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THE ANNOTATED BRITISH COLUMBIA BUSINESS CORPORATIONS ACT

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This looseleaf service provides complete coverage of British Columbia corporations law including: the full text of the *Business Corporations Act* and Regulations, clear and concise summaries of key reported and unreported decisions interpreting the Act, and a detailed legislative table of concordance.

What's New in this Update

This release features updates to the case law annotating the British Columbia Business Corporations Act. This release also features updates to Appendix TC § TC:1. Bergen, Table of Concordance of Business Corporations Acts.

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Highlights

Section 30 — Personal Liability for Pre-Incorporation Contracts — PPH Ltd. took an assignment of purchase and sale agreement ("APS") from the buyer. NP was the sole director, officer and shareholder of PPH. PPH was not incorporated until 12 days after the assignment. The court found that the evidence supported a finding that PPH had acted in a manner adopting the APS and that NP was not personally liable. The court rejected the contention that because NP personally signed the assignment, provided the $5,000 deposit, was the officer and director of PPH, and therefore personally made the decision to not complete the APS, the corporate veil should be lifted so as make NP personally liable. The fact that a director or officer decided, in that capacity, that a corporation should breach a contract does not amount to the type of improper conduct that justifies piercing the corporate veil, at least where the director or officer could not be sued for the tort of inducing breach of contract. It was self evident that NP would have to sign all documentation on behalf of PPH and there were no facts to suggest that PPH was incorporated and then used as a shield for improper conduct: *Dawood v. Popes Property Holdings Inc. et al*, 2025 ONSC 2144, 2025 CarswellOnt 4964 (Ont. S.C.J.) (decided with reference to s. 21 of the Ontario *Business Corporations Act*).

Section 142 — Continuation of Director's Fiduciary Duties — A director's fiduciary duties to a company may continue, even after they have been removed as a director against their will. In this case, MB was the CEO and a director of the plaintiff corporation from 2019 to 2024. During this time, MB's likeness and social media personality were inextricably linked with the plaintiff's products, principally vapes. This linkage was facilitated by a licensing agreement. MB essentially became the "public face" of the company; the plaintiff invested tens of millions of dollars in the promotion of its products using this linkage. In 2024, MB was removed as director. MB then initiated multiple legal proceedings challenging his removal and seeking to be reinstated. Simultaneously, MB incorporated a company that directly competed with the plaintiff. The plaintiff sued for breach of fiduciary duty and successfully obtained an interim injunction restraining MB from competing with plaintiff pending trial. In light of MB's ongoing efforts to utilize the court process to find his removal as director to be of no force and effect, the court found that his fiduciary duties to the plaintiff continued, despite having been removed as director against his will: *Ignite International Brands, Ltd v. Bilzerian*, 2025 BCSC 566, 2025 CarswellBC (B.C. S.C.).

Section 146 — Indoor Management Rule — The policy underlying the "indoor management rule", codified in this section, is to ensure that internal corporate restrictions on authority or the corporation's

failure to follow its internal procedures do not abrogate the company's obligations to a third party. The rule is applicable even in cases of forgery, where there is nothing on the face of the document that would suggest that it was anything other than what it appeared to be. In this case, the plaintiff entered into a contract with the defendant construction company for the construction of a home for himself and his wife on a "friends and family" cost rate. The defendant's principal would often offer such deals to friends and employees and their family members. The plaintiff's father was the manager of the defendant and a friend of the defendant's principal. The plaintiff requested and was issued what he thought was an agreement of purchase and sale ("APS") executed by the defendant's principal. Two months later, the plaintiff's father was fired for theft and fraud; the defendant 's principal refused to complete the APS on the grounds his signature was fraudulently rubber-stamped by the plaintiff's father. The court held the APS was enforceable. There was no evidence that the plaintiff knew or ought to have known about his father's alleged duplicity prior to his termination and no evidence he forged the APS himself. He was therefore entitled to rely upon the signed APS between himself and Millstone because of the indoor management rule: *Curridor v. Millstone Homes Inc*, 2025 ONSC 745, 2025 CarswellOnt 1206 (Ont. S.C.J.), additional reasons 2025 CarswellOnt 5526 (Ont. S.C.J.) (decided with reference to s.19 of the Canada *Business Corporations Act*).

Section 227 — Oppression and Shareholders' Reasonable Expectations — GS Ltd. was founded in 2002 for the purpose of purchasing an historic pub, Six Mile House (SMH). The principal investors were EN and the respondent, DW. DW and EN were the directors of GS and also of SMH. DW managed the pub's day-to-day operations, while EN was responsible for managing the kitchen. EN became less involved with SMH's operations, apparently due to drug addiction. In 2004, EN left his employment and did not return until 2009, when he was rehired as operations manager. However, he missed work often and did not comply with requests that he submit to drug tests. Ultimately, he was reduced to working two days a week and removed as director of SMH. EN died in 2016, at which time DW became the sole director of GS Ltd. The petitioners became the equitable owners/beneficiaries of EN's share interest, approximately 39%, in GS Ltd. They began discussions with DW regarding the sale of their shares but could not reach an agreement. The petitioners claimed DW and GS acted oppressively through their failure to pay dividends, to provide them with notice of shareholder meetings, or to provide them with any opportunity to participate in the affairs of GS or SMH. The oppression claim was dismissed on the basis the petitioners could not have had any expectations in the latter regard; rather, they had made it clear from the outset their only interest was in selling their shares. The court, however, found that the dissolution of GS Ltd. would be "just and equitable" under s. 324(1)(b): *Eddy Ng Management Services Ltd. v. Golden Spigot Pub Ltd.*, 2025 BCSC

301, 2025 CarswellBC 436 (B.C. S.C.).

Section 227 — Oppression and the Equitable "Clean Hands" Defence — Remedies for oppression are equitable ones and as such, the doctrine of clean hands applies. Where the impugned conduct appears to be due to the applicant's misconduct, the applicant cannot insist on a remedy. In this case, the parties were the founders, directors and equal shareholders of DE Ltd., an oilfield service company. Each party had a distinctive role; the applicant was employed as the company's general manager and had access to the company's bank account. As compensation, the applicant received bi-weekly shareholder draws. In 2024, 14 years after DE Ltd. was formed, the respondents discovered that in 2023, the applicant had withdrawn $75,000 from the company account to pay his personal income taxes and took steps to hide his withdrawals behind false invoices. Withdrawals for personal use had occurred in the past; however, those withdrawals were discussed openly amongst the parties and were done with the knowledge and consent of at least two directors. The applicant claimed he was embarrassed about his need for the funds and had always intended to account for the withdrawals through his shareholder loan account, an assertion contested by the parties. The applicant's employment was terminated and he resigned as director. Thereafter, the respondents resolved that future compensation was to be paid by way of salary and not as shareholder dividends. This effectively deprived the applicant of any financial benefits from the company. The applicant sought dissolution of the company on grounds of oppression and/or on just and equitable grounds. While the judge declined to make a finding of theft or misappropriation, he dismissed the application on the basis, inter alia, the applicant's own conduct was the cause of the current situation: *Babenek v. Driven Energy Ltd*, 2025 ABKB 282, 2025 CarswellAlta 1055 (Alta. K.B.) (decided with reference to ss. 215 and 242 of the Alberta *Business Corporation Act*).

Section 227 — Reasonable Expectations and Sophisticated Contracting Parties — In circumstances involving sophisticated participants in a commercial relationship (in this case, a limited partnership) entered into on the basis of comprehensive written agreements, it would be the exceptional case where a complainant could establish, for the purpose of pursuing an oppression claim, a reasonable expectation that exists independently of the rights and obligations set out in the agreements. A partnership, including a limited partnership, unlike a corporation, is not a legal entity or person but rather a group of persons, corporate or individual, carrying on a business with a view to profit. Such entities should not be equated to corporations: *Kuipers v. NEP Limited GP Inc.*, 2025 ABKB 278, 2025 CarswellAlta 1034 (Alta. K.B.), citing *Landvis Canada Inc. v. Ocean Choice International Limited Partnership*, 2016 NLTD (G) 4, 2016 CarswellNfld 9 (N.L. T.D.), a dditional reasons 2016 CarswellNfld 48 (N.L. T.D.)(decided with reference to s. 242 of the Alberta *Busi-*

ness Corporations Act).

Section 227(3)(c) — Receivership Order — The granting of a receivership order is an extraordinary relief that should be granted cautiously and sparingly. If there is a remedy other than receivership, it should be considered because receiverships are intrusive interferences with the affairs of company, harmful to the reputation of the company and can incur considerable costs. A relevant factor in this inquiry is the nature of the property over which a receivership is sought and where the specific property secures a debt. In this case, in an oppression proceeding arising from the development of residential condominium towers by two limited partnerships, the petitioner, a minority shareholder in T Inc., successfully sought an interim injunction prohibiting T Inc. from disposing or diminishing the value of its cash or other assets without written consent. When T Inc. later applied to vary the injunction so as to allow it to provide $20 million to its majority shareholder to repay a certain debt, the petitioner counter-applied for the appointment of an interim receiver and manager over all of T Inc.'s property, with authority to conduct various investigations. Here the court found it relevant that the petitioner had already sought and been granted viable remedies and had not demonstrated any irreparable harm those remedies would not address. This was also not a debtor/creditor situation where the targeted property secured a debt; rather, it was a petition brought by a shareholder who, in that capacity, had no right to the assets of the company, but rather only to a bundle of rights and liabilities, including the right to a proportionate part of assets on windup or liquidation and the right to oversee the management of the company by its board of directors. In these circumstances, to take the management of T Inc. out of the hands of its directors would be draconian: *Mirage Trading Corporation v. Ghahroud*, 2025 BCSC 588, 2025 CarswellBC 949 (B.C. S.C.).

Section 227(3)(f) — Removal of Director — The parties were married in 2001 and separated in 2021. In 2015, the husband incorporated R Co, at which time the petitioner wife was named one of the two directors, the second being K, the husband's son from a previous marriage. Both the petitioner and K were equal shareholders. The petitioner was installed as director because the husband had in that same year declared bankruptcy and could not act as a director. Otherwise, the petitioner had no involvement at all with R Co. In 2019, the husband took steps to dissolve R Co. In 2020, unbeknownst to the petitioner, the husband successfully sought revival of R Co., at which time the wife's 50% interest was diluted and she became a one-third shareholder, and one of three directors, with the husband installed as the third. The petitioner had no knowledge of either the dissolution of R Co or its revival until 2023, when she consulted an accountant regarding the parties' divorce proceedings, at which time she became aware of her potential liability as director

for the sizeable and unpaid debts the husband had caused R Co. to incur. The petitioner commenced oppression proceedings, seeking her removal as director as of the date in 22019 when R Co. was dissolved. The petition was allowed. The court found that the husband's conduct - his failure to communicate or otherwise advise the petitioner he was dissolving R Co, and then reconstituting R Co.'s shareholding and directorship - was in breach of his duty to act in good faith and to exercise reasonable care and diligence. This breach oppressively and unfairly prejudiced the petitioner by exposing her to personal liability for the husband's dereliction of the company's obligations. In these circumstances, removal of the petitioner as director was "necessary" to satisfy her "reasonably held" expectations: *Ror v. Pires*, 2025 ONSC 828, 2025 CarswellOnt 1823 (Ont. S.C.J.) (decided with reference to s. 248 of the Canada *Business Corporations Act*).

Sections 232 and 233 — Derivative Actions where Leave of Court is not Required — The person who has the authority to operate the company in its ordinary course is the person who has the implied authority to commence litigation on behalf of that company without authorization of the company's board or without seeking leave of the court. Depending upon the particular circumstances, the person with that authority may be the company's president, or it may be someone else. The implied authority, however, is not unlimited. It is constrained to litigation that is related to the company's business or to litigation that is specifically targeted at addressing an emergent situation; it does not include the ability to commence litigation relating to the affairs of the company. In this case, following the marital separation of the parties, both directors and equal shareholders of a farm company, by consent order, the wife was given the authority to operate the farm in the ordinary course of business. Subsequently, the owners of the property on which most of the he farming operations were conducted, terminated the lease, allegedly at the behest of the husband. The wife, on behalf of the company, sued the landlord for breach of the lease and the husband for breach of fiduciary duty, without the consent of the husband and without leave of the court. The court held that given the wife had control of the company's day-to-day operations, and given that the lease litigation related to the ordinary course of the farm business, the wife was authorized to commence the action without authorization of the board and without leave of the court. With respect to the claim against the husband, it may be unusual for a company to sue one of its two directors and its president, this does not mean the litigation relates to the affairs of the company as opposed to its business. Here, the action did not relate to the husband's status as a shareholder, director, or president nor did it relate to the organization of the company. Rather, the action concerned the preservation of the company's business; this includes the pursuit of a claim against a person who owes a fiduciary duty to the company and allegedly breaches it. Similarly, pursuing a claim against an individual who has allegedly misappropriated

company funds, and therefore, an action to protect the company's assets is, also related to the business of the company as opposed to its affairs: *Bajwa Farms Ltd. v. Bajwa*, 2022 BCSC 1056, 2022 CarswellBC 1683 (B.C. S.C.) (followed in Bonjour Vietnam Restaurant Corp. v. Hoang, 2025 BCSC 723, 2025 CarswellBC 1197 (B.C. S.C.).

Section 236 — Staging of Security for Costs — Staged security is not appropriate in cases involving serious allegations of dishonesty or breach of fiduciary duty; staging payments could lead to delay in the prosecution of the case , leaving to hang and the allegations of serious misconduct would hang over the affected party until the case was resolved. In this case, the plaintiffs alleged the plaintiff breached her fiduciary to a limited partnership, advanced her own interests over the interests of the partnership, disclosed confidential information to a third party, falsely created a deadlock in the partnership, and improperly attempted to terminate the partnership with the intent of acquiring the partnership's assets for herself. The court declined the plaintiff's request that security be posted in three tranches. The allegations posed a particular risk of harm, given the defendant's reputation as a mortgage broker, and it was necessary for the claim to be advanced with dispatch: *Buffalo Megan Holding Ltd. v. PKT Holdings Inc.*, 2025 BCSC 798, 2025 CarswellBC 1286 (B.C. S.C.); see also *Synq Access + Security Technology Ltd. v. Ohman*, 2018 BCSC 1242, 2018 CarswellBC 1977 (B.C. S.C.).

Section 324 — Winding-up on "lust and equitable" Grounds and Limitation Act — Opression remedy claims are subject to the Limitation Act. There is, however, no time bar to the court's exercise of its jurisdiction to grant a remedy under this section, save for what might arise out of the equitable defence of laches. A laches defence will lie if the defendant can demonstrate that the plaintiff, by delaying the initiation of their case, has either (a) acquiesced in the defendant's conduct; or (b) caused the defendant to alter his position in reasonable reliance on the plaintiff's acceptance of the status quo. In this case, GS Ltd. was founded in 2002 to purchase a pub, SMH. The principal investors were EN and the respondent, DW. DW and EN were the directors of GS and also of SMH. DW managed the pub's day-to-day operations, while EN was responsible for managing the kitchen. EN became less involved with SMH's operations, apparently due to drug addiction. In 2004, EN left his employment and did not did not return until 2009, when he was rehired as operations manager. However, he missed work often and did not comply with requests that he submit to drug tests. Ultimately, he was reduced to working two days a week and removed as director of SMH. EN died in 2016, at which time DW became the sole director of GS Ltd. The petitioners became the equitable owners/beneficiaries of EN's share interest in GS Ltd. They began discussions with DW regarding the sale of their shares but could not reach an agreement. The court dismissed the petitioner's claim for oppression but ordered that GS

Ltd. be dissolved on just and equitable grounds. The defence of laches did not apply. A "claim" in the Limitation Act, means "a claim to remedy an injury, loss or damage that occurred as a result of an act or omission". Here, the remedy sought by the petitioners under this section was not for an injury, loss, or damage but rather for an order allowing them to realize the value of their investment. In addition, their right to claim this remedy did not arise out of an act or omission; it arose out of the parties' circumstances. Any failure by EN to assert his right to seek dissolution appeared to be a result of his addiction and his desire to conceal his addiction from his family, as opposed to acquiescence. Given their communications with DW, the petitioners' delay following EN's death could not reasonably have been interpreted as acquiescence to their capital being effectively marooned. Further, the respondents were not shown to have altered their position such that the bringing of the petition was unreasonable: *Eddy Ng Management Services Ltd. v. Golden Spigot Pub Ltd.*, 2025 BCSC 301, 2025 CarswellBC 436 (B.C. S.C.).

Section 348(3) (Liability of Shareholders of Dissolved Companies) — Section not Applying to LLC Companies — This section does not apply to a limited liability corporation ("LLC"). In this case, the plaintiff claimed she entered into an agreement with the defendant art gallery, TP LLC, under which she loaned money to be used towards the gallery's operations and also purchased some art she never received. TP LLC was later dissolved and the plaintiff unsuccessfully sought to make its sole director personally liable. The court held that there was no basis for piercing the corporate veil and that personal liability could not be imposed on the director under this section. In the latter regard, the court noted that BC companies and extra-provincial companies are referenced under separate subsections of the same provisions throughout the Act, indicating that different legal considerations apply to each and that a BC company and an extra-provincial company are distinct concepts. Extra-provincial companies are not referred to in s. 348 and therefore, this provision did not apply: *Darel v. Tri-Parker Gallery LLC*, 2025 BCSC 324, 2025 CarswellBC 440 (B.C. S.C.).