for Sam and Gurdial and their respective families until 2017 when Gurdial left to live in Vancouver.
- [103] The Bagry brothers in Canada were the initial joint owners of the Vernon Property. Sam and Gurdial became the registered owners of the Vernon Property after the death of Sam's two brothers in 1993.
- [104] Gurdial left the Vernon Property in 2017 after she refused to agree to the purchase of the Surrey Property. Gurdial moved to Vancouver in 2017 and has not returned to live in the Vernon Property since.
- [105] Gurdial brings the Vernon Property Petition pursuant to s. 6 of the Partition of Property Act, R.S.B.C. 1996, c. 347 [PPA]. Section 6 of the PPA provides that in a proceeding for partition of property, where a party, whose interest in the property is 50% or greater, requests an order for the sale of the property, the court must order the sale unless it sees good reason to the contrary.

[106] Gurdial is an equal owner of the Vernon Property with Sam. Therefore, she is entitled by s. 6 of the PPA to an order for sale unless the court sees good reason to the contrary. In this case, I find that there is good reason to deny the sale of the Vernon Property on the open market because:

- a) Sam and his brothers built the house on the Vernon Property after they purchased it in 1983;
- b) Sam has lived on the Vernon Property since they built the house;
- c) Both Sam and Gurdial raised their children on the Vernon Property;
- d) Sam is 77 years old and currently resides on the Vernon Property with his wife and children;
- e) Sam and Gurdial are on opposite sides of a dispute over the control of the Company;
- f) The issues in the Liquidation Petition have resulted in Sam having no income from the family business since 2021;
- g) Sam has little resources at the present time but that will change once the results of the Liquidation Petition are realized;
- h) Sam is also a 50% owner of the Vernon Property; and
- i) Gurdial can receive the value of her interest in the Vernon Property without having to sell it and thereby leaving Sam and his family without a residence.

[107] Accordingly, there will be an order that Sam purchase the Vernon Property at fair market value.

Adjustment for the Mortgage

[108] The Vernon Property is subject to a mortgage. Sam deposes that the mortgage represents security for a loan taken by Gurdial to finance Jaspaul's education in New York. Sam's evidence is that he allowed Gurdial to borrow \$200,000 against the security of the Vernon Property to finance Jaspaul's education. According to Sam, the loan remains unpaid and the mortgage security remains on the Vernon Property.

[109] Neither Gurdial nor Jaspaul address the mortgage loan in their evidence.

[110] Based on the evidence of Sam, I find that Sam should not be held responsible for the mortgage. He has not benefitted from the funds advanced under the mortgage. The mortgage security was placed on the Vernon Property to benefit Jaspaul and at the request of Gurdial.

[111] Accordingly, the mortgage debt should be entirely the responsibility of Gurdial. She will be better positioned to collect the debt from Jaspaul than Sam.

Adjustment for Occupation Rent

[112] Gurdial has not resided on the Vernon Property since 2017. Sam and his family have lived on the Vernon Property continuously since then without paying rent. As a result, Gurdial claims occupation rent based on half of the market rent payable for the property.

[113] The general rule in claims for occupation rent is that an occupying owner of property will not be charged occupation rent unless:

- a) the occupying owner claims an allowance for expenses; or
- b) the occupying owner ousted the absent owner from the property.

(Bernard v. Bernard, 1987 CarswellBC 56 (BCSC))

[114] Therefore, the question in this case is whether Sam excluded or ousted Gurdial from the Vernon Property in 2017. Gurdial submits that she was excluded from the Vernon Property by Sam after she denied his request to purchase the Surrey Property. Sam submits that Gurdial chose to leave the Vernon Property to be closer to her children due to health issues.

[115] After a close examination of the evidence on this issue, I have concluded that the evidence of Gurdial falls short of establishing that Sam excluded her from the Vernon Residence after their disagreement in 2017. There is no evidence from Gurdial that she attempted to stay in Vernon but was denied access to the Vernon Property. There is no evidence that Sam specifically told her to leave the Vernon Property and Gurdial deposes that she continued to live on the Vernon Property with Sam for six weeks to finish the harvest season.

[116] The specific evidence in this regard is found in Gurdial's affidavit sworn August 9, 2024, where Gurdial deposes as follows:

- 28. Satnam was furious. He told me that I could take my "share" of the Company and leave the Vernon House. He said he would take his "share" of the Company and continue working and living at the Vernon House. I understood that Satnam was demanding that I leave the Vernon House for good.
- 29. I was reminded of my difficult decision to stick by his side after the accident in 1993 and how much more comfortable my life would have been if I chose differently. After this argument, Satnam refused to say anything more to me and we have not spoken since September 2017.

[]

- 31. Although I did not wish to leave the Vernon House, which I lived in with Satnam and Ranjit since 1983, and which I jointly owned with Satnam, it was clear I could no longer stay. His aggression towards me made me feel very uncomfortable I continued to live in the Vernon House with Satnam and his family so I could continue to help operate the Company through the busy harvest season. About six weeks later, once the apple harvest was completed, Jaspaul came to Vernon.

- [117] The evidence of Gurdial on her exclusion from the Vernon Property is equivocal. It is equally consistent with Gurdial having a difficult time with the conflict that had developed between her and Sam, deciding that she had had enough and leaving the Vernon Property as a result.
- [118] I am not satisfied by the evidence of Gurdial that she was excluded or ousted from the Vernon Property by Sam. Accordingly, there will not be an order for the payment of occupation rent.
- [119] Further, even if occupation rent was payable by Sam, Gurdial has not established the amount of market rent payable. The evidence related to market rent consists of rental listings taken from the internet. There is no analysis or explanation of the rental listings. There are insufficient details about the listed properties and the Vernon Property to make any realistic or reasonable comparison of the listings to the Vernon Property. Accordingly, even if occupation rent was payable, I would have dismissed Gurdial's claim for compensation due to a lack of evidence.

Conclusion on the Vernon Property Petition

- [120] Based on the foregoing analysis, Sam will purchase the Vernon Property from Gurdial. To facilitate the purchase I will make the following orders:
- a) The Vernon Property will be appraised by a qualified property appraiser agreed upon by the parties;
 - b) If the parties cannot agree on the appraiser, they have leave to apply for directions;
 - c) Sam will purchase the Vernon Property at the appraised value;
 - d) The purchase will be financed by a further interim distribution from the Company;
 - e) The interim distribution from the Company to finance the purchase of the Vernon Property will be a credit to the Company on the purchase of Sam's shares in the Company;
 - f) The payout of the mortgage registered against the title will be paid out of Gurdial's share of the sale proceeds; and
 - g) The net sale proceeds remaining after the payment of the mortgage and the payment of other closing costs will be divided equally between the parties.

Costs

- [121] If the parties cannot agree on costs, they have leave to apply.

"D.K. Hori J."

HORI J.

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