

CANADA / JUDGMENT

Castilloux v. Mitchell

2025 BCCA 282

COURT

British Columbia Court of Appeal

DECIDED

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2025 BCCA 282 Castilloux v. Mitchell

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

Castilloux v. Mitchell,

2025 BCCA 282

Date: 20250811

Docket: CA50232

Between:

Daniel Castilloux and Daniel Castilloux in his capacity as trustee of the

Dan Castilloux 2018 Family Trust

Appellants

(Petitioners)

And

David Mitchell, Howard Mitchell Holdings Ltd., Slow Loris Holdings Ltd.,

Mitchell Press Limited, Howard Mitchell, Linda Mitchell, Lisa Mitchell,

Joanne Potter, Stephen Mitchell, 238736 B.C. Ltd., The Mitchell Family Trust

and Mitchell Digital Limited

Respondents

(Respondents)

Before:

The Honourable Chief Justice Marchand

The Honourable Justice Griffin

The Honourable Justice Mayer

On appeal from: An order of the Supreme Court of British Columbia, dated
October 30, 2024 (Castilloux v. Mitchell, 2024 BCSC 1985,
Nanaimo Docket S96543).

Counsel for the Appellants:

D. Roelants

Counsel for the Respondents:

P.J. Roberts, K.C.

J.J.R. Schachter

Place and Date of Hearing:

Vancouver, British Columbia

June 12, 2025

Place and Date of Judgment:

Vancouver, British Columbia

August 11, 2025

Written Reasons by:

The Honourable Chief Justice Marchand

Concurred in by:

The Honourable Justice Griffin

The Honourable Justice Mayer

Summary:

The appellant petitioned the court below to liquidate and dissolve companies under s. 324(1)(b) of the Business Corporations Act, S.B.C. 2002, c. 57. The chambers judge dismissed the petition. The appellant claims the judge: (1) applied an overly restrictive interpretation to the "just and equitable" standard under s. 324(1)(b) in the context of a "family company"; and (2) committed a palpable and overriding error when he misstated facts regarding a settlement offer between the parties. The appellant also applies to adduce fresh evidence. Held: Application to adduce fresh evidence and appeal dismissed. The chambers judge properly applied the legal framework. His approach to the "just and equitable" standard was not overly restrictive but instead complied with

the broad, context-driven and discretionary nature of the court's power under s. 324(1)(b). Although the chambers judge misstated the circumstances of the rejected settlement offer, the settlement offer was not material to the judge's analysis. The error was palpable but not overriding. The proposed fresh evidence could not have affected the outcome in the court below.

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Reasons for Judgment of the Honourable Chief Justice Marchand:

Introduction

- [1] The appellant, Daniel Castilloux, was a director and the CEO of the respondent, Mitchell Press Limited ("Mitchell Press" or the "company"), until his employment was terminated for cause. He remains a shareholder of Mitchell Press and its associated companies (together, the "companies").
- [2] Mitchell Press is essentially a family-owned company with no history of paying dividends. Being effectively unable to sell his shares, Mr. Castilloux says he is in "shareholder purgatory". He therefore petitioned the court below to liquidate and dissolve the companies under s. 324(1)(b) of the Business Corporations Act, S.B.C. 2002, c. 57 [BCA]. Under s. 324(1)(b), the court may order a company be liquidated and dissolved if it finds it is just and equitable to do so.

- [3] The chambers judge dismissed Mr. Castilloux's petition: *Castilloux v. Mitchell*, 2024 BCSC 1985 [RFJ]. Mr. Castilloux appeals. He claims the chambers judge erred in his understanding of the "just and equitable" standard under s. 324(1)(b). He also claims the chambers judge committed a palpable and overriding error when he misstated underlying facts regarding who made and who rejected a settlement offer. In addition, Mr. Castilloux applies to adduce fresh evidence of the companies' continued decline, claiming it underscores the need for liquidation and dissolution.
- [4] I would dismiss the appeal. The chambers judge properly applied the legal framework. His approach to the "just and equitable" standard was not overly restrictive but instead complied with the broad, context-driven and discretionary nature of the court's power under s. 324(1)(b). Although the chambers judge misstated the circumstances of the rejected settlement offer, the settlement offer was not material to the judge's analysis. The error was palpable but not overriding.
- [5] I would also dismiss Mr. Castilloux's fresh evidence application. The proposed fresh evidence could not have affected the outcome in the court below.

Background

- [6] Mitchell Press is a private commercial printing company established in 1928 by the grandfather of the respondent, David Mitchell. David Mitchell's father, Howard Mitchell, ran the company for many years. To avoid confusion, I will refer to members of the Mitchell family by their first names. In doing so, I intend no disrespect.
- [7] In 1990, Mr. Castilloux married Howard's daughter, Joanne Potter. Howard then brought Mr. Castilloux into the company as an employee, where he eventually occupied senior management positions. Although Mr. Castilloux separated from Howard's daughter in 2010 and they later divorced, this did not affect his status at the company. Over time, Mr. Castilloux and David were given more responsibility for running the company.
- [8] In 2017-2018, Howard restructured Mitchell Press into several corporate entities and then made a gift of most of the entities' shares to his children and Mr. Castilloux. Until March 2022, Mr. Castilloux and David were the only directors of the companies. Each of them controls 37.6 percent of the equity shares in all of them. The remaining 24.8 percent are held by David's siblings, Stephen Mitchell and Joanne Potter, and his cousin, Lisa Mitchell. Mr. Castilloux and David own all the voting shares in Howard Mitchell Holdings Ltd., which in turn owns all the voting shares in the other companies. Of the 200 voting shares, Howard gave 99 to Mr. Castilloux and 101 to David.
- [9] After this reorganisation, Mr. Castilloux took on the role of CEO and David that of President of Mitchell Press (which remained the primary business asset). However, it was Mr. Castilloux who effectively ran the printing business.

- [10] Two issues emerged between Mr. Castilloux and David that are relevant to the present dispute. The factual findings concerning both issues were critical to the judge's final determination. Except for one error (which I address below), none are challenged on appeal.
- [11] The first is Mr. Castilloux's claim that David did not contribute to the company's operations. This became a source of growing resentment for Mr. Castilloux and eventually led to David resigning as an employee of the company on February 28, 2021. As the judge noted,
- [10] [T]his did not alter the fact that [David] had become a substantial owner and the controlling director of the companies. His ongoing expectations, expressed repeatedly and directly to Mr. Castilloux, included that he should be advised and consulted about large expenditures, major management decisions, key personnel changes, and the like. He also expected that Mr. Castilloux would act responsibly in the company's best interests and in accordance with his fiduciary duties as CEO. In my view these were reasonable expectations.
- [12] The second was the onset of the Covid-19 pandemic in March 2020. Mr. Castilloux refused to comply with the company's Covid-19 policies, claimed Covid-19 mandates were part of a government conspiracy and largely stopped coming to the company plant. This contributed to friction within the company and further conflict between the parties. The judge characterized Mr. Castilloux's behaviour in this period as selfish and irresponsible: RFJ at paras. 11-13.
- [13] On February 19, 2021, David sent an email to Mr. Castilloux several days before Mr. Castilloux was to undergo surgery. David wished Mr. Castilloux well with the medical procedure, confirmed his confidence in Mr. Castilloux as the company's leader, and encouraged Mr. Castilloux to foster "cooperation and a healthy work environment at all levels." He reminded Mr. Castilloux that, as owners and directors, they had a responsibility to share all material information and work together in the best interests of the company: RFJ at paras. 14-15.
- [14] Despite Mr. Castilloux's submissions to the contrary, the judge found the email's "overall message was well-intentioned, conciliatory and optimistic": RFJ at para. 15.
- [15] The judge went on to find that Mr. Castilloux, following his surgery, was determined to exclude David from the company. Mr. Castilloux intentionally excluded David from all corporate decision-making and forbade members of the management team from speaking with him, on pain of dismissal. The ongoing conflict made it difficult for employees to do their jobs. This included Gary Gunter, who Mr. Castilloux had hired as Mitchell Press's new President (without consulting David): RFJ at paras. 12, 16-19.

- [16] Mr. Gunter eventually called a meeting with Mr. Castilloux and David "to have it out". This resulted in the creation of an "Expectation Document" on April 19, 2021. The document is reproduced in full at para. 19 of the RFJ. In essence, the document required both Mr. Castilloux and David to be involved in strategic decisions concerning the company, including senior management personnel decisions, company investments over \$100,000, strategic planning decisions, and financial reviews.
- [17] The judge found Mr. Castilloux expressly agreed to be bound by these expectations, all of which the judge found to be reasonable: RFJ at para. 20.
- [18] The Expectation Document did not lead Mr. Castilloux to change his behaviour. For example, a few weeks after the Expectation Document was circulated, Mr. Castilloux began secret discussions about his plan to wrest control of Mitchell Press from the Mitchell family. Mr. Castilloux also organized the acquisition of a \$300,000 Kodak printer without consulting David, in violation of the Expectation Document. Mr. Gunter reported this to David. David was upset but acquiesced in the decision: RFJ at paras. 20-21.
- [19] On February 15, 2022, and due to Mr. Castilloux's increasingly erratic behaviour, David wrote him an email proposing he take a leave of absence. The judge found that the email was diplomatic but that the proposed solution was not optional: RFJ at paras. 22-23.
- [20] Mr. Castilloux did not respond to the email. Having concluded further attempts at reconciliation would be pointless, David wrote a letter to Mr. Castilloux notifying Mr. Castilloux of his intention to pass a director's resolution authorizing Mr. Castilloux's dismissal unless Mr. Castilloux agreed to an exit package on substantially the terms set out in the letter. The letter was sent March 7, 2022. He gave Mr. Castilloux seven days to respond, after which the offer would be taken off the table: RFJ at paras. 23-24.
- [21] Mr. Castilloux did not respond until March 18, 2022. He repeated he would not communicate with David directly and suggested a mediator be engaged to assist in negotiations. David expressed his willingness to do this. However, on March 20, 2022, Mr. Castilloux unilaterally decided to fire the company's CFO. Mr. Gunter was made aware of Mr. Castilloux's intention and notified David: RFJ at para. 25.
- [22] The judge found Mr. Castilloux knew or should have known he had no authority to make this decision and concluded there was a substantial possibility Mr. Castilloux was "merely making mischief on his way out the door": RFJ at para. 26.
- [23] This led David to terminate Mr. Castilloux's employment as CEO for cause on March 21, 2022. The letter reiterated Mr. Castilloux's various violations of the Expectations Document, continued refusal to communicate with David, erratic and unprofessional behaviour, and latest attempt to expose the company to significant cost and risk by firing the CFO: RFJ at para. 29.

- [24] Before turning to consider the merits of Mr. Castilloux's petition, the judge made the following comments:
- [32] The resulting situation is a long way from optimal, of course. Mr. Castilloux has been ousted from any involvement in a company to which he has devoted substantially all of his adult working life. He claims to be unemployed and unable to find work suited to his skills and experience. He says that he is exhausting his savings on everyday expenses, and that he has no means of realising the value of his shares in the companies. The companies' articles of incorporation prohibit the sale, transfer or disposition of his shares without David Mitchell's approval, which Mr. Castilloux says he has so far refused to grant. David Mitchell replies that Mr. Castilloux has not sought approval to sell his shares, and that he has rejected the terms of the company's offer to purchase them.
- [33] This would seem to be the crux of the matter: the Mitchell family members are prepared to purchase Mr. Castilloux's shares, but not for a price that he is willing to accept. In the meantime, from 2021 to 2023, the revenues of the printing business have increased from \$13 million to \$22 million annually, but despite this growth it has operated at a loss over the same interval. David Mitchell is convinced, and the company's executives agree, that this is due to cost-management issues that can be remedied. The majority shareholders - David, Stephen, Joanne and Lisa Mitchell - claim to have decided that the best option to maximise value for everyone, including Mr. Castilloux, would be to continue with efforts to return the business to profitability, and then to market all of its corporate assets as a going concern. They are unanimous in their determination to liquidate the companies once the books are balanced, but they are opposed to Mr. Castilloux's application to do so immediately.
- [Emphasis added.]
- [25] Both parties acknowledge the judge erred in finding the company had offered to buy Mr. Castilloux's shares. Rather, the companies rejected an offer to settle from Mr. Castilloux. As I explain below, this is a palpable but not overriding error.

The chambers judge's reasons for judgment

- [26] The chambers judge began by laying out the legal framework concerning an application under s. 324(1)(b) of the BCA, restating a summary of the applicable legal principles found in *Weisstock v. Weisstock*, 2023 BCCA 352: RFJ at para. 35.
- [27] Bearing these principles in mind, the judge considered three possible grounds for ordering liquidation: (1) Mr. Castilloux's inability to sell his shares; (2) Mitchell Press was analogous to a partnership; and (3) there was a justifiable lack of confidence. The judge concluded by assessing whether any other considerations were relevant to determining what was just and equitable in the circumstances.

- [28] The judge first dealt with Mr. Castilloux's claim that his inability to realize the cash value of his shares justified an order to wind up the companies. The judge recognized Mr. Castilloux was in "shareholder purgatory" but found this did not, by necessity, justify an order under s. 324(1)(b). As the judge put it:
- [38] I agree that Mr. Castilloux's immediate options are limited, but this alone does not make it just and equitable to order the winding up of Mitchell Press Ltd. and its affiliates against the wishes of their majority owners. Mr. Castilloux's reasonable expectations when he received his shares were necessarily limited by the strictures in the articles of incorporation concerning their transferability, and he did not insist upon a free-standing shareholders agreement that he would be able to sell his shares if he was no longer involved in the business. He will have appreciated that David Mitchell was now the majority voting shareholder, and that in the event of any dispute between them, he would be entitled to exercise control to the extent permitted by the articles of incorporation and the BCA. In the absence of an agreement otherwise, a minority shareholder cannot reasonably expect to be in the position of "vetoing" the majority's wishes: *Petersen v. Hawley*, 2022 BCCA 169 at para. 33.
- [39] The removal of a shareholder as an employee or director of a company is not a reason for ordering the company to be wound up, unless it can be shown that the removal was not exercised bona fide, or that the grounds for exercising the power were such that no reasonable person could think it was in the best interests of the company: *Boffo Family Holdings Ltd. v. Garden Construction Ltd.*, 2011 BCSC 1246 at para. 155. In my view, as I have already said, Mr. Castilloux's removal was objectively reasonable and justifiable, and it was in the company's best interests. Mr. Castilloux could not reasonably expect to be kept on regardless of how he behaved, and s. 324(1)(b) of the BCA is not a mechanism to allow a minority shareholder to monetise his investment: *Petersen* at para. 43, citing *Boffo* at para. 156.
- [29] The judge then considered, and rejected, the proposition that Mitchell Press was "analogous to a partnership" such that intervention was called for. The judge noted Mitchell Press has the usual structure of a limited liability corporation. He also noted Mr. Castilloux spent most of his time at Mitchell Press as a salaried employee, his shares were a gift, he never bought into the companies and none of his own money is locked up in them: RFJ at paras. 40-41.
- [30] The chambers judge next rejected Mr. Castilloux's claim there was a "justifiable lack of confidence" between the members of the companies. The judge noted that, in the absence of a partnership-like relationship between members, "this is a narrow inquiry limited to dishonest business conduct by the present directorship." Mr. Castilloux's allegations of various forms of mismanagement on the part of David, and the fact the companies continued to post annual losses, was therefore irrelevant: RFJ at paras. 42-44.

- [31] According to the chambers judge, there was no evidence David had engaged in dishonest business conduct. Rather, all his business decisions were taken in good faith and were supported by the majority shareholders. Citing the "business judgment rule", the judge found these decisions should be afforded deference and it was not the court's place to second-guess them: RFJ at para. 44.
- [32] Finally, the judge, noting his broad discretion to determine what was just and equitable in the circumstances, considered whether "any other equitable considerations" should be weighed in the exercise of his discretion. He found the parties' conduct was relevant and material. In particular, he concluded "Mr. Castilloux's conduct disentitles him from the remedy he seeks" and it "would be neither just nor equitable to grant him the drastic remedy of a liquidation order in circumstances where the conflict that he claims to have rendered it necessary was substantially of his own making": RFJ at para. 45.

Mr. Castilloux's position on appeal

- [33] On appeal, Mr. Castilloux claims the chambers judge committed two errors. First, he claims the judge made a palpable and overriding error of fact when he found Mr. Castilloux rejected the company's offer to purchase his shares. It was Mr. Castilloux who offered to sell his shares, and the companies that rejected the offer. Second, he says the chambers judge erred by applying an overly restrictive "just and equitable" standard under s. 324(1)(b) of the BCA.

- [34] Both alleged errors stem from Mr. Castilloux's interpretation of *Safarik v. Ocean Fisheries Ltd.* (1996), 12 B.C.L.R. (3d) 342, 1995 CanLII 6269 (C.A.). He claims *Safarik* stands for two principles that were overlooked or misapplied by the chambers judge.

- [35] Citing para. 102 of *Safarik*, he states the first principle as follows:

Safarik stands for the principle that in a family business where one owner has been given shares because of a significant commitment and sacrifice to help the company and he is subsequently excluded from the company - he must be given a way to realize the value of his shares.

- [36] On this understanding of *Safarik*, Mr. Castilloux claims the judge's mischaracterization of the settlement negotiations is a palpable and overriding error. If the judge had properly understood Mr. Castilloux's settlement offer had been denied, there would have been evidence he was unable to realize the value of his shares--compelling court intervention to allow him to do so. Instead, the judge's erroneous finding of fact suggests he believed Mr. Castilloux had a reasonable way to extricate himself from the "family business" and, as a result, there was no need to make an order under s. 324(1)(b).

- [37] In support of this argument, Mr. Castilloux points to the judge's statement at para. 33 of the RFJ:

This would seem to be the crux of the matter: the Mitchell family members are prepared to purchase Mr. Castilloux's shares, but not for a price that he is willing to accept.

[Emphasis added by Mr. Castilloux.]

[38] Mr. Castilloux claims this statement demonstrates the judge was aware the issue turned on whether Mr. Castilloux had a means to realize the value of his shares.

[39] Second, Mr. Castilloux claims para. 100 of *Safarik* stands for the following:

As stated in [*Safarik*], when gifts of shares in family companies are provided, reasonable expectations are not governed by contracts, they are based on trust.

[40] He argues family companies are very different from non-family companies and the judge should have taken a more liberal approach to the words "just and equitable" in the case of a family company.

[41] In particular, he claims the judge erred by relying on Mr. Castilloux's failure to insist on a free-standing shareholders' agreement allowing him to sell his shares if he was no longer involved in the business. He argues contracts are often not drawn up in the context of a family business. According to Mr. Castilloux, the judge instead should have looked to the reasonable expectations of the parties to determine whether it was just and equitable to liquidate the companies.

[42] Mr. Castilloux submits he made significant personal sacrifices for Mitchell Press both before and after he was gifted his shares. He argues these sacrifices were made on the belief he would be able to work for the company and the shares would provide him with a reasonable standard of living in retirement. He claims the judge, in misunderstanding the applicable law, failed to consider these expectations and ultimately erred in determining it would not be just and equitable to liquidate the companies.

[43] According to Mr. Castilloux, the law is clear on both points. He cites *Eddy Ng Management Services Ltd. v. Golden Spigot Pub Ltd.*, 2025 BCSC 301; *Ten Hoeve v. Beukens*, 2020 BCSC 1194; and *Sohi v. Best Choice Blueberry Farms Limited*, 2018 BCSC 36, as further support for his position.

Issues

[44] As I see it, there are two issues on appeal. I would re-order and re-frame them as follows:

1. Did the chambers judge err by overlooking or misunderstanding relevant principles in *Safarik* concerning a s. 324(1)(b) petition?
2. Did the chambers judge make a palpable and overriding error of fact regarding the parties' settlement negotiations?

Standard of review

- [45] The standard of review for decisions made under s. 324 of the BCA was set out by this Court in *Esposito v. Esposito*, 2022 BCCA 51:
- [17] Decisions made under the authority of ss. 324 and 227 of the BCA involve broad exercises of discretion and are afforded considerable deference on appeal. Whether a remedy under ss. 324 and 227 of the BCA is just and equitable is a question of mixed fact and law: *M. McIsaac Family Holdings Ltd. v. Tolam Holdings Ltd.*, 2020 BCCA 371 at para. 60. The court will only interfere if the trial judge "acted on a wrong principle, gave insufficient or no weight to relevant considerations, or made a decision that is so clearly wrong it results in an injustice": *McIsaac* at para. 60 and the further authorities that are referred to.
- [46] To overturn a decision due to an error of fact, the error must be both "palpable", in the sense that it is obvious, and "overriding", in the sense that it goes to the core of the outcome of the case: *Housen v. Nikolaissen*, 2002 SCC 33 at paras. 5-6; *Benhaim v. St-Germain*, 2016 SCC 48 at para. 38.

Discussion

Issue 1: Did the chambers judge err by overlooking or misunderstanding relevant principles in *Safarik* concerning a s. 324(1)(b) petition?

- [47] The judge made no such error. Respectfully, *Safarik* does not stand for the legal principles Mr. Castilloux claims it does.
- [48] The Court in *Safarik* did say "it is not erroneous to take a more liberal approach to the words 'just and equitable' in the case of a family company in which one of the family after many years of service is no longer permitted to participate in the business": at para. 102 (emphasis added). In other words, the court may take a more liberal approach in certain cases concerning a family company.
- [49] But this is not the same as saying an owner who is subsequently excluded from a family company "must be given a way to realize the value of his shares."
- [50] Similarly, it is correct that in the context of the family business at issue in *Safarik*, the Court found the failure to draw up a formal contract was not, on its own, enough to prevent the son from realizing the value of his shares: at para. 100.
- [51] But again, to draw from this a generalized principle that, as Mr. Castilloux puts it, "when gifts of shares in family companies are provided, reasonable expectations are not governed by contracts, they are based on trust", is incorrect.
- [52] Mr. Castilloux's interpretation of *Safarik* is indicative of a misunderstanding of the judge's discretionary powers under s. 324 of the BCA. As this Court stated in *Weisstock*:

[48] 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).

[Emphasis added.]

[53] The correct understanding of Safarik was provided in the next paragraph of the Court's reasons in Weisstock:

[49] Determining what is "just and equitable" is a fact-and context-specific exercise. For example, the test may be applied more liberally in the context of a family company than a conventional commercial enterprise: Safarik at para. 102; Petersen v. Hawley, 2021 BCSC 2348 [Petersen BCSC] at para. 14, aff'd Petersen BCCA.

[Emphasis added.]

[54] To adopt Mr. Castilloux's interpretation of Safarik would cut directly against the settled understanding of the court's broad discretion under s. 324(1)(b).

[55] Similarly, Eddy Ng Management Services, Ten Hoeve, and Sohi do not support Mr. Castilloux's position. In all three, the Court found the business in question to be analogous to a partnership for the purposes of determining whether liquidation was appropriate: Eddy Ng Management Services at paras. 37-42; Ten Hoeve at para. 46; Sohi at para. 96. The chambers judge rejected Mr. Castilloux's claim that the partnership analogy was applicable here: RFJ at paras. 40-41. Mr. Castilloux does not challenge that conclusion on appeal.

[56] The chambers judge understood the applicable law. At para. 35 of the RFJ, he reproduced paras. 43-52 of Weisstock, including the two paragraphs quoted above. He was therefore aware of Safarik and the legal principles it stands for. He was also correct in understanding he had broad discretion under s. 324(1)(b) to determine what was just and equitable in the circumstances of the present dispute.

[57] What qualifies as just and equitable is ultimately a case-specific determination. And the present case is not akin to Safarik.

[58] In Safarik, Gordon Safarik was trying to extricate himself from the family company started by his father. In 1962, Gordon began working for the family business at the age of 13. In 1968, he was given shares in the company along with his three brothers. Gordon spent his entire working life with the company. In 1990--over twenty years later-- Gordon sought an order to liquidate the company so he could realize the value of his shares following a falling-out with his brothers, who remained co-owners: Safarik at paras. 3, 11, 33.

[59] This factual backdrop led the Court to observe:

- [100] 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.
- [60] Mr. Castilloux was brought into Mitchell Press as an adult. For the vast majority of his time with the company, he was a salaried employee. He was only gifted shares in 2018. The breakdown in his business relationship with David occurred just four years later. When he was gifted his shares, he was no longer a member of the family. The shares were intended to reward him for his contributions to the company. They were not given to him on the basis of a familial relationship. And the shares were structured to ensure David retained ultimate control of the companies. In these circumstances, it is not unreasonable to expect Mr. Castilloux would have looked after his interests by, for example, negotiating a shareholders' agreement.
- [61] Given the particular facts of this case, it was open to the chambers judge to conclude Mr. Castilloux should have reasonably expected David "would be entitled to exercise control to the extent permitted by the articles of incorporation and the BCA" if there were a dispute: RFJ at para. 38, relying on *Petersen v. Hawley*, 2022 BCCA 169 at para. 33.
- [62] Mr. Castilloux is wrong to claim the judge focused on the contractual rights between the parties to the exclusion of Mr. Castilloux's stated expectations. The judge expressly noted Mr. Castilloux's position, including his personal sacrifices to the company and his reliance on the shares to provide for him in retirement: RFJ at para. 37.
- [63] But it is not just Mr. Castilloux's reasonable expectations that are relevant. The expectations of the other owners are relevant as well. It is not clear why these parties should have reasonably expected the almost 100-year-old family business would be subject to a liquidation and dissolution order if the relationship between David and Mr. Castilloux broke down just a few years after Mr. Castilloux was given a minority shareholding and voting position in the companies.
- [64] It was also open to the chambers judge to consider the parties' conduct in determining whether the court should exercise its discretion to grant relief under s. 324(1)(b): *Weisstock* at para. 51.
- [65] The judge found David had not acted in bad faith or against the best interests of the company: RFJ at para. 39. This stands in contrast to his findings concerning Mr. Castilloux:
- [45] I bear in mind that the words "just and equitable" provide me with a broad discretion in which, as between the parties, the concepts of fault and "clean hands" are not always determinative or even particularly influential. In the present case, however, I find that they are relevant and material. I have concluded, quite simply, that Mr. Castilloux's conduct disentitles him from the remedy he seeks. He bears responsibility for his role in deliberately

contriving a situation in which his dismissal was not only justifiable, but inevitable. It would be neither just nor equitable to grant him the drastic remedy of a liquidation order in circumstances where the conflict that he claims to have rendered it necessary was substantially of his own making. The unanimous, rational, and entirely defensible ambition of the majority shareholders to carry on with business as usual must prevail.

[66] In the context of the present dispute, it was open to the judge to reach this conclusion. As I summarized above, the judge made considerable findings of fact concerning Mr. Castilloux's irresponsible, erratic, and uncooperative conduct, and the ways his behaviour negatively impacted the company. None of these findings are challenged on appeal.

[67] I see no reviewable error in the chambers judge's understanding or application of the law.

Issue 2: Did the chambers judge make a palpable and overriding error of fact regarding the parties' settlement negotiations?

[68] The respondents acknowledge the judge erred in his characterization of the settlement negotiations. Ultimately, the error was palpable but not overriding.

[69] I have already concluded Safarik does not stand for the principles Mr. Castilloux ascribes to it. The inability of an owner to realize the value of shares in a family company does not automatically necessitate an order under s. 324(1)(b). Mr. Castilloux's claim that the judge, had he properly stated the facts, would have been compelled to order liquidation and dissolution is, therefore, without merit.

[70] Moreover, nowhere in his analysis did the judge rely on the (erroneous) fact Mr. Castilloux had rejected an offer from the company. The judge's analysis did not suggest he believed Mr. Castilloux had a reasonable way to extricate himself from the company. To the contrary, the judge explicitly considered the fact Mr. Castilloux was unable to realize the value of his shares and was therefore stuck in "shareholder purgatory": RFJ at paras. 37-38.

[71] The judge provided no details as to the nature of the settlement offer and made no findings as to its reasonableness or whether the parties were acting in good faith in the negotiations. The settlement offer cannot be said to have factored into his final determination.

[72] When the judge identified the failed settlement offer as the "crux of the matter", he did not mean the crux of the legal issue to be resolved. Rather, the judge was identifying the crux of the conflict between the parties: Mr. Castilloux had no effective means of monetizing his shares and was looking for a way to do so.

[73] Although the judge misstated the facts, he understood and carefully considered Mr. Castilloux's predicament in reaching his conclusion. The judge's misstatement was therefore immaterial to the outcome.

Application to adduce fresh evidence

- [74] Mr. Castilloux seeks to adduce fresh evidence of the combined financial statements of the companies. According to Mr. Castilloux, the financial statements show the companies' financial circumstances are deteriorating since his departure, underscoring the need for the liquidation and dissolution order.
- [75] As the Supreme Court of Canada stated in *Barendregt v. Grebliunas*, 2022 SCC 22 at para. 29, an appellate court should admit fresh evidence when four conditions are met:
1. The evidence could not, by the exercise of due diligence, have been obtained for the trial;
 2. The evidence is relevant in that it bears upon a decisive or potentially decisive issue;
 3. The evidence is credible in the sense that it is reasonably capable of belief; and
 4. The evidence is such that, if believed, it could have affected the result at trial.
- [76] I see no need to consider criteria 1, 2 and 3. The application plainly fails on criteria 4: even if the evidence were believed, it could not have affected the result at trial. There are two reasons why.
- [77] First, evidence had already established the companies were struggling financially. The judge understood that context: RFJ at paras. 33, 43.
- [78] Second, evidence of further financial decline, without any evidence David had engaged in dishonest business conduct or acted in bad faith, would not have changed things. As the judge correctly held, it was not the court's role to "second-guess" management decisions made in good faith with a view to the best interests of the companies. Such decisions are protected by the business judgement rule: RFJ at para. 44; *BCE Inc. v. 1976 Debentureholders*, 2008 SCC 69 at paras. 40 and 99; *Dubois v. Milne*, 2020 BCCA 216 at para. 88.
- [79] Mr. Castilloux has not provided any evidence, expert or otherwise, that David was making poor decisions or acting in bad faith, or, for that matter, that Mr. Castilloux would have done any better in the circumstances. Evidence of further financial decline, on its own, would not have affected the results.

Conclusion and disposition

- [80] For the reasons above, I would dismiss the appeal and the fresh evidence application.
- [81] Much like the judge below, I recognize Mr. Castilloux is in a difficult position. As things stand, he is unable to realize the value of shares in companies he no longer has influence over. The companies are losing money, and the value of his shares is likely declining.

[82] But the judge justifiably concluded it would not be just and equitable to grant a liquidation order. Mr. Castilloux's current financial situation is not grounds for intervening in that decision.

"The Honourable Chief Justice Marchand"

I AGREE:

"The Honourable Justice Griffin"

I AGREE:

"The Honourable Justice Mayer"

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