
CANADA / JUDGMENT

Byle v. 0143622 B.C. Ltd.

2010 BCSC 1378

COURT

Supreme Court of British Columbia

DECIDED

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2010 BCSC 1378 Byle v. 0143622 B.C. Ltd.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Byle v. 0143622 B.C. Ltd.,

2010 BCSC 1378

Date: 20100930

Docket: S094784

Registry: Vancouver

Between:

Sidney Byle and James Byle

Petitioners

And

0143622 B.C. Ltd. also known as The Byle Development Company Ltd.

and Eleanor Carr-Harris

Respondents

Before: The Honourable Mr. Justice Greyell

Reasons for Judgment

Counsel for the Petitioners:

K.B. Friesen

Counsel for the Respondents:

K. Weslowski

Place and Date of Hearing:

Vancouver, B.C.

March 26, 2010

Place and Date of Judgment:

Vancouver, B.C.

September 30, 2010

[1] The petitioners apply, pursuant to s. 227 of the Business Corporations Act, S.B.C. 2002, c. 57 (the "Act"), for declarations that:

1. the affairs of 0143622 B.C. Ltd. (formerly known as The Byle Development Co. Ltd.) (the "Company") have been and are being conducted in a manner that is oppressive and unfairly prejudicial to the petitioners;
2. the respondent Eleanor Carr-Harris is not a director of the Company;
3. the petitioners hold certain common shares in the Company;
4. the petitioners are the current directors of the Company;

and for related relief.

[2] This petition was argued at the same time as a petition brought by the Administrator of the estates of Cornelius Byle and Marion Byle for orders respecting the preservation and control of property (the "Corner Lot") owned by the Company (the "Property Petition"). Cornelius Byle's estate held a first mortgage against the Corner Lot and the Administrator requested orders permitting him to list and sell the Corner Lot.

[3] It was and is my view that the petitions raised distinct issues and I therefore issued reasons relating to the Property Petition on April 29, 2010 granting the application and making certain orders respecting the Corner Lot (see *Byle v. 143622 B.C. Ltd.*, 2010 BCSC 596). I said that I would issue separate reasons dealing with the petitioners' application under the Act. These are those reasons.

[4] The following issues must be resolved on this application:

1. Is this an appropriate case for determination on a summary application?
2. Who are the current owners of shares formerly owned by William Byle and Daniel Byle?
3. Do the petitioners have standing to bring this application?
4. Does the Byle Foundation (the "Foundation") own shares in the Company?
5. Was Eleanor properly appointed as a director of the Company?

6. Were the petitioners properly appointed as directors of the Company?
7. Have the affairs of the Company been conducted in a manner which is oppressive or unfairly prejudicial to the petitioners, contrary to s. 227(2) of the Act?
8. If the answer to 7 is yes, what remedy should be granted to bring an end to the oppressive or unfairly prejudicial conduct?

BACKGROUND

- [5] The issues in this case have a complex history going back a number of decades. They arise from the business and personal relationships between Cornelius and Marion Byle, their offspring, a charitable organization called the Byle Foundation and the Company, a business initially incorporated by three members of the family to develop property owned by the parents.
- [6] Cornelius and Marion Byle had four children: James; Eleanor; William; and Daniel. Each of their sons married: James married Denise; William married Nettie Jean; and Daniel married Teresa. Daniel and Teresa are the parents of Sidney. William and Daniel have passed away.
- [7] The petitioner James and the respondent Eleanor are therefore brother and sister and the petitioner Sidney is their nephew. For the sake of clarity, I will refer to the family members by their first names throughout these reasons.
- [8] Control of the Company is the central issue in these proceedings. For that reason, I have not attributed the positions advanced by the petitioners or by Eleanor to the corporate respondent. When I refer to the respondent, I refer to the personal respondent, Eleanor. I will refer to the corporate respondent as the Company.
- [9] Several decades ago, Cornelius and Marion owned property in Surrey and the family worked together to run various enterprises, including a mink farm.
- [10] The parents ultimately received offers for their property from developers. William conceived the idea that some of the family members could develop the property without involving developers. His idea was that the property should be held in the name of a company and that James would be involved in some construction aspects of the development.
- [11] The Company was incorporated on December 15, 1975 to hold and develop the property.
- [12] These petitions are the latest in a series of legal disputes between members of the Byle family concerning the affairs of the Company. It is apparent there has been and remains considerable animosity between the parties.

The Company

- [13] The Company started with three subscribers: William; James; and Denise. Each held one common share.
- [14] Sometime after incorporation, 100 further shares were issued. There is no evidence of what became of the three original common shares, however it is not disputed that after the share issuance William held 40 common shares and James and Denise, together, held 40 common shares in the Company. All the parties agree that these 80 shares have voting rights attached to them.
- [15] The parties also agree that 20 shares were issued in the name of the Foundation. However, James says that these were non-voting and that the Company holds them in trust for the Foundation. Eleanor says the Foundation's 20 shares have voting rights and that they are held by the Foundation.
- [16] The parties have been involved in previous litigation. Three actions were tried together before Legg J., and ultimately proceeded to the Court of Appeal (see *Byle v. Byle*, [1988] B.C.J. No. 1528 and *Byle v. Byle* (1990), 65 D.L.R. (4th) 641 (B.C.C.A.)). These actions involved the rights and obligations between James and William relating to debts allegedly owed by James to both William and the Company.
- [17] As of January 10, 1979, James and Denise did not hold shares in the Company; they transferred nine shares to William and 31 shares to Daniel. William was a director of the Company from 1975 until his death in 1992. For at least some time during that period, he was also president of the Company.
- [18] While the Company's affairs were being directed by William, it acquired subsidiaries in the State of Washington, one of which was Cascade Cold Storage ("Cascade"). Cascade was ultimately sold.
- [19] One of Eleanor's concerns is that the Foundation, which she maintains is a shareholder of the Company, never received an accounting of the proceeds of the sale nor any amount representing its interest in the proceeds of the sale of Cascade. Eleanor remains convinced William has defrauded the Company and accordingly she has persevered in seeking an accounting of the Company's affairs.
- [20] Eleanor says that William moved the Company's books and records from British Columbia, where they are required to be kept pursuant to the Act, to the State of Washington, where he moved a number of years ago. Eleanor says that she has made numerous demands for the return of the books and records. She also says that, during his life, Cornelius also demanded their return.
- [21] Since she was appointed a director of the Company (the validity of which is challenged by the petitioners) Eleanor has made numerous complaints to the Registrar of Companies in Victoria to try and have the records returned to British Columbia. Her efforts in this regard are now directed at Nettie Jean, who she says was a former officer and director and had possession of the books and records following William's death. She maintains that Nettie

Jean, who resides in the State of Washington, remains in possession of the corporate records and refuses to provide them to her.

- [22] A number of events occurred relating to the Company's shares following the Court of Appeal's decision. The parties have set these transactions out in their affidavit materials.
- [23] I note here that there are no share certificates, no minutes of shareholders or directors meetings, no copies of either shareholders or directors resolutions and no other written material recording the affairs of the Company. Eleanor's solicitor has made an attempt to reconstruct the Register of Directors (the "Register"), but that reconstruction acknowledges it may be inaccurate because of the paucity of records.
- [24] As noted above, James and Denise initially held 40 shares in the Company and in 1979 they transferred 31 shares to Daniel and 9 shares to William. This gave Daniel a total of 31 shares, and William a total of 49.
- [25] In 1992 William passed away in the State of Washington. The petitioners and Nettie Jean say that by virtue of a Community Property Agreement between William and Nettie Jean, William's shares in the Company passed to Nettie Jean. In 2009 Nettie Jean purported to transfer those shares to Sidney.
- [26] The respondent says there was no probate of William's estate in British Columbia or in the State of Washington and, accordingly, Nettie Jean never owned William's shares and could not transfer them to Sidney. The respondent appears to be taking the position that no shares in the Company can be transferred following a shareholder's death unless the shareholder's estate is probated.
- [27] The petitioners say that when Daniel died in 2006 his 31 shares were transferred to his widow Teresa as part of his estate. Teresa, in turn, purported to transfer the shares to James in 2009. Again, the respondent says Teresa (who lived in the State of Washington) held no shares in the Company as Daniel's estate was never probated in British Columbia or the State of Washington. Accordingly, Teresa never became a registered shareholder and could not transfer any shares to James.
- [28] Eleanor offers other evidence in support of her claim that Daniel could not deal with his shares upon death. She deposes in one of her affidavits that she was informed by Daniel that he sold his shares to William in 1984. She has also attached an undated 'Authorization for the Inspection of Business Records' in which Daniel appears to permit her to inspect the books and records of the Company. She says that this contains evidence that Daniel relinquished his shares in the Company. The respondent also notes Daniel declared bankruptcy in June 1991 and did not declare the shares as part of his assets. Eleanor therefore says Daniel had no shares in the Company either because he sold them, "relinquished" them or because no letters probate were obtained in British Columbia.

- [29] I have not given any weight to the affidavit evidence that Daniel sold his shares to William or that Daniel relinquished them. There is no other evidence that Daniel sold his shares; Nettie Jean does not claim to own them. While in the Authorization Daniel did write: "I relinquished my shares the 3rd of May, 1984", I am of the view the shares he is referring to are those in Cascade.
- [30] There are many reasons why Daniel might not have listed his shares among his assets when he declared bankruptcy in 1991. I do not think his failure to do so necessarily means he no longer owned the shares. I will discuss and make findings related to Eleanor's claim that the shares could not pass without letters probate being taken out later in these reasons.
- [31] Because of the position she takes regarding William's and Daniel's shares, Eleanor argues that the Foundation, which she says holds 20% of the shares in the Company, is the only legal and proper shareholder of the Company and hence the only entity able to elect or appoint directors to the Company's board of directors.
- [32] Eleanor says that in 1994 the trustees of the Foundation did appoint her as the director of the Company and she therefore argues she is the only director of the Company and the only person authorized to act on its behalf.
- [33] During the period 1975 to 2007, the Company dissolved and was restored by court order three times. In her capacity as the director of the Company, Eleanor caused an application to be made under s. 50 of the Act to restore the Company in 2007. A master of this Court ordered on August 20, 2007 that the Company be restored as 0143622 B.C. Ltd.
- [34] The petitioners' petition is founded on what occurred at a meeting held on May 9, 2009. Denise, James, Sidney, Teresa and John Goudsward (proxy for Nettie Jean) met by telephone conference and conducted what they described as an annual general meeting (the "2009 Meeting") of the Company. James attached a note from Teresa to the minutes of the 2009 Meeting which outlines the reasons for holding it:

I Teresa Byle, am the widow and sole beneficiary of the estate of Daniel Charles Byle.

On January 10, 1979 Daniel Byle entered into an agreement to purchase 31 shares in The Byle Development Company and the Byle Construction Company Ltd. from James and Denise Byle. The purchase price of these shares was secured by promissory notes signed and witnessed on January 10, 1979.

Because of circumstances beyond Daniel Byle's control, he was unable to complete the share sale agreements he had made with James Byle.

As the beneficiary of Daniel Byle's shares in the Byle Development Company, I have authorized James Byle to ask the only "legally authorized" director of the Byle Development Company, Jeannie Byle Barga to call an "Annual General Meeting" of the Byle Development Company so that the outstanding issues regarding the 1979 transfer of corporate shares can be dealt with at that meeting.

[Emphasis in original]

The note is signed in the name of Teresa L. Byle and is dated March 19, 2009. Nettie Jean, described as Jeannie Byle Bargen in the note from Teresa, was at one time a director of the Company. The petitioners say that, without authority, Eleanor filed the necessary forms to remove Nettie Jean as a director.

[35] The minutes reflect what transpired at the 2009 Meeting:

- those present considered themselves present or past shareholders of the Company;
- the meeting was constituted as the Annual General Meeting of the Company;
- the current shareholders were confirmed as Nettie Jean with 49 shares and Teresa with 31 shares;
- the Foundation was said to hold 20 shares "in reserve" which had not been issued;
- those present noted that the Company records, filed with the Registrar of Companies, said Eleanor was the sole director (they commented that she had been appointed without notice to the shareholders);
- those present passed resolutions appointing Sidney and James as directors and approving the share transfers from Nettie Jean to Sidney and from Teresa to James;
- the shareholders voted to instruct their counsel to file a Notice of Change of Directors and to request Eleanor provide them with the Company's books; and
- those present voted to retain control of the 20 shares "held in trust for the Byle Foundation" "because of Cornelius Byle's wish to dissolve the Byle Foundation".

[36] Two other notes are attached to the minutes of the 2009 Meeting. One is signed by Nettie Jean in which she says she inherited William's 49 shares and agrees to transfer them to Sidney. The other is signed by Teresa and is substantially similar to the note quoted above except that in place of the paragraph requesting an annual general meeting, she writes:

I Teresa Byle, agree to transfer 31 shares of The Byle Development Company Ltd., back to James Richard Byle to satisfy the uncompleted agreement that was signed on January 10, 1979 by Daniel Charles Byle.

[Emphasis in original]

[37] Eleanor does not recognize the 2009 Meeting as an annual general meeting. She argues James does not hold the position of secretary-treasurer of the Company as he asserts. The respondent asserts James held these positions and that he was a director until January 15, 1979. At that time he transferred his shares to Daniel and William and, Eleanor says, ceased holding these offices. In support of her position, Eleanor refers to the Register which was filed with the Registrar of Companies, one of the few corporate documents she has in her possession. The Register does not say if and when James ceased to be secretary, but it shows

that he was appointed to that position in 1975 and that subsequently Daniel was appointed to the position of secretary in 1979, Nettie Jean in 1984 and Eleanor in 1994.

[38] To summarize the parties' positions concerning the Company:

- the petitioners, James and Sidney, say they are directors of the company as a result of their appointment at the 2009 Meeting;
- the petitioners James and Sidney say they are shareholders by virtue of shares transferred to them and as a result of the approval of those transfers at the 2009 Meeting;
- Sidney relies on Nettie Jean's evidence. She deposed she received William's interest in the Company (his shares) under a Community Property Agreement. She says that she transferred them to Sidney so he and James "could have control over the Company and then work to wrap up the Byle Estate and related matters.";
- Sidney therefore says he owns 49 shares. These 40 shares are made up of the original 40 shares William owned and the 9 shares James sold to William in 1979. Sidney says Nettie Jean transferred these 49 shares to him in March 2009;
- James says he owns 31 shares. These were the 31 shares he transferred to Daniel in 1979. James says Teresa transferred them back to him in 2009. Teresa signed a note saying that she was transferring them back to James because Daniel had never been able to pay James for them;
- Eleanor says the Foundation holds 20 shares in the Company and is the only bona fide shareholder; and
- Eleanor says that she was appointed director by the Foundation in 1994 and that she remains the only director of the Company.

The Foundation

[39] The Foundation was incorporated under the Canada Corporations Act, R.S.C. 1970, c. C-32, on September 18, 1979, by Cornelius. Cornelius was a religious man and hoped the Foundation would eventually be in the position to make charitable donations to worthy Christian organizations.

[40] There was a suggestion in the evidence that the Foundation may also have been the brainchild of William as a device by which he and the shareholders of the Company could repay their parents for the land which had been conveyed to the Company.

[41] The Foundation's bylaws (the "Bylaws") provide:

6. Members and Trustees. The members of the corporation shall be the trustees. There shall be no members of the corporation other than the trustees. Any meetings of the members may be held concurrently with the meetings of the trustees. There shall be such number of trustees, between three (3) and fifteen (15) as the trustees shall by resolution from time to time determine. ...
- ...
8. Term. Each trustee shall serve for such term as the trustees themselves may determine. Trustees may be reappointed and may serve an unlimited number of successive terms. Any trustee may resign by delivering a written resignation to the President or Secretary of the Corporation, and the remaining trustees may fill the vacancy.
9. Rights of Members. The right of a member to vote and all his right, title, and interest in or to the corporation shall cease on the termination of his membership. ...
10. Removal of members, trustees or officers. Any member, trustee or officer may be removed from membership or from office by the affirmative vote of two-thirds (2/3) of the full membership at any regular or special meeting called for that purpose.
- ...
12. Annual Meetings. The annual meeting of the members and trustees of the corporation shall be held at the principal office of the corporation or at such other place within or outside of the Province of British Columbia as the Board of Trustees shall designate, ...
- ...
14. Notice of annual and special meetings. Notices of the time, place, and purpose or purposes of annual or special meetings shall be given or served, either personally or by mail or by telephone ...
- ...
22. Election, term of office and qualifications. The President shall be elected at each annual meeting by the board of trustees from among their number, and the other officers shall be elected at each such meeting by the board of trustees from among such persons as the board of trustees may see fit.
- [42] In summary, the Bylaws provide that a member is a trustee and that there must be a minimum of three and a maximum of 15 trustees at any given time. Trustees serve for such term as the trustees decide and may be reappointed and serve an unlimited number of terms. A trustee may resign by delivering a resignation or be removed from office by a 2/3 vote. The Bylaws require the Foundation to hold annual meetings and to give appropriate notice thereof to its trustees.

- [43] Following incorporation, the Foundation remained inactive. It appears to have remained in this position until the trustees met in early 1994 and the respondent took an increasingly active role in its affairs.
- [44] To determine how Eleanor became appointed a director of the Company, I must turn to the records (such as they exist) of the Foundation.
- [45] As stated, the Foundation remained inactive for a number of years. The cause of such inactivity is unclear. The material suggests it was because of a lack of funding, however a clause in an affidavit filed by Eleanor suggests the Foundation was allowed to become inactive as a result of verbal misrepresentations made by William and the Foundation's accountant at the time as to its activities.
- [46] Eleanor has produced minutes of the Foundation's board of trustees meetings dated May 21, September 11 and 12, 1994 which are important to the position she takes in response to the petition.
- [47] Present at the May 21 meeting were Cornelius, James and a Mr. Sulkers, referred to as "former trustees" and a Mr. Viersen, referred to as "trustee-elect". Eleanor and a family friend were also present.
- [48] As of the date of the meeting, Industry Canada had advised the Foundation it would be struck from the Register "within the year" if it did not provide updated reports. The Foundation had requested a delay of one year to do so.
- [49] The minutes record the passing of Marion and William and that a new executive was appointed with Cornelius as president, Mr. Sulkers as vice-president and Mr. Viersen as secretary-treasurer. Eleanor was appointed as assistant to the secretary-treasurer; this position does not have voting rights.
- [50] I quote from portions of the minutes:

Trustee Jim Byle recounted the earliest origins of the intention to form a charitable foundation. These arose at a pre-incorporation meeting of The Byle Development Company in 1975. This was held at Jim's home on Hamilton Street in New Westminster. At this meeting an agreement was reached between W.A. Byle, C. Byle and J.R. Byle that 20% of the shares of The Byle Development Company would be put into the name of the foundation. These plans finally came to fruition in 1979-1980 with the formal incorporation of The Byle Foundation.

...

It has recently come to the attention of some of the Trustees that a 20% shareholding in two B.C. corporations was placed into the name of The Byle Foundation, by William A. Byle. This was sworn under oath in The Supreme Court of British Columbia, and was included in the Reasons for Judgement of The Honourable [sic] Mr. Justice Legg. The Trustees are very concerned and puzzled, as they were not informed and this has not been included in our books of account.

Furthermore, The Byle Development Company, Ltd. is the parent corporation of a wholly owned (94%) subsidiary corporation in Washington State, Cascade Cold Storage, Inc. This in turn formed a second-tier subsidiary known as Agri-Land Corporation. These three companies operated as a "controlled group" for tax purposes.

After the sale of the U.S. corporations, there was a major tax-free distribution to the shareholders of The Byle Development Company. However, neither creditors (which includes our Founder) nor certain shareholders (which includes The Byle Foundation) were included in this distribution, except that our Founder did receive a fractional proportion (as later calculated) but with no accounting. These cash movements appear to involve two of our former Trustees, one a Chartered Accountant and both being in fiduciary relationships to our Founders.

The Trustees are deeply concerned that they were not plainly informed of the gift of shares much earlier. They recognise their duty to investigate this "distribution to shareholders" as the Foundation seems to have been deprived of a six-figure sum. Because this involves two of our former Trustees, we are in a quandry about how to properly proceed. It was resolved to investigate this privately for the time being.

The trustees who had only recently become aware of the Foundation's 20% shareholding in the Company were Mr. Sulkers and Mr. Viersen. The minutes continued:

Brief mention was made of the possibility that The Byle Foundation may presently be the only legal shareholder remaining in The Byle Development Company. How would this impact on Info Circular 80-10R, 16(c)?

We have no knowledge that Nettie Jean Byle ever purchased any shares. This was the only legal way she could get them. They cannot be directly inherited, under B.C. law. Only a legally appointed "personal representative" may distribute shares, and then must conform to the existing Articles of the company. Bona fide shareholdings need to be confirmed.

[Emphasis added]

Up to ten days before this meeting, there had been no "personal representative" appointed for W.A. Byle's estate. In fact, the attorney acting on behalf of his widow has announced that there is "no estate" of W.A. Byle. (Which is preposterous, as corporate shares do become part of one's estate.) Furthermore, her attorney has announced the intention to allow The Byle Development Company to be struck from the Register, with the result that the Corner Property would escheat to the Crown!

[Emphasis in original]

[51] The trustees resolved to investigate matters and expressed the following concern:

A concern was expressed that we follow proper procedures throughout. The intention is to double-check our Articles & Bylaws, and the law under which the Foundation operates, the Canada Corporations Act, with a view to ensuring no technical procedural mistakes. It will be necessary that a working knowledge of the Company Act be gained by a couple of members.

[52] A companion set of minutes records that Eleanor led the meeting "since she is the most aware of what has gone on and what we need to do".

[53] Two further meetings of the Foundation are of interest. On September 11, 1994, James, Cornelius, Eleanor and Mr. Viersen had a telephone meeting at which they made plans for Cornelius, Eleanor and Mr. Viersen to attend the office of the Registrar of Companies in Victoria the following day.

[54] On the ferry to Victoria on September 12, 1994, Mr. Viersen and Cornelius continued the September 11 trustees meeting. Eleanor was present but James was not. At this meeting they concluded that:

- the Foundation was "endowed" with 20% of the shares of the Company;
- William and Nettie Jean had both been paid directors and officers of the Company;
- the books and records of the Company had been removed from the jurisdiction of B.C. without consent of the other shareholders;
- no accounting had been provided by the Company for the sale of Cascade or its subsidiaries; and
- no probate had been done of William's estate.

[55] The minutes of this meeting include the following:

Cornelius Byle and Ben Viersen, together, reviewed some of the past legal efforts to keep Development in "Good Standing", and then looked at the copy of The B.C. Company Act that Eleanor had been studying, and saw that the directorships lapsed annually.

The Trustees of The Byle Foundation discussed the fact that here was a B.C. corporation with no director, about to be struck from the Register, while The Byle Foundation, the only bona fide shareholder, and which held 20% of the shares, could elect or appoint a Director to submit the needed Annual Reports and Fees, and keep the corporation in good standing.

In addition, Cornelius Byle's Chartered Accountant had alerted him to possible severe tax problems which could impact any Director financially. This was discussed.

...

IT WAS RESOLVED:

"That the Trustees of The Byle Foundation, the holder of the only remaining bona fide shares of The Byle Development Company Ltd., elect Eleanor Carr-Harris, daughter of the founder, Cornelius Byle, as provisional Director of The Byle Development Company until such time as a regular Annual General Meeting be held."

The only purpose of the trip to Victoria was to ensure that the Annual Reports of The Byle Development Company Ltd. were correctly submitted, and to get a copy of the Articles and Memorandum of the Company.

[Emphasis in original]

[56] James does not dispute his involvement in the May 21 or September 11, 1994 meetings. He deposes that he did tell Eleanor she could not use the Foundation to take over the control of the Company.

[57] Notwithstanding the minutes above described as well as considerable correspondence from Eleanor to the B.C. Registrar of Companies during 1994 on behalf of the Foundation asserting the Foundation holds 20% of the shares of the Company, James takes the position in his November 24, 2009 affidavit, that:

No Company shares were ever issued to the Foundation. There is no evidence that shares were issued. It was never intended that the Foundation would receive any shares in the Company. When Eleanor Carr-Harris proposed at a meeting in 1994 to use the Foundation to gain control over the Byle Development Company, I told Eleanor Carr-Harris and Ben Viersen (co-Director of the Byle Foundation) that the Foundation could not be used to obtain control over the Company as it had no voting shares and even if it did those shares were not allowed to have any voting privileges. Eleanor Carr-Harris indicated that she did not care about those details and insisted that she had to get control of the corporation to remove Nettie Jean's control of the Company so she could not use it to negotiate a hold harmless agreement with the rest of the family. When Eleanor refused to listen to me I got very upset saying you are trying to convince me to use this Foundation to illegally claim ownership of the Company as a strategic move just so you can sue Nettie Jean. I got to my feet and said as I walked out that I'm not getting myself involved in anything illegal.

[58] James has considerable historic involvement with the Foundation. A review of the few annual summaries of directors filed with Industry Canada shows he was listed as a director in 1981 but not in filings made by Cornelius in March, 1992, 1993 or 1994. He was listed again as a trustee in 1995 along with Mr. Viersen and Cornelius. He signed the annual summary in June 1997 as a trustee director. James was considered a trustee at the meetings which occurred in 1994 when Eleanor was appointed as director of the Company.

[59] James asserts he is a current trustee/director of the Foundation, that he has never resigned and that he has had no notice of filing of the last Annual Summary for the Foundation filed with Industry Canada on July 16, 2009 naming Mr. Viersen as the only trustee/director.

LEGAL DISCUSSION

1. Is this an appropriate matter for determination on a summary application?

[60] The respondent argues this is not an appropriate case for a determination of the issues on the affidavit evidence before the court and that the issues raised should be determined following a trial.

[61] The facts set out by the parties and others in the affidavits are in some instances unclear and contradictory. There are significant disputes between the petitioners and the respondent on a number of issues going back over many years. However, in my opinion, much of the conflicting evidence is not relevant and many of the relevant facts are not contentious.

[62] Therefore a number of substantive issues can be resolved by the court on this application, including whether the Foundation owns shares in the Company and the rights attached to any shares it owns, the validity of the transfer of William's and Daniel's shares in the Company to their widows, and ultimately to James and Sidney, whether the petitioners have standing to bring this application, whether the affairs of the Company have been conducted in a manner that is oppressive and unfairly prejudicial to the petitioners and what remedy should follow if the petitioners have standing and succeed in their claim for relief.

[63] On these issues there is little substantive disagreement on the evidence.

2. Who are the current holders of the shares formerly owned by William and Daniel?

[64] The parties agree that in 1984 William and Daniel held 49 and 31 shares in the Company, respectively. I have already said that I do not accept Eleanor's evidence that Daniel sold or relinquished his shares before his death.

[65] The petitioners say that pursuant to a Community Property Agreement, William's shares passed to his wife Nettie Jean either before or at the time of his death in 1992. Nettie Jean claims to have sold them to her nephew, Sidney, for \$1 in 2009. The petitioners further say that Daniel's shares passed to his widow, Teresa, when he died in 2006 and that she transferred them to James. This transfer, they say, was effected to remedy a debt; Daniel had purportedly purchased the shares from James in 1979 but had never been able to pay James for them.

[66] Sections 4.1 and 4.2 of the Company's Articles provide for the transmission of shares in case of a shareholder's death:

4.1 In the case of the death of a member the legal personal representative of the deceased shall be the only person recognized by the Company as having any title to or interest in the shares registered in the name of the deceased. Before recognizing any legal personal representative the directors may require him to take out a grant of probate or letters of administration in British Columbia.

4.2 Any person who becomes entitled to a share as a result of the death or bankruptcy of any member upon producing the evidence required by section 61 of the Companies Act, or who becomes entitled to a share as a result of an order of a court of competent jurisdiction or a statute, upon producing such evidence as the directors think sufficient that he is so entitled, may be registered as holder of the share or may transfer the share.

[Emphasis added]

[67] The respondent appears to rely on these Articles for the proposition that shares could not pass to her sisters-in-law because the estates of William and Daniel were never probated. I note that 4.1 permits the directors to require probate; they are not foreclosed from recognizing a legal personal representative when a grant of probate has not been taken out.

[68] The Act is also relevant. It says:

118 The personal or other legal representative, or trustee in bankruptcy, of a shareholder of a company is entitled to become or to designate another person to become a registered shareholder of the company if the person provides to the company or its transfer agent

(c) in the case of a death,

(i) the original grant of probate or letters of administration or a court certified copy of them, or

(ii) the original or a court certified or authenticated copy of the grant of representation, will, order or other instrument or other evidence of the death under which title to the shares or securities is claimed to vest,

119 If a personal or other legal representative, or a trustee in bankruptcy, of a shareholder of a company applies to the company or its transfer agent under section 118 to become or to designate another person to become a registered shareholder of the company, provision to the company or transfer agent of the records required under that section for the application is, despite the memorandum or articles, sufficient authority to enable the company or transfer agent to register the applicant or the person designated by the applicant, as the case may be, as a registered shareholder of the company.

[Emphasis added]

[69] It follows that, if the requirements of ss. 118 and 119 are met, despite anything in its Articles, the Company is empowered to register a transfer of shares.

[70] I turn now to the facts of this case.

[71] A Community Property Agreement was signed by William and Nettie Jean on March 29, 1984 in the State of Washington. It reads, in part,

WHEREAS, the parties desire that all their property shall be community property.

NOW, THEREFORE, for and in consideration of their mutual agreements set forth below, the parties agree as follows:

1. All property of whatsoever nature or description, whether real, personal, or mixed, now owned or hereafter acquired by said parties or either of them, shall be considered and construed and is hereby declared to be community property.
2. In the event of the death of one of the parties, while the other party survives by thirty (30) days, then the whole of said community property now owned together with all other community property, real or personal, that may hereafter be acquired shall at once pass to the surviving party in fee simple.

[72] Black's Law Dictionary, 8th ed., s.v. "community property" defines that term as "[a]ssets owned in common by husband and wife as a result of its having been acquired during the marriage by means other than an inheritance or a gift to one spouse, each spouse generally holding a one-half interest in the property."

[73] Read in view of this definition, the Community Property Agreement appears to deal with the shares in two ways: pursuant to section 1, in 1984 William gave Nettie Jean a one-half interest in his shares in the Company, and pursuant to section 2, Nettie Jean inherited the remaining 50% interest in the shares when William died in 1992.

[74] The combined effect of ss. 118(c)(ii) and 119 of the Act is therefore that under certain circumstances, Nettie Jean would be entitled to transfer William's shares to Sidney.

[75] William died 18 years ago. On the evidence before me I am left with no doubt that it was William's intention to transfer his shares to Nettie Jean. Likewise, Nettie Jean intended to transfer those shares to Sidney. I find that the Community Property Agreement and the steps taken by Nettie Jean effectively transferred the beneficial interest in William's shares to Sidney.

[76] Daniel's shares must be dealt with separately.

[77] James transferred 31 shares to Daniel in 1979. In return, Daniel promised to pay his brother. Teresa's evidence is that due to circumstances beyond Daniel's control, he never paid James in full for the shares.

[78] When Daniel died his estate had an obligation to James to make restitution for the incomplete bargain struck in 1979. Daniel did not leave a will. I find that Teresa was acting for Daniel's estate when she transferred his shares to James. In the alternative, James retained the beneficial interest in the shares because he was never paid for them.

3. Do James and Sidney have standing to bring this application?

[79] Section 227(2) of the Act permits "a shareholder" to apply to the court for an order to remedy oppressive and unfairly prejudicial conduct.

[80] The definition of "shareholder" for the purposes of s. 227 includes "a beneficial owner or any other person the court considers to be an appropriate person to make an application".

[81] I have found that James is the beneficial owner of 31 shares in the Company and that Sidney is the beneficial owner of 49 shares. Both petitioners therefore have standing to bring this application.

4. Does the Foundation own shares in the Company? If so, what rights are attached to those shares?

[82] There is ample evidence that the founders of the Company intended that the Foundation hold 20% of the Company and that they took steps to achieve this end.

[83] The intention is recorded in Denise's affidavit in which she says:

The Byle Development Company Ltd. was established with 100 shares. Bill Byle had 40 voting shares, Jim Byle had 39 voting shares, and I, Denise Byle, had 1 voting share. The remaining 20 shares were to be held in trust, until after the Company completed its obligation to provide 20% of its profits from the development to a charitable foundation.

[84] The charitable foundation to which Denise refers is the Foundation. Denise goes on to say that the shares were not intended to be voting shares in the hands of the Foundation. I will return to this below.

[85] Some of the steps taken to achieve the intended result are outlined in the evidence. Attached to Denise's affidavit is a partial transcript of a recorded family meeting held on December 30, 1978 at which they discussed ownership of Company shares. The following statement is attributed to William:

So what we have done, we have set aside, uh, anyways, we set aside TWENTY PERCENT - they have been issued - of the shares of both companies and they're they're they are being held "in trust" for the to be put into the name of The Byle Foundation.

[86] One of the two companies to which William refers is the Company. The Foundation was incorporated on September 18, 1979; it did not yet exist at the date of the meeting, however this evidence indicates that in 1978, 20 shares had been issued for the Foundation and were intended to be put in the Foundation's name.

[87] William later gave sworn evidence both on an examination for discovery for the 1988 actions before Legg J. and at that trial itself. After hearing that and other evidence, Legg J. recited the following background facts in his reasons, at pp. 2-3:

The shares of [the Company] were held by Jim and Denise, by Bill, and by the Byle Foundation. In December 1975 Jim became the registered holder of 39 common shares of [the Company] and Denise became the registered holder of one such share. Bill owned 40 such shares and the Byle Foundation owned 20 such shares.

[Emphasis added]

- [88] It is fair to assume Legg J. recited the Foundation's interest in the Company because that was the evidence before him. As noted earlier, James was a party to the action and gave evidence which does not appear to dispute the Foundation's shareholding.
- [89] While the nature of the Foundation's shareholdings in the Company was not the primary issue in the actions before Legg J., it was relevant information as the actions related to the Company's affairs. It is clear from his reasons that the evidence before Mr. Justice Legg was that the Foundation held 20% of the Company's shares.
- [90] The petitioner James says that the Foundation's 20 shares are held "in trust" by the Company. There is no evidence before me of what effect a finding that the shares are held in trust would have on the issues in this case. However James appears to be alleging that because the shares are held in trust, the Foundation cannot exercise the rights attached to those shares. James's actions and statements are inconsistent with this position.
- [91] In the 1978 conversation quoted above, William refers to the shares as being held in trust. I note again that that meeting occurred before the Foundation was incorporated. Denise's evidence, quoted above, also refers to a trust arrangement. However Denise and James sold their shares in the Company "under protest and under threat" in January of 1979. It is reasonable to assume that neither have evidence of what happened to the shares once the Foundation was incorporated later that year. We must therefore turn to other evidence.
- [92] In 1994, Mr. Viersen became a trustee of the Foundation. He says that he learned in 1994 that "the Byle Foundation holds 20 shares in the Byle Development Company Ltd. ..." He does not say that the Company was holding these shares in trust.
- [93] Mr. Viersen also deposed that in September 1994 the other trustees were James and Cornelius and that on September 11, 1994 the three trustees and Eleanor held a telephone meeting. The minutes of that meeting are quoted from at length, above.
- [94] The attendees at that meeting discussed the standing of the Company and agreed to appoint Eleanor as a director of the Company. James says that he objected to the use of the Foundation's shares to take control of the Company. He says that he informed the meeting that the shares were non-voting. James does not say that he objected to the planned course of action on the basis that the shares were held in trust for the Foundation.
- [95] In further support for his claim that the Foundation's shares in the Company are held in trust by the Company, James deposes that Cornelius Byle "indicated his desire to dissolve the Byle Foundation, which Byle Foundation he had created". At the 2009 Meeting, a motion was purportedly made by James and seconded by Sidney "THAT the twenty (20) shares held in Trust for the Byle Foundation, remain in the control of The Byle Development Compnay [sic] because of Cornelius Byle's wish to dissolve the Byle Foundation."

- [96] Whether or not Cornelius wanted to dissolve the Foundation, the charity had been lawfully incorporated under the Canada Business Corporations Act in 1979. It then acquired the rights of a legal person. Its founder's desire to dissolve it could not affect its legal status and does not derogate from the Foundation's entitlement to its property.
- [97] It is clear that 20 shares in the Company were intended to benefit the Foundation. William says those shares were issued by 1978 and were waiting to be put in the name of the Foundation. The evidence before Mr. Justice Legg was that the Foundation owned 20 shares of the Company. In 1994 Mr. Viersen was informed that the Foundation held 20 shares in the Company (albeit non-voting shares). James did not raise the issue of the shares being held in trust when he says he objected to Eleanor's appointment as director of the Company in 1994.
- [98] I find that subsequent to its incorporation in 1979 the Foundation became the beneficial and legal owner of 20 shares in the Company.
- [99] James and others also allege that the shares do not have voting rights attached to them.
- [100] As outlined above, the Company was registered on December 15, 1975. The Memorandum reads, in part,
1. The name of the Company is "THE BYLE DEVELOPMENT CO. LTD."
 2. The authorized capital of the Company consists of Ten Thousand (10,000) shares divided into Ten Thousand (10,000) Common shares with a par value of One (\$1.00) Dollar each.
 3. WE agree to take the number and kind of shares in the Company as set opposite our names.
- The names William Arthur Byle, James Richard Byle and Denise Byle each appear with "1 common share" beside them.
- [101] According to s. 2, at the time it was registered the Company had only one kind of share: common shares.
- [102] Section 59 of the Act provides as follows:
- (1) Subject to section 256, a company may, in its notice of articles and articles, or, if the company is a pre-existing company that has not complied with section 370 (1) (a) or 436 (1) (a), in its memorandum or in its memorandum and articles, provide for one or more classes of shares.
 - (2) If no express provision for one or more classes of shares is made in a company's charter under subsection (1) of this section, the shares of the company constitute a class of shares for the purposes of this Act.
 - (3) Every share must be equal to every other share, subject to special rights or restrictions attached to any such share under the memorandum or articles.

- (4) Subject to subsection (6), each share of a class of shares must have attached to it the same special rights or restrictions as are attached to every other share of that class of shares.
- (5) It is not inconsistent with subsection (3) or (4) for special rights or restrictions to be binding on or accessible to only some of the shareholders holding shares of a class of shares if those special rights or restrictions are attached to each of the shares of that class of shares.
- (6) Subsection (4) does not apply to special rights or restrictions that are applicable only to one or more series of shares.

[Emphasis added]

[103] Therefore, absent evidence to the contrary in the Company's Memorandum or Articles, all the shares of the Company form a single class of share (s. 59(2)) and each share carries the same rights and restrictions (s. 59(4)). It was open to the Company to create additional classes or series of shares with different rights and restrictions, but there is no evidence that this was done.

[104] As there is no persuasive evidence placed before me by the petitioners that leads me to conclude that the shares of the Foundation should be treated on any different basis than those issued to William and James, I find that all of the outstanding shares of the Company carry the same rights and restrictions.

[105] The Foundation's shares therefore carry voting rights.

[106] That being the case, I conclude that the Foundation is a 20% shareholder in the Company and its shares hold voting rights. As a shareholder it is entitled to participate in the Company's affairs to the extent permitted under the Company's Articles and the Act.

5. Was Eleanor properly appointed as a director of the Company?

[107] I have already decided that the Foundation owns 20 of 100 outstanding shares in the Company. Eleanor says she is director of the Company because she was appointed to that position by the trustees of the Foundation on September 12, 1994. Eleanor's position rests, in part, on whether the Foundation had authority to make this appointment under the circumstances.

[108] On the evidence before me, I cannot decide whether Foundation had such authority.

[109] It is clear that James was one of the trustees of the Foundation in 1994 when it allegedly appointed Eleanor as director of the Company. The minutes and James's evidence indicate that he was present at a meeting on September 11, 1994 during which Eleanor's appointment was discussed. The minutes say James agreed to the appointment; James says he did not approve but, rather, informed Eleanor that she was trying to illegally take over control of the Company using the Foundation shares.

- [110] I find from the materials before me that James knew that the Foundation appointed Eleanor as director of the Company and that she was pursuing restoration of both the Foundation and the Company with Industry Canada and the B.C. Registrar of Companies, respectively. I find James, as trustee, likely objected to the appointment but was outvoted by Cornelius and Mr. Viersen.
- [111] The parties agree that until sometime in 1992, Nettie Jean was a director of the Company. James says Eleanor's appointment was not proper, in part, because the only legal director, Nettie Jean, was not consulted. Eleanor says that Nettie Jean's term had expired and that the Company had no directors when she was appointed in 1994. Eleanor also expressed concern about Nettie Jean's failure to file corporate records which, in 1994, was about to result in the Company being struck from the Register.
- [112] There is insufficient evidence before me on which I can decide whether Nettie Jean was improperly removed as a director.
- [113] Although I have considerable doubt about whether Eleanor was properly "appointed" as a director of the Company, in the absence of other persuasive evidence, I will proceed on the basis that the Register, dated April 8, 2009, is correct. This document lists Eleanor as the only director of the Company.
6. Were the petitioners properly appointed as directors of the Company?
- [114] The petitioners seek an order declaring them to be the directors of the Company. They say the 2009 Meeting was an annual general meeting at which they were elected by the shareholders.
- [115] The Act says the following about holding an annual general meeting:
- 169 (1) Subject to sections 167 and 170, a company must send notice of the date, time and location of a general meeting of the company at least the prescribed number of days but not more than 2 months before the meeting,
- (a) to each shareholder entitled to attend the meeting, and
 - (b) to each director.
- (2) The accidental omission to send notice of any general meeting to, or the non-receipt of any notice by, any of the persons entitled to notice does not invalidate any proceedings at that meeting.
- [116] There are other sections of the Act which deal with the election or appointment of directors in different circumstances. These sections were not argued before me; the petitioners rely on the fact they were elected at an annual general meeting and I have therefore decided this issue on that basis.

[117] I have found that the Foundation is now and has at all relevant times been a shareholder of the Company. There is no evidence that the Foundation was given notice of the 2009 Meeting or otherwise given an opportunity to participate in electing directors.

[118] In my view, the 2009 Meeting was not a valid annual general meeting of the Company as no notice of the meeting was provided to the Foundation. A representative of the Foundation had a right to notice of and to attend the meeting.

[119] I therefore decline to order that the petitioners are duly elected directors of the Company.

7. Have the affairs of the company been conducted in a manner which is oppressive and unfairly prejudicial to the petitioners?

[120] The Act gives certain parties a statutory cause of action when the affairs of a company have been conducted in a way which unfairly prejudices the complainant's interests. The relevant parts of s. 227 are:

227 (1) For the purposes of this section, "shareholder" the same meaning as in section 1 (1) and includes a beneficial owner of a share of the company and any other person whom the court considers to be an appropriate person to make an application under this section.

(2) A shareholder may apply to the court for an order under this section on the ground

- (a) that the affairs of the company are being or have been conducted, or that the powers of the directors are being or have been exercised, in a manner oppressive to one or more of the shareholders, including the applicant, or
- (b) that some act of the company has been done or is threatened, or that some resolution of the shareholders or of the shareholders holding shares of a class or series of shares has been passed or is proposed, that is unfairly prejudicial to one or more of the shareholders, including the applicant.

[121] In *Wilkison v. Today's Carpets et al.*, 2000 BCSC 1509, Mr. Justice Edwards summarized the case law on the meaning of "oppression or unfair prejudice" in the context of the then Company Act, R.S.B.C. 1996, c. 62. Section 200(1) is substantially similar to s. 227(2) of the Act. At paras. 32-36 he said:

[32] In order for the plaintiffs to bring themselves within the language of s. 200(1)(a) and (b) [now s. 227(2)(a) and (b)] the oppression or unfair prejudice must be with respect to the rights, position or interests of the applicant as members, that is, as shareholders of the company and not with respect to their rights, interest or position as directors, officers or employees.

[33] *Fulton J.*, in what is generally accepted to be a leading authority in British Columbia of *Diligenti v. RWMD Operations Kelowna Ltd. et al.* [(1976)], 1 B.C.L.R. 36 [(S.C.)] at 41:

In respect of both paras. (a) and (b), I agree with the submission of counsel for the respondents, on the basis of the authorities cited that the oppression and the unfair prejudice must be with respect to the rights, position or interests of the applicant as member, that is, as shareholder, of the companies and not with respect to his rights, interests or position as director, officer, or employee.

And at p. 45:

There has been no interpretation, in this context, of the words "unfairly prejudicial". Turning to the dictionaries for assistance, I find the following definitions in the Shorter Oxford English Dictionary, 3rd ed.:

"Prejudice . . . I. Injury, detriment, or damage, caused to a person by judgment or action in which his rights are disregarded; hence, injury to a person or thing likely to be the consequence of some action ... [sic]

"Prejudicial ... I. Causing prejudice; detrimental, damaging (to rights, interests, etc.) ... [sic]

"Unfair ... Not fair or equitable; unjust ... Hence, unfairly."

[35] With respect to the word "oppressive" Viscount Simonds, in *Scottish Co-operative Wholesale Society Ltd. v. Meyer*, [1959] A.C. 324, [1958] 3 All E.R. 66 said at p. 342 that he adopted the "dictionary meaning of the word" (oppressive) as burdensome, harsh and wrongful: 66 D.L.R. (2d) 628.

[36] In *Nystad v. Harcrest Apt. Ltd.*, 3 B.C.L.R. (2d) 39 at 43 McEachern C.J.S.C. said:

Before the court would do this, there had to be oppressive conduct - a lack of probity and fair dealing (*Loch v. John Blackwood Ltd.*, [1924] A.C. 783 (P.C.)), a treating of the company's assets as the wrongdoer's own (*Thomson v. Drysdale*, [1925] S.C. 311 (C.A.)) or harsh, unfair conduct (*Re James Lumbers Co.*, 58 O.L.R. 100, [1926] 1 D.L.R. 173 (H.C.)).

[Emphasis in original]

[122] The duties of a director are also outlined in the Act.

142 (1) A director or officer of a company, when exercising the powers and performing the functions of a director or officer of the company, as the case may be, must

- (a) act honestly and in good faith with a view to the best interests of the company,
- (b) exercise the care, diligence and skill that a reasonably prudent individual would exercise in comparable circumstances,
- (c) act in accordance with this Act and the regulations, and
- (d) subject to paragraphs (a) to (c), act in accordance with the memorandum and articles of the company.

- (2) This section is in addition to, and not in derogation of, any enactment or rule of law or equity relating to the duties or liabilities of directors and officers of a company.
- (3) No provision in a contract, the memorandum or the articles relieves a director or officer from
- (a) the duty to act in accordance with this Act and the regulations, or
- (b) liability that by virtue of any enactment or rule of law or equity would otherwise attach to that director or officer in respect of any negligence, default, breach of duty or breach of trust of which the director or officer may be guilty in relation to the company.
- [123] In short, as a director Eleanor is required to exercise reasonable skill in carrying out her duties and to act in accordance with the Act, in good faith and in the best interests of the Company. I find that Eleanor failed to do so.
- [124] In my view, Eleanor did not exercise reasonable skill or good faith when determining who the Company's shareholders were. Once she was appointed director, Eleanor assumed that the transfers from William to Nettie Jean and from Daniel to Teresa were ineffective as no letters probate had been taken out. She started with this as a proposition of fact. She did not tell Nettie Jean or Teresa what steps they were required to take in order to have the shares registered in their names or in the names of James and Sidney. She simply decided, as the sole representative of the Company, she was not going to recognize their interests in the Company nor more recently recognize the interests of their transferees, the petitioners.
- [125] While I would not go so far as to say Eleanor had a positive duty to assist Nettie Jean and Teresa to perfect their title to William's and Daniel's shares, I find that it was not reasonable for Eleanor to assume and act as if 80% of the shareholdings in the Company had evaporated. At the very least, the estates of William and Daniel were shareholders of the Company and it was incumbent upon Eleanor to recognize those interests.
- [126] Instead, I find that Eleanor did not act in the good faith or in the best interests of the Company. Even before her 1994 appointment, her agenda was set. Eleanor's zeal to find an avenue to pursue "justice" on behalf of the estate of her father, Cornelius, against William, Nettie Jean and others lead her to treat the Company as her own - ignoring the duty of fidelity incumbent on directors to act in the interests of others including former persons whose interests might be affected. She considered the Foundation to be the only shareholder of the Company as "NO PROBATE HAD BEEN DONE" on William's estate.
- [127] Finally, Eleanor did not act in accordance with the Act. I will use one example. Section 182(1)(b) requires a company hold an annual general meeting "at least once in each calendar year and not more than 15 months after the annual reference date for the preceding year".
- [128] The Company was restored on August 30, 2007. There is no evidence that since that date, Eleanor, as sole director, has called an annual general meeting.

[129] In failing to recognize William's and Daniel's interests, in pursuing her objective for purposes other than the best interests of the Company and in failing to perform her duties under the Act, Eleanor has caused the petitioners unfair prejudice with respect to their "right, position or interest" as beneficial owners of shares in the Company. She has proceeded in an unfair and unjust manner by failing to put them on notice of the position she was taking on behalf of the Company. She was well aware of the significant interests both William and Daniel had in the Company.

[130] The only conclusion I can draw from the uncontradicted evidence is that Eleanor acted purposefully and with the intent of finding a way to circumvent the petitioners' interests in the Company as potential shareholders. In this manner she could side step their opposition and continue to pursue her claims.

[131] In my view she failed in the most basic of duties as a director.

8. What remedy should be granted to bring an end to the oppressive and unfairly prejudicial conduct?

[132] Section 227(3) of the Act lists some of the remedies available to remedy oppressive and unfairly prejudicial conduct:

227 (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.

[133] I have found that the Foundation is the legal and beneficial owner of 20 shares in the Company. I have further found that James is the beneficial owner of 31 shares and Sidney is the beneficial owner of 49 shares.

[134] While it is true that Nettie Jean and Teresa have not taken all steps necessary to perfect James's and Sidney's legal interests in the shares flowing from William's and Daniel's estates, I am of the view that this flows, at least in part, from the manner in which Eleanor conducted the affairs of the Company.

[135] I therefore order that as a remedy to the oppressive and unfairly prejudicial conduct, the legal interest in what were formerly William's 49 shares is transferred to Sidney and the legal interest in what were formerly Daniel's 31 shares is transferred to James. I order that the necessary amendments be entered in the Company's share registry and that despite any provision of the Articles, no additional approval is required to give effect to these transfers.

CONCLUSION

[136] As I said at the outset of these reasons, the issues in this case arise from business and personal relationships spanning decades. While the respondent Eleanor argued that a full trial was required to determine these issues, I found that much of the conflicting evidence is irrelevant and that I am able to resolve a number of substantive issues on the evidence before me.

[137] As a result, I declare that:

1. the petitioner James is the legal owner of 31 shares in the Company;
2. the petitioner Sidney is the legal owner of 49 shares in the Company; and

3. the Foundation is the legal owner of 20 shares in the Company.

[138] I order that:

1. the Company's central securities register be amended to reflect orders 1, 2, and 3;
2. a general meeting of the shareholders of the Company occur as soon as possible as is consistent with the requirements of the Act and the Articles of the Company (the "Meeting");
3. the Meeting be held in the Province of British Columbia;
4. counsel for the petitioners have conduct of the Meeting, including taking whatever steps are necessary to ensure the Meeting is held in accordance with the Act and the Company's Articles;
5. in accordance with Article 11.1, all current directors retire at the Meeting but be eligible for re-election at the Meeting;
6. the agenda at the Meeting include the following matters:
 - i. the election of directors of the Company;
 - ii. the selection of a registered records office for the Company;
7. Eleanor not exercise the powers of director of the Company from the date of these reasons to the date of the Meeting;
8. after the Meeting, the new board of directors for the Company make all reasonable efforts to recover any records pertaining to the affairs of the Company which are in the possession or control of any current or former director or shareholder.

[139] I am aware that these reasons do not resolve all of the outstanding issues between the parties. I would remind the parties that the Company is incorporated under the laws of British Columbia and its affairs must be conducted according to the provisions of its Articles and the Act.

[140] The newly elected directors are required to act in the best interests of all shareholders - including those of the Foundation.

[141] The parties may make submissions as to costs.

"GREYELL J."

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