

The Canadian Abridgment eDigests -- Business Associations

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BUS.III.1.g.iii.C

Subject Title: Business associations

Classification Number: III.1.g.iii.C

Specific matters of corporate organization -- Directors and officers -- Fiduciary duties -- Self-dealing transactions -- Miscellaneous

Litigation concerned matters of corporate malfeasance, avarice and deceit in technology sector, in connection with venture capital fund providing seed capital to start-up technology companies -- Action was brought claiming that certain defendants were liable for breach of fiduciary duty and breach of contract regarding establishment of competing business -- It was further claimed that these defendants were liable for breach of fiduciary duty, breach of contract, and conspiracy, and that other defendants were liable in tort for knowing assistance in breach of fiduciary duty, inducing breach of contract, and conspiracy, all concerning sale of mobile software development lab business -- Trial judge allowed action, and awarded damages and made order for disgorgement of profits -- Defendants appealed -- Appeal dismissed -- Defendants' argument that they could not be held liable for any breach because party to whom they owed duty was different than party that suffered loss had to be rejected -- It would be anomalous result if law offered no remedy for breach of director's fiduciary duty in circumstances where limited partnerships suffered resulting loss -- If that were case, directors could act with impunity to damage interests of limited partnership, including by engaging in self-dealing, and there would be no remedy for such breach of fiduciary duty -- It was appropriate that fiduciary duty of defendants in question should expand to include duty to limited partnership -- This was not situation where defendants were balancing corporation's interests against those of limited partnership; instead, they acted solely in their self-interest and contrary to interests of both general partner and limited partnership.

Extreme Venture Partners Fund I LP v. Varma (2021), 2021 CarswellOnt 18074, 2021 ONCA 853, C.W. Hourigan J.A., Grant Huscroft J.A., S. Coroza J.A. (Ont. C.A.); additional reasons at (2022), 2022 ONCA 5, 2022 CarswellOnt 33, C.W. Hourigan J.A., Grant Huscroft J.A., S. Coroza J.A. (Ont. C.A.); reversing in part (2019), 94 B.L.R. (5th) 38, 2019 CarswellOnt 7501, 2019 ONSC 2907, Conway J. (Ont. S.C.J. [Commercial List]); additional reasons at (2019), 148 O.R. (3d) 360, 46 C.P.C. (8th) 148, 94 B.L.R. (5th) 119, 2019 CarswellOnt 11923, 2019 ONSC 4459, Conway J. (Ont. S.C.J. [Commercial List]); additional reasons at (2020), 2020 CarswellOnt 1320, 2020 ONSC 651, Conway J. (Ont. S.C.J. [Commercial List]); and affirming (2019), 148 O.R. (3d) 360, 46 C.P.C. (8th) 148, 94 B.L.R. (5th) 119, 2019 CarswellOnt 11923, 2019 ONSC 4459, Conway J. (Ont. S.C.J. [Commercial List]); additional reasons to (2019), 94 B.L.R. (5th) 38, 2019 CarswellOnt 7501, 2019 ONSC 2907, Conway J. (Ont. S.C.J. [Commercial List]); additional reasons at (2020), 2020 CarswellOnt 1320, 2020 ONSC 651, Conway J. (Ont. S.C.J. [Commercial List]); reconsideration / rehearing refused (2022), 2022 ONCA 57, 2022 CarswellOnt 517, C.W. Hourigan J.A., Grant Huscroft J.A., S. Coroza J.A. (Ont. C.A.) [Ontario]

BUS.III.1.g.ix

Subject Title: Business associations**Classification Number: III.1.g.ix****Specific matters of corporate organization -- Directors and officers -- Fiduciary duties -- Miscellaneous**

Assistance in breach of fiduciary duty -- Litigation concerned matters of corporate malfeasance, avarice and deceit in technology sector, in connection with venture capital fund providing seed capital to start-up technology companies -- Action was brought claiming that certain defendants were liable for breach of fiduciary duty and breach of contract regarding establishment of competing business -- It was further claimed that these defendants were liable for breach of fiduciary duty, breach of contract, and conspiracy, and that other defendants were liable in tort for knowing assistance in breach of fiduciary duty, inducing breach of contract, and conspiracy, all concerning sale of mobile software development lab business -- Trial judge allowed action, and awarded damages and made order for disgorgement of profits -- Defendants appealed -- Appeal dismissed -- Defendants' argument that initial offer to purchase mobile software development business was rejected by board, and thus that offer had no impact, ignored trial judge's finding that offer was only one instance of illegal activity employed as part of ongoing conspiracy to purchase business at discounted price -- Another example of objection to findings was specious argument that board could have discovered actual revenue numbers if they had undertaken more due diligence; this was not manner in which corporate law worked -- Where information was deliberately falsified, it was no defence to say that board should have known better -- This was not case of trial judge imposing some new morality-based constraints on way business operated; it was court applying settled law of corporations, fiduciary duty, contract, and tort to conduct of defendants.

Extreme Venture Partners Fund I LP v. Varma (2021), 2021 CarswellOnt 18074, 2021 ONCA 853, C.W. Hourigan J.A., Grant Huscroft J.A., S. Coroza J.A. (Ont. C.A.); additional reasons at (2022), 2022 ONCA 5, 2022 CarswellOnt 33, C.W. Hourigan J.A., Grant Huscroft J.A., S. Coroza J.A. (Ont. C.A.); reversing in part (2019), 94 B.L.R. (5th) 38, 2019 CarswellOnt 7501, 2019 ONSC 2907, Conway J. (Ont. S.C.J. [Commercial List]); additional reasons at (2019), 148 O.R. (3d) 360, 46 C.P.C. (8th) 148, 94 B.L.R. (5th) 119, 2019 CarswellOnt 11923, 2019 ONSC 4459, Conway J. (Ont. S.C.J. [Commercial List]); additional reasons at (2020), 2020 CarswellOnt 1320, 2020 ONSC 651, Conway J. (Ont. S.C.J. [Commercial List]); and affirming (2019), 148 O.R. (3d) 360, 46 C.P.C. (8th) 148, 94 B.L.R. (5th) 119, 2019 CarswellOnt 11923, 2019 ONSC 4459, Conway J. (Ont. S.C.J. [Commercial List]); additional reasons to (2019), 94 B.L.R. (5th) 38, 2019 CarswellOnt 7501, 2019 ONSC 2907, Conway J. (Ont. S.C.J. [Commercial List]); additional reasons at (2020), 2020 CarswellOnt 1320, 2020 ONSC 651, Conway J. (Ont. S.C.J. [Commercial List]); reconsideration / rehearing refused (2022), 2022 ONCA 57, 2022 CarswellOnt 517, C.W. Hourigan J.A., Grant Huscroft J.A., S. Coroza J.A. (Ont. C.A.) [Ontario]

BUS.III.1.h.viii

Subject Title: Business associations**Classification Number: III.1.h.viii**

Specific matters of corporate organization -- Directors and officers -- Liabilities -- Miscellaneous

Plaintiff leased nine trucks to corporate defendant ISEES which was owned by individual defendant J -- Plaintiff alleged that ISEES had stopped making payments on six trucks in August 2017 and had failed to return them -- Plaintiff sued for outstanding balances owed and for conversion of its trucks -- Plaintiff obtained judgment against ISEES for amounts due under leases but parallel claim against J was dismissed -- Trial judge ruled that ISEES was in breach of disputed lease agreements by failing to make monthly payments and failing to return trucks as required by agreements -- Trial judge also ruled that ISEES was also liable to plaintiff for tort of conversion but that J was not -- Plaintiff appealed dismissal of parallel claim and costs; defendants cross-appealed -- Appeal allowed; cross-appeal dismissed -- Issue between parties was matter of debt arising from breach of contract -- Foundation of parties' relationship in contract meant that defendant was lawfully entitled to possession of trucks at commencement of leases, and recovery of them by plaintiff was matter of contractual right -- Defendant did not acquire possession of trucks illegally and their possession was subject to obligation to return them end of contract but that did not mean that their possession after that point was tortious -- Corporate defendant was separate legal person -- Expectation in commercial dealings is that personal liability of shareholder or director of corporation would be engaged by written guarantee -- Attempt to find defendant ISEES collaterally liable in conversion, was to support claim against J -- Secured lender should not be able to engage personal liability of directors and shareholders of corporate borrower simply by suing for tortious conversion of collateral rather than in contract or debt -- There was no basis to lift or pierce corporate veil -- Even if there was corporate tort involved, it would be inappropriate to find director J concurrently liable for tort, even though she controlled corporation's operations -- "Control" of corporation did not equate to corporation merely being alter ego of shareholders -- One person corporations were explicitly permitted by Alberta Business Corporations Act and gave them separate legal personality just like any other corporation -- One person controlling corporation did not mean it had no "real" independent existence.

Driving Force Inc v. I Spy-Eagle Eyes Safety Inc (2022), 2022 ABCA 25, 2022 CarswellAlta 189, Frans Slatter J.A., Frederica Schutz J.A., Jack Watson J.A. (Alta. C.A.) [Alberta]

BUS.III.3.c.vi.D.1

Subject Title: Business associations

Classification Number: III.3.c.vi.D.1

Specific matters of corporate organization -- Shareholders -- Meetings -- Conduct of meeting -- Voting -- Shareholder agreements and voting trusts

Parties executed C Holding shareholders' agreement and voting trust agreement (VTA) that named applicant as voting trustee and respondent as shareholder -- VTA entitled applicant to exercise all voting rights in respect of respondent's shares, except for matters including sale of all assets or establishment of sale price of wallboard for sale to M Co. -- President of respondent was sophisticated investor with extensive experience who was represented by legal counsel when he executed agreements -- Applicant purported to vote respondent's shares in favour of its motions at shareholders' meetings -- Credit and pricing motion proposed that shareholders would create price list and policies to use in selling product to customers, including M Co. -- Respondent asserted motions fell within excluded matters, and applicant breached trust or fiduciary duties because motions were contrary to respondent's best interests as beneficiary -- Respondent sought declaration that provision in VTA that applicant had no duty to account was against public policy and void ab initio -- Applicant brought

application for declaration of right under VTA to vote respondent's shares at shareholders' meetings -- Application granted -- Excluded matters did not apply as evidence did not establish C Holding was being sold and credit and pricing motion did not establish sale price M Co. would pay -- Assumed without deciding that VTA created trust relationship, applicant had duty to exercise its discretion to vote respondent's shares in C Holding's best interests, not respondent's -- Respondent failed to establish motions were contrary to C Holding's interests -- There was nothing unjust about holding respondent to terms of VTA that released applicant from duty to account to respondent.

Canco Manufacturing Holdings ULC v. PFI Interests, LLC ([\(2021\)](#), [2021 CarswellNS 772](#), [2021 NSSC 320](#), Ann E. Smith J. (N.S. S.C.) [Nova Scotia]

BUS.III.3.e.ii.C.2

Subject Title: Business associations

Classification Number: III.3.e.ii.C.2

Specific matters of corporate organization -- Shareholders -- Shareholders' remedies -- Relief from oppression -- Oppressive conduct -- Dealings with shares

Respondent A Ltd. was investment issuer whose shares were listed on TSX Venture Exchange' -- Individual respondents were directors of A Ltd. -- Petitioner JTB was co-founder and director of A Ltd. -- JTB was CEO of A Ltd. from May 2016 to July 2020 -- JTB did not own shares in A Ltd. -- Petitioner NB was spouse of JTB -- Petitioners alleged that NB beneficially held large shareholding position in A Ltd. through two companies -- Dispute arose over control of A Ltd. -- Directors rejected proposal from petitioners to convert loans of JTB's family into equity in A Ltd. -- Directors had discovered letter of intent (LOI) for JTB's family to sell shares to M Co. -- In August 2020, BC Securities Commission issued cease trade order (CTO) as result of A Ltd.'s failure to file required documents and forms -- In November 2020, M Co. announces acquisition of 33 percent of shares in A Ltd. -- A Ltd. took position that acquisition was ineffective because of CTO -- Directors sold shares in A Ltd. to fund that invested in public companies (KY) -- AGM was scheduled for April 2021 -- A Ltd. proposed slate of directors -- M Co./JTB proposed different slate of directors -- Petitioners brought petition alleging that conduct of respondents was oppressive -- Petition dismissed -- Fact that petitioners kept existence of the M Co. LOI secret from majority directors established that they expected negative consequences if it was disclosed -- It was clear that any delay in JTB's termination could have led to negative consequences for shareholders -- Petitioners must have, or should have, expected that majority directors would immediately terminate JTB as CEO -- Discovery of M Co. LOI created circumstances wherein respondents reasonably believed company had to be protected from JTB -- Petitioners should also have reasonably expected that if that M Co. LOI came to light, opposing directors would attempt to fight it by issuing shares -- Resolution to issue shares with little or no notice for JTB was neither breach of petitioners' reasonable expectations nor oppressive in circumstances.

Bonner v. Axion Ventures Inc. ([\(2021\)](#), [2021 CarswellBC 3097](#), [2021 BCSC 1899](#), A. Ross J. (B.C. S.C.) [British Columbia]

BUS.V.3.e.ii

Subject Title: Business associations

Classification Number: V.3.e.ii

Legal proceedings involving business associations -- Practice and procedure in proceedings involving corporations -- Institution of proceedings -- Authority to institute proceedings

Plaintiff company was potential subcontractor to proposal to build housing for sporting event -- Subcontractor was not able to participate in financing, as lenders did not consent to involvement of subcontractor -- Subcontractor brought two separate statements of claim, against defendant Crown -- Both claims were struck out, for failure to disclose reasonable cause of action -- Claim of misfeasance in public office was struck, with leave to amend -- Subcontractor brought amended statement of claim, on issue of misfeasance -- Subcontractor also claimed that Crown breached its obligations to them, seeking declaratory relief to this effect -- Crown claimed that amended statement of claim failed to disclose cause of action -- Crown moved to strike amended statement of claim -- Motion granted; claim struck out without leave to amend -- If it was found that court had erred in denying leave to amend, any new action was to proceed only with leave of court -- There was no claim for misfeasance before court when applicable law came into force.

The Catalyst Group Inc. v. Dundee Kilmer Developments Limited Partnership (2021), 72 C.C.L.T. (4th) 290, 2021 CarswellOnt 3975, 2021 ONSC 2132, Cavanagh J. (Ont. S.C.J.); affirmed *The Catalyst Capital Group Inc. v. Dundee Kilmer Developments Limited Partnership* (2022), 2022 ONCA 168, 2022 CarswellOnt 2199, K. van Rensburg J.A., L.B. Roberts J.A., Paul Rouleau J.A. (Ont. C.A.) [Ontario]

BUS.VI.2.c.ii

Subject Title: Business associations

Classification Number: VI.2.c.ii

Changes to corporate status -- Loss of corporate status -- Dissolution -- Miscellaneous

Siblings (T and D) inherited equal beneficial interest in two corporate respondents via alter ego trust following death of their father in 2013 -- Siblings' interests constituted entirety of corporate corpus -- Companies owned real estate, including income-generating properties -- T and D were corporate directors and D currently managed companies -- Siblings determined they were unable to work together but could not agree on how to separate corporate interests -- Having found parties could no longer work together and were deadlocked, judge granted T's application for liquidation and dissolution of companies and dismissed D's cross-application for order for fair market value corporate share repurchase -- D appealed -- Appeal dismissed -- Judge identified proper legal structure to guide her analysis, addressed issues raised by s. 324 of Business Corporations Act, determined parties were deadlocked and required remedy to free them, and then next within context of s. 227 of Act determined appropriate remedial option; judge's reasons were consistent with legal analysis required by s. 324 and s. 227 of Act -- Judge did not err in ordering liquidation and dissolution when equity could be achieved through alternative and less intrusive order under s. 227(3) of Act -- Parties accepted they were deadlocked and required "corporate divorce", and despite years of negotiations, no agreement was reached -- It was not persuasive to assert judge should have considered remedial options that neither party advanced and that were unrealistic or futile -- It was reasonable and proper for judge to focus on finite remedial options that parties,

with benefit of legal advice, advanced -- Judge's discretionary decision was consistent with findings she made.

Esposito v. Esposito ([2022](#)), [2022 BCCA 51](#), [2022 CarswellBC 307](#), Bauman C.J.B.C., Voith J.A., Willcock J.A. (B.C. C.A.); affirming *Esposito v. 304768 B.C. Ltd.* ([2021](#)), [2021 CarswellBC 1621](#), [2021 BCSC 961](#), Jackson J. (B.C. S.C.) [British Columbia]

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