

CANADA / JUDGMENT

Drinkall v. Drinkall

2020 BCSC 964

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Supreme Court of British Columbia

DECIDED

29 June 2020

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2020 BCSC 964 Drinkall v. Drinkall

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Drinkall v. Drinkall,

2020 BCSC 964

Date: 20200629

Docket: E49441

Registry: Kamloops

Between:

Monique Drinkall

Claimant

And

Gary Allen Drinkall, Drinkall Ranches Ltd. and High Prairie Outfitters Ltd.

Respondent

Before: The Honourable Madam Justice B.J. Brown

Reasons for Judgment

Counsel for Claimant:

M.N. Fus

Counsel for Respondent, Gary Drinkall:

E. Bowman

Counsel for the Respondent, Drinkall Ranches Ltd.

S. Parhar

Written Submissions of Claimant:

May 16, June 8 and 10, 2020

Written Submissions of Respondent, Gary Allen Drinkall:

May 27 and June 12, 2020

Written Submissions of Drinkall Ranches Ltd.:

June 4, 2020

Place and Date of Judgment:

Kamloops, B.C.

June 29, 2020

- [1] Mr. Drinkall brings application for relief arising out of my judgment of June 25, 2019. Effectively, Mr. Drinkall applies to have me reconsider specific aspects of the decision.

Background

- [2] By way of background, after 17 days of trial from October 2017 through December 2018, I dealt with the issues in this trial including property division and spousal support. I determined the amount that Mr. Drinkall would pay compensation to Ms. Baldwin with respect to two corporate entities and determined Ms. Baldwin's interest in a property in Arizona. I also set spousal support and fixed arrears of spousal support. A formal order has not yet been entered.
- [3] Mr. Drinkall's application addresses (amongst other relief) reconsideration of the asset division. The original application was dated August 27, 2019.
- [4] After various Chambers hearings (August 29, 2019, November 8, 2019, March 9 - 11, 2020) the parties had made little progress on that application. I suggested to the parties that in an effort to make some progress toward resolution, the most significant issue, that is whether the court would reconsider and vary the order that Mr. Drinkall pay Ms. Baldwin \$600,000 in compensation for his shares in Drinkall Ranches Ltd. ("DRL"), should be heard initially with the balance of the application to be heard at a later date. In addition, because the original application did not specifically seek the relief that Mr. Drinkall wished, I suggested to counsel for Mr. Drinkall that an amended notice of application, specifically addressing the relief that he sought should be filed and Ms. Baldwin should be permitted an opportunity to respond. The revised notice of application was filed May 11, 2020. This application was to be heard in open court in May 2020. However due to the complications of the Covid-19 pandemic and the court closure, I suggested to the parties that they may wish to proceed by

written argument. They have done so.

- [5] Three days had been reserved in March 2020 to hear Mr. Drinkall's applications. Much of the time reserved was spent trying to resolve matters between the parties, particularly with respect to methods that Mr. Lencucha (the Drinkall's tax expert) suggested might be available to reduce the tax consequences of Ms. Baldwin's compensation order for DRL or retaining an independent expert, one not associated with any party, to provide recommendations as to tax-efficient compensation to Ms. Baldwin. These efforts were not successful. There was no appetite to co-operate. As I suggested the parties agreed to proceed with a portion of the applications listed in the notice so that some conclusions could be reached.

Position of the Parties

- [6] In his revised Notice of Application Mr. Drinkall seeks:
6. Pursuant to section 97(1)(b) of the Family Law Act, an order reconsidering the compensation order made in the Decision such that the Court:
 - a. Cancel or terminate the order that the Respondent, Gary Allen Drinkall pay to the Claimant the sum of \$600,000.00 for her interest in the shares of DRL, and
 - b. Instead order/declare that the Respondent, Gary Drinkall holds 24 shares of DRL in trust for Monique Drinkall, and has always held them in trust for her so long as Gary Drinkall has had the shares,
 - c. Such further and other orders this Court deems just to facilitate the division of assets between the Claimant and Respondent, Gary Allen Drinkall.
- [7] The position of the applicant is that I should reconsider and vary the order that he pay Ms. Baldwin the sum of \$600,000 in satisfaction of her interest in Drinkall Ranches Ltd. He argues that he has tried to raise funds to satisfy his obligations pursuant to the judgment and has not been able to do so. He says that the shares that he holds in Drinkall Ranches Ltd. must be liquidated "by someone". He argues that therefore, the compensation payment must be reconsidered by the Court. He submits that the compensation order should be cancelled and instead Ms. Baldwin should receive shares in Drinkall Ranches Ltd. He says that he has obtained tax opinions to the effect that if he withdrew funds from Drinkall Ranches Ltd. there would be tax consequences upward of 42%.
- [8] He argues that I misinterpreted the report prepared by Donald Spence of Spence Valuation Group as that report did not comment on the tax consequences to a shareholder of liquidating their shareholding.
- [9] He asks that I consider the tax consequences to him of drawing funds out of Drinkall Ranches Ltd. to purchase Ms. Baldwin's interest. He says that these have not previously been considered by the court because the court determined that Mr. Drinkall would retain his shareholdings and would not experience tax consequences. He says that though the court

determined family property should be divided equally between the spouses, the compensation order, as it stands, results in Ms. Baldwin receiving more than the 50% value of the shares once they are converted to cash. Therefore, he says, the compensation order must be adjusted to reflect a truly equal division of family property.

- [10] He says however that this can all be avoided by simply giving Ms. Baldwin shares in Drinkall Ranches Ltd.
- [11] Ms. Baldwin argues that Mr. Drinkall has not identified evidence that has been misunderstood or misconstrued nor does he identify a misapplication of the law. Rather, he argues from the reasons for judgment, not the evidence or positions taken at trial.
- [12] Ms. Baldwin says the only miscarriage Mr. Drinkall cites is that he will have to pay the judgment and that he may have to pay tax that Ms. Baldwin will not have to pay. She asserts the true purpose of Mr. Drinkall's application is to further delay payment and minimize Ms. Baldwin's recovery.
- [13] She argues that DRL and Mr. Drinkall have not disclosed fully any documents that they have with respect to any loan applications that they have made or their current financial position.
- [14] She argues that Mr. Drinkall simply wants her to receive shares, rather than compensation for her interest in DRL without providing any indication as to how or what price or shares might be purchased or how to ensure that she would not receive a dry judgment. She raises a number of issues that may result if she receives shares in DRL.
- [15] She argues that Mr. Drinkall does not identify any new evidence which he wishes to introduce which was previously unavailable.
- [16] She argues that to the extent that his loan applications have been disclosed, they demonstrate that he did not provide accurate information with respect to his assets for the lender to make a reasoned decision.
- [17] She says that in September 2017 Mr. Drinkall obtained an expert's report from Mr. Lencucha on the taxes payable if he took funds from DRL to pay Ms. Baldwin. This report was served on her in early October 2017. Yet, Mr. Drinkall chose not to introduce the report in evidence. She says that even now all there is only an "outline" letter from Mr. Lencucha dated August 2019 referring to possible tax planning.
- [18] She says that there is no new evidence which would justify reopening the trial. There is no identification of the specific law which was misapplied. Or how there has been a miscarriage of justice. She says there is no identification of material evidence that was misconstrued. She says that Mr. Drinkall has not demonstrated an inability to raise funds, he has shown a disinclination to do so.

- [19] She says that for the court to reconsider its decision Mr. Drinkall must show a miscarriage of justice and that the result would be different. She submits that funds are available to satisfy this judgment if there was any motivation to pay her.
- [20] DRL argues that no order has been made against it and it is not legally required to participate to assist either Mr. Drinkall or Ms. Baldwin. It says doing so would not be in the company's best interest. DRL and Mr. Drinkall both stress that Mr. Drinkall is a minority shareholder. It says that it would be "bankrupt" if it had to service a debt beyond \$350,000 - \$400,000.

The Evidence

- [21] In his affidavit sworn August 22, 2019, Gary Drinkall deposed with respect to the judgment respecting Drinkall Ranches Ltd. that he had made efforts to find financing to satisfy Ms. Baldwin's interest in DRL. He had not been able to generate enough to do so. He had received rejection letters from Scotia Bank and FCC. He said that in the previous year DRL had applied for funding and had been approved provisionally for up to \$750,000. However, he did not anticipate that DRL would still qualify for \$750,000 in financing as the 2018 financials would show reduced income. He thought that DRL might qualify for \$500,000 in financing and that he would know by mid September 2019. If DRL was to receive funding, there would be taxes payable when he drew funds out of the company. He said that even if the company was willing to loan him the funds he would not be able to satisfy the judgment and service the debt created by the loan. Therefore his shares in DRL would need to be sold to generate the funds required.
- [22] He said that he had had some advice to the effect that with cooperation between the parties they could structure the share disposition in a way to minimize tax consequences to Ms. Baldwin and Gary Drinkall. He said that he anticipated that his accountant's reporting advice would be completed sometime in September as well as the corporate year-end and taxes. He sought an extension of time within which to satisfy the judgment.
- [23] Mr. Drinkall provided me with a letter from Mark Lencucha, a tax consultant, dated August 22, 2019 which addresses certain questions posed by Mr. Drinkall with various hypotheticals. The letter is not an opinion per se. The hypotheticals contemplate varying the order of the court and obtaining co-operation between the parties. (For example, providing Ms. Baldwin with preferred shares in DRL with annual dividend entitlement, put and call options, and recognizing a possible CRA challenge.)
- [24] He was asked in conclusion:

And my wrap up question is what in your view are the best case and worst case scenarios in the circumstances?

He answered:

Best case scenario is sale of shares after divorce to create capital gain rather than a dividend. Ideally the sale would be eligible for capital gains exemption. This could virtually eliminate all tax except recoverable AMT. Worst case is an ineligible dividend taxed at rates close to 42%.

He said:

I would be happy to engage in further analysis once the actual payout number, confirmation of who beneficially owns shares at that time, I could review in detail and provide real estimates and model transactions. In the meantime, I trust the above information stimulates dialogue between the parties and allows them to deal with risk of taxation of corporate funds used to fund a portion of the payout.

[25] On February 21, 2020 Mr. Drinkall filed an affidavit from his law firm which deposed that Mr. Lencucha had advised the deponent that he was holidaying in Mexico and would not return until March 2, 2020. To provide answers and opinions requested by Mr. Drinkall he required each spouse's taxable income information. Depending on parties' incomes, funds could be disbursed which could optimize tax savings and reduce the overall tax burden. Without parties' respective tax and income information the tax consequences could not be accurately modelled. The maximum tax rate for dividend income over \$300,000 is approximately 42%. The maximum tax rate for capital gains is approximately 25%. There are capital gains exemptions that could reduce the tax consequences to zero. The maximum tax payable on income is 50%. (I understand that Ms. Baldwin's financial information is not required to determine capital gains which Gary Drinkall will incur on a sale of his shares.)

Discussion

1. Jurisdiction to Reconsider

[26] Mr. Drinkall relies on s. 97 of the Family Law Act, S.B.C. 2011, c. 25 [FLA], and the inherent jurisdiction of this Court.

[27] Section 97 of the Family Law Act provides:

Giving effect to property division

97 (1) For the purposes of giving effect to a division of property or family debt under this Part or Part 6 [Pension Division], the Supreme Court may

- (a) determine any matter respecting the ownership, right of possession, or division of the property or family debt, and
 - (b) despite sections 94 (2) [orders respecting property division] and 215 (2) [changing, suspending or terminating orders generally], and subject to subsection (3) of this section, make any order that is necessary, reasonable or ancillary to give effect to the division.
- (2) Without limiting subsection (1), the Supreme Court may make an order to do one or more of the following:

- (a) declare who has ownership of, or right of possession to, property;
 - (b) require that title to a specified property granted to a spouse be transferred to, held in trust for, or vested in the spouse, absolutely, for life or for a term of years;
 - (c) require a spouse to pay compensation to the other spouse if property has been disposed of, transferred, converted, or exchanged into another form, or for the purpose of dividing the property;
 - (d) require partition or sale of property and payment to be made out of the proceeds of sale to one spouse or both in specified proportions or amounts;
 - (e) require property forming all or a part of the share of either or both spouses to be transferred to, held in trust for, or vested in a child;
 - (f) require a spouse to give security, in any form the court directs, for the performance of an obligation imposed by an order under this section, including a charge on property;
 - (g) require a spouse to waive or release in writing any right, benefit or protection given by section 23 of the Chattel Mortgage Act, R.S.B.C. 1979, c. 48, section 19 of the Sale of Goods on Condition Act, R.S.B.C. 1979, c. 373, or section 58 or 67 of the Personal Property Security Act;
 - (h) subject to subsection (3), declare that one spouse is responsible for payment of an item of family debt and must indemnify the other spouse for the item of family debt;
 - (i) require the sale of property for the purposes of paying an item of family debt;
 - (j) transfer property to a spouse.
- (3) An order in relation to family debt applies only as between the spouses and does not affect an agreement between a spouse and any other person.
- (4) Nothing in this section permits the Supreme Court to divide excluded property unless permitted under section 96 [division of excluded property].

[28] The inherent jurisdiction to reconsider is summarized in *Bronson v. Hewitt*, 2010 BCSC 871:

[25] Prior to entry of an order, a trial judge has an unfettered discretion to re-consider or revise any aspect of the decision. In *Clayton v. British American Securities Ltd.* (1934), 49 B.C.R. 28 (C.A.), Macdonald J.A. stated at 66-67:

My view has always been that the trial judge might resume the hearing of an action apart from rules until entry of judgment, but as it was vigorously combated I have given it careful consideration. The point, as far as I know, has not been squarely decided; at least by any cases binding upon us. It is, I think, a salutary rule to leave unfettered discretion to the trial judge. He would of course discourage unwarranted attempts to bring forward new evidence available at the trial to disturb the basis of a judgment delivered or to permit a litigant after discovering the effect of a judgment to re-establish a broken-down case with the aid of further proof. If the power is not exercised sparingly and with the greatest care fraud and abuse of the Court's processes would

likely result. Without that power however injustice might occur. If, e.g., a document should be discovered after pronouncement of judgment, but before entry, shewing that the judgment was wrong and the trial judge was convinced of its authenticity no lack of diligence by a solicitor in not producing it earlier should serve to perpetuate an injustice. The prudent course is to permit the trial judge to exercise untrammelled discretion relying upon trained experience to prevent abuse, the fundamental consideration being that a miscarriage of justice does not occur.

- [26] New evidence is not an essential prerequisite to a reconsideration application. A judge may properly reopen if satisfied, either because of the argument of one of the parties, or on the basis of his or her own reconsideration of the record, that the original judgment was in error because it overlooked or misconstrued material evidence or misapplied the law: *Sykes v. Sykes* (1995), 6 B.C.L.R. (3d) 296 (C.A.) at para. 10.
- [27] The filing of an appeal is not a bar to a reconsideration application: *Banyay v. Actton Petroleum Sales Ltd.* (1996), 17 B.C.L.R. (3d) 216 (C.A.). A reconsideration application is not an alternative method of appeal: *Kemp v. Wittenberg*, [1999] B.C.J. No. 810 (S.C.).
- [33] From my review of the authorities I take the law to be that new evidence will only be admissible on a reconsideration application if it would likely change the result and, except in exceptional circumstances, the evidence could not have been obtained by reasonable diligence before the trial. In exceptional circumstances, in order to prevent a miscarriage of justice, fairness may dictate that new evidence will be admissible even though the evidence may have been discoverable prior to trial. New evidence will generally not be admissible in situations where the evidence was not called at trial because of tactical considerations.
- [29] A somewhat broader approach to reconsideration is set out in *Kemp v. Wittenberg*, 1999 CanLII 5269 at para. 5:
- [5] It is clear from the authorities that the court has a broad discretion to reconsider a decision before it has been entered as a formal judgment. That discretion, however, is to be used sparingly. At its heart the discretion has as its purpose the correction of what would otherwise be a miscarriage of justice. It is not, on my understanding of the cases, intended to be an alternative method of appeal.

And *Strachan v. Reynolds et al*, 2006 BCSC 362 at para. 91:

- [91] I pause to observe at this point that the principles annunciated in these cases cannot be questioned. For example, finality of judgment is most important; damages are assessed at trial once and for all. While exceptional circumstances are required to reopen a trial, the principles are not absolute. As was said in *Murphy*, when dealing with Court of Appeal jurisdiction, the Court has power to hear evidence of something which has altered the effect of an order of the Court since it was made, "if the particular exigencies of justice clearly outweigh the general undesirability of doing so"; or, as was said in *Mulholland* at p.680, if to refuse to allow the fresh evidence would affront common sense, or a sense of justice. The discretion will be exercised positively where these situations arise. It is a matter of

discretion and degree. Additionally, in the case at Bar, we are no longer dealing with the assessment of future costs of care. Rather, we are dealing with the actual costs, in light of actual developments which have occurred after the completion of the trial.

- [30] The Court of Appeal emphasized two further considerations in *Grewal v. Grewal*, 2016 BCCA 237:
- [70] The legal principles that govern re-opening a trial are not in dispute, and were succinctly set out by the majority in *Clayton v. British American Securities Ltd.* (1934), 49 B.C.R. 28 (C.A.). Before judgment is entered, the trial judge enjoys an unfettered discretion to re-open the case. This discretion should, however, be exercised sparingly. The overriding objective is prevention of a miscarriage of justice.
- [71] Subsequent decisions have added further guidance. A judge should address two primary considerations in deciding whether to re-open: first, is it probable that a miscarriage of justice would occur without reopening and, second, would a rehearing probably change the result? In general, a party should not be permitted to re-open if the sole purpose is to re-argue or re-cast its case. Nevertheless, new evidence is not an essential prerequisite to granting an application to re-open. It will always depend on the individual circumstances and the overarching concern of the interests of justice: *B.C. Gas Utility Ltd. v. Alpha Manufacturing Inc.*, [1999] B.C.J. No. 187 (S.C.) at paras. 16-17; *Sykes v. Sykes* (1995), 6 B.C.L.R. (3d) 296 (C.A.) at para. 10; *Moradkhan v. Mofidi*, 2013 BCCA 132 at paras. 28-31.
2. Consideration of the Tax Implication of the Compensation Order for Ms. Baldwin's interest in Mr. Drinkall's shares in DRL
- [31] The Court of Appeal has recently discussed this issue in a number of cases.
- [32] In *Maguire v. Maguire*, 2016 BCCA 431, the court said:
- [38] The case law that developed under the FRA provided that there is no absolute rule as to whether tax consequences should or should not be taken into account in the division of family assets. Where there is evidence that a division of family assets will attract tax consequences, an allowance should be made for tax. Where it is not clear when or in what amount taxes will be exigible, an allowance may not be made: *Murchie v. Murchie* (1984), 53 B.C.L.R. 157 at para. 390 (C.A.); *Halpin* at para. 63; *McPherson v. McPherson* (1988), 48 D.L.R. (4th) 577 at 583 (Ont. C.A.). Likewise, where taxes are "speculative" the court may not take taxes into account: *O'Bryan v. O'Bryan* (1997), 43 B.C.L.R. (3d) 296 at para. 54 (C.A.); *Ouellette v. Ouellette*, 2012 BCCA 145 at paras. 31-32
- [33] In *Sanai v. Mahmoud*, 2017 BCCA 155 the court said:
- [34] As *Ouellette* demonstrates, it will not be necessary and indeed perhaps not always even possible, to account for tax consequences inherent in liquidating an asset. In *Ouellette*, however, the sums discussed appear to have been speculative and unsupported by evidence as to the quantum, and the judge found "Mr. Ouellette did not intend to sell his interest in

the business ". That is not the case before us. Here the corporations are two holding companies and a personal services corporation, none of them requiring the continuity essential to an on-going concern as was the case in Ouellette. Significantly, the record here includes evidence of the scale of the tax liability inherent in bringing the wealth out from behind the corporate curtain, which the appellant was willing to do immediately, and there is no evidence to the effect the monies retained in the corporations could be sheltered so as to attract a tax burden less than posited by the expert Mr. Tidball.

- [37] The evidence of the quantum of distributive taxes is not extensive. In my view, we are positioned to determine the issue and it is in the interests of justice that we do so without referring this matter to the trial court with the attendant delay and expense for the parties.
- [38] The judge referred to Mr. Tidball's evidence that now the tax range that will apply is 27% to 38%. There is discussion in the expert opinion and Mr. Tidball's viva voce testimony of the possibility of a "butterfly" transaction whereby assets of a company devolve to another company that may be owned by the recipient spouse, thereby to postpone taxes for both parties equally. The judge, however, elected to allocate the corporate assets entirely to the appellant, by-passing this possibility. Following the judge's lead, it seems the way to bring parity to the division of family assets - to "level the field" - is to make an allowance for distributive personal income taxes. The appellant has made submissions that the lowest rate, 27%, produces an over-all effect on the value of family assets in excess of \$400,000. In my view this diminution in real value should be shared, at this rate. I recognize that this conclusion will result in a significant reduction in the required compensation payment. However, that alone, cannot be a reason to decline to interfere, and the size of the adjustment itself illustrates the unevenness inherent in the order although it purported to effect an equal division of assets.
- [34] In my view it is appropriate that I reconsider my decision with respect to my order that Mr. Drinkall compensate Ms. Baldwin for \$600,000 for the shares that he holds in Drinkall Ranches Ltd. There may be a miscarriage of justice if the tax implications are not taken into consideration.
- [35] At trial the most significant issue was Mr. Drinkall's shares in DRL. The defendants took the position that these were an excluded asset pursuant to s. 85 of the FLA. I determined that the shares were not excluded (paras. 27-43). I made a compensation order, based on the Spence report. The Spence report was a joint report. The parties had agreed on the valuation date. I made a compensation order pursuant to s. 97(2)(c) of the FLA. Mr. Drinkall did not argue that Ms. Baldwin should receive shares in specie. In his trial summary of December 5, 2018 he argued that Ms. Baldwin should receive compensation for ½ of the increase in value of the shares in DRL as an excluded asset.
- [36] Although I did not say so expressly (as the point did not appear to be in dispute) it was my view that a compensation order was appropriate to give effect to the division of property. This had been a prolonged high conflict family proceeding involving Ms. Baldwin, Gary

Drinkall and the senior Drinkalls (as the majority shareholders in DRL). There was no good will between the claimant and respondents. Transferring shares to Ms. Baldwin would likely prolong the conflict and generate more litigation to the prejudice of all. A compensation order was the fair resolution of asset division for DRL.

- [37] In this application Mr. Drinkall asks that I vary my judgment to award Ms. Baldwin shares in specie, rather than a compensation payment as I have done. I am not prepared to do so, as I was not when rendering the original judgment. These are still high conflict family proceedings. That explains in part for the matters have been so prolonged. To provide Ms. Baldwin shares in DRL is simply to prolong what has already been unnecessarily lengthy and costly litigation. It will leave her in a minority shareholders position. There is no proposal from anyone to acquire the shares. Although Mr. Drinkall suggests that she would be able to sell the shares in DRL, I cannot imagine any purchaser independent of the Drinkall family purchasing the shares and I think it highly unlikely that she would receive an offer close to the Spence valuation for the shares. The only fair order is an order for compensation as I have made.
- [38] Although Mr. Drinkall argues that it would be fair for Ms. Baldwin to receive and sell shares now, at their current market value, this ignores the agreement with respect to the valuation date for DRL.
- [39] The defendant did not lead evidence at trial that the sale of the shares was likely or of the tax consequences from a potential sale of the shares or dividend from Drinkall Ranches Ltd. It appears, based on Ms. Baldwin's evidence that such an opinion was available, although it was not introduced in evidence. I am not persuaded that this was necessarily a tactical decision, such that I should not reconsider my decision in this regard. It does appear to me that it is unfair to Mr. Drinkall that the tax consequences to him of a sale of the shares he holds in DRL should not be taken into consideration.
- [40] Based on the evidence currently before me it is my view that, as Mr. Drinkall has deposed, he is not able to raise sufficient funds without resorting to the sale of his shares in Drinkall Ranches Ltd. to satisfy the judgment to Ms. Baldwin. It is likely that there will be some tax consequences should he sell shares to make funds available. On the limited information before me I cannot say how much that would be: somewhere between 0 and 25%. Based on the decision of the Court of Appeal in Sanai, it would appear appropriate that I permit Mr. Drinkall an opportunity to provide me with a more precise opinion with respect to the distributive taxes on the sale of shares that he holds in DRL. These tax consequences may be significant and I am satisfied the test for reopening is met: per the considerations set out in Grewal, ignoring these tax consequences could lead to a miscarriage of justice and a consideration of the tax consequences could lead to a different result. I am acutely aware that we are now one-year post judgment and that Mr. Drinkall has had some form of opinion on this issue since 2017. These matters have been very prolonged. I am going to provide Mr. Drinkall with a limited opportunity to provide me with better evidence. I will provide him with 30 days within which to provide me with an opinion as to the likely distributive taxes.

- [41] I do not anticipate that funds would be made available from Drinkall Ranches Ltd. by dividend. As Mr. Drinkall Senior has indicated, in his view, he and his wife, who are the majority shareholders in DRL do not want to declare dividends as that would have tax consequences for them.
- [42] Finally, Mr. Drinkall argues that I have confused the minority shareholder discount referred to in the Spence opinion for distributive taxes. There is no confusion. A minority shareholder discount was all that was addressed in the evidence before me at trial. There was no opinion with respect to taxes which would be incurred on a compensation payment to Ms. Baldwin and that was not addressed in the judgment of June 2019.

"B.J. Brown J."

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Prepared on 29 October 2026 · Esheria