IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Runnalls v. Regent Holdings Ltd.,*
2010 BCSC 1106

Date: 20100805
Docket: S081934
Registry: Vancouver

Between:

Mary Anne Runnalls and Neeva Gayle Hix

Petitioners

And

Regent Holdings Ltd. and A. Theodore Ewachniuk

Respondents

Before: The Honourable Mr. Justice N. Smith

Reasons for Judgment

Counsel for the Petitioners:	G. E. Sourisseau S. N. Baldwin
Counsel for the Respondents:	J. Vilvang, Q.C.
Place and Date of Hearing:	Vancouver, B.C. November 9, 2009, December 14, 16, and 17, 2009, and June 29, 2010
Place and Date of Judgment:	Vancouver, B.C. August 5, 2010

I. Introduction

[1] The respondent Regent Holdings Ltd. (“Regent”), is a family company that owns a marina and commercial property. The petitioners, Mary Anne Runnalls and Neeva Gayle Hix, are minority shareholders in Regent. The majority shareholder is their brother, the respondent, A. Theodore Ewachniuk.

[2] In Reasons for Judgment dated August 7, 2008 (2008 BCSC 1073), I found that Regent had been operated in a manner that was oppressive or unfairly prejudicial to the petitioners. I found that the petitioners

were entitled to relief under s. 227 of the *Business Corporations Act*, S.B.C. 2002, c. 57. However, I declined to order a specific remedy at that time because I made a further order, by consent of the parties, for a valuation of Regent and the appointment of an inspector. I said that although the obvious solution is for Mr. Ewachniuk to purchase his sisters' shares, an order to that effect would not be appropriate until a purchase price could be properly determined.

[3] The inspector and valuators have now delivered their reports and the petitioners seek an order fixing the price at which Mr. Ewachniuk must purchase their shares or, alternatively, an order that Regent be liquidated. The primary issues are as follows:

a) For the purposes of fixing the share purchase price, should Regent's total value be increased to compensate for transactions the petitioners say benefited Mr. Ewachniuk at their expense or at the expense of Regent (the "compensation amount")? These transactions include allegedly excessive management and directors' fees as well as dealings between Regent and Mr. Ewachniuk or other entities in which he had an interest. Some of the transactions are relatively recent, but others occurred many years ago.

b) What is the base value of the company to which any compensation amount should be added? That value depends, in part, on the effect given to an agreement that gives another company, in which Mr. Ewachniuk has an interest, the right to share in the proceeds of any future sale of certain Regent assets. The value also depends on the choice of valuation date.

II. The Company

[4] Regent was incorporated in 1954 by the present parties' parents, grandfather, and uncle, all of whom are now dead. Mr. Ewachniuk became the majority shareholder in 1980, when he purchased his parents' shares. Prior to that, he and the petitioners had each received shares through inheritance from their grandfather and uncle. Each petitioner now owns 8,500 shares, or 18.8 per cent of the total, while Mr. Ewachniuk owns the remaining 28,000 shares. Although Mr. Ewachniuk did not become the majority shareholder until 1980, he says that he has been managing the company since the 1960s. For most of that time, until 2000, he was also a practicing lawyer.

[5] Regent's principal asset is a waterfront property in Richmond on which it developed a marina and two commercial buildings. The commercial buildings are leased to a restaurant and to retail and office tenants. The marina is leased to a related company, Vancouver Marina (1971) Ltd. ("Vancouver Marina"), of which Regent is 50 per cent shareholder. The other shareholder in Vancouver Marina is Richmond Boat and Yacht Sales Ltd. ("Richmond Boat"), a company owned in equal shares by Mr. Ewachniuk and John Short. Mr. Short has for many years managed the day-to-day marina operations.

[6] The petitioners say that they have been excluded from any role in Regent while Mr. Ewachniuk has treated the company and its assets as his personal property. Mr. Ewachniuk says Regent's valuable and profitable assets were developed under his management over a period of more than 40 years, with no contribution or assistance from his sisters.

III. Previous Proceedings

[7] This conflict is obviously a long-standing one. The petitioner, Ms. Hix, says in an affidavit that she commenced a petition under the oppression and winding up provisions of the former *Company Act*, R.S.B.C. 1979, c. 59, in 1986. She says that that petition was converted to an action and examinations for discovery were held, but she felt "overwhelmed and ill-prepared" and instructed her lawyers to "discontinue or dismiss" that action. The petitioner, Ms. Runnalls, said she shared her sister's feelings about Mr. Ewachniuk's management of Regent at the time, but did not have the resources to participate in the litigation.

[8] Unfortunately, counsel have been unable to find copies of any of the pleadings in that 1986 proceeding. I therefore do not know what allegations were made or whether the proceeding was dismissed or discontinued. Some of the transactions now at issue predate, or at least flow from, transactions that occurred before 1986.

[9] More recently, the petitioners challenged their mother's will following her death in 2006. That will would have made the petitioners' inheritances conditional on them giving their Regent shares to Mr. Ewachniuk. Following a trial of that action, Hinkson J., as he then was, declared the will to be void, finding that it had been procured by the undue influence of Mr. Ewachniuk (*Hix v. Ewachniuk*, 2008 BCSC 811). The Court of Appeal has since dismissed an appeal from that judgment (2010 BCCA 317).

[10] In my previous Reasons for Judgment in this proceeding, I found that there was oppression in "matters of basic corporate governance", including a failure to hold annual meetings and a failure to obtain the petitioners' approval for purported consent resolutions dealing with such matters as appointing directors and waiving appointment of auditors. I also found that the petitioners had, rightly or wrongly, lost confidence in Mr. Ewachniuk and did not believe that they could trust him to manage an interest that, for them, is part of their family inheritance. At para. 31 of those Reasons for Judgment I found that:

> [i]n the circumstances, just an[d] equitable considerations entitle them to extricate themselves from the situation and invest their assets elsewhere.

[11] It is important to note that, although I have already found there to be oppression, that finding was not based on any of the transactions now at issue. The question is whether the losses now alleged by the petitioners resulted either from the oppressive conduct I previously found or from conduct that, in itself, amounts to further oppression.

IV. The Expert Reports

[12] Three expert reports have now been prepared. Glenn Balderston, a real estate appraiser, has provided an opinion on the value of the Richmond property, including the land, the leasehold water lots, and the commercial buildings. He says that, as of March 18, 2008 (the date petition was filed), the property was worth $9.2 million. By July 16, 2009 (the date Mr. Balderston inspected the property), that value had dropped to $8 million as a result of "the worldwide financial meltdown that commenced in the latter part of 2008".

[13] Mr. Balderston's report, along with other material, was considered by Vern Blair, a business valuator.

He says that, as of March 18, 2008, the total value of all issued and outstanding shares of Regent as a going concern was between $5.8 million and $9.1 million. The major reason for that wide range in value is that the court must decide whether, for valuation purposes, it is appropriate to ignore an agreement that gives Mr. Ewachniuk's other company, Richmond Boat, the right to share in the proceeds of any future sale of the marina.

[14] As of May 31, 2009, Mr. Blair says the share value of Regent was between $5.4 million and $8.3 million. (Mr. Blair refers to May 31, 2009 because that was the date of the most recent financial statements he reviewed. He assumed that the value of the property on that date was the same as Mr. Balderston found it to be a few weeks later in July 2009.) The total value of Regent's shares may be less than the value of its principle asset because a purchaser of shares does not obtain certain tax advantages that are available to a purchaser of assets.

[15] If all of the assets of Regent were to be immediately liquidated and proceeds distributed to shareholders, Mr. Blair says the total value would be between approximately $4.3 million and $6.3 million.

[16] Russell Law, a chartered accountant, was the appointed inspector. He has identified a number of transactions, payments, and commitments totalling more than $7 million that he suggests may have benefited Mr. Ewachniuk, or other parties related to him, at the expense of Regent. These transactions are what the petitioners say are further instances of oppressive or unfairly prejudicial conduct and it is that $7 million, or some portion of it, that they say should be added back to the value of Regent as a compensation amount for the purpose of determining the value of their shares.

V. The Transactions at Issue

1. Management and Directors' Fees

[17] According to Mr. Law's analysis, directors' and management fees paid by Regent to Mr. Ewachniuk and/or his wife, Patricia, in the years 2001 to 2007 totalled $1,451,622. During the same period, Regent had net losses totalling more than $750,000. The payments include $540,000 that Mr. Ewachniuk used in 2004 to pay a judgment relating to his former law practice and which he now acknowledges should not have been paid with funds from Regent. Excluding that payment, the total fees paid to Mr. and Mrs. Ewachniuk ranged from a low of $21,000 in 2001 to a high of $310,000 in 2006.

2. Vancouver Marina

[18] The most recent lease between Regent and Vancouver Marina is dated February 1, 2000, but it is similar to earlier leases going back to at least 1980. The lease provides that Regent is to receive, as rent, 50 per cent of the annual net earnings of the marina business. From 2001 through 2007, that agreement gave Regent rental income averaging about $150,000 a year. That increased to $230,000 in 2008 and $238,000 in 2009.

[19] Prior to the creation of Vancouver Marina, Richmond Boat leased the marina from Regent. A lease dated February 24, 1969, provided that Richmond Boat was to pay rent to Regent of $1,000 a month, plus 15

per cent of its gross profits.

[20] The 2000 lease provides that, in calculating its net earnings for the purpose of establishing the rent to Regent, Vancouver Marina may deduct up to $60,000 in management fees paid to Richmond Boat. These funds are apparently used by Richmond Boat to pay a salary to Mr. Short. According to Mr. Law's analysis of the financial records, Richmond Boat has, in each year since 2001, received management fees in an amount equal to the rent paid to Regent, plus $60,000. Vancouver Marina therefore paid half of its net earnings as rent to Regent, as required by the lease, and the other half to Richmond Boat as additional management fees. The total management fees paid to Richmond Boat between 2001 and 2009 were in excess of $2 million.

[21] A further provision in the lease states that any capital expenses incurred by Regent are to be repaid by Vancouver Marina. Mr. Law says that capital expenses of $415,928 were charged to Regent in 2003, but that that amount has not been repaid. He suggests that half of that amount, $207,964, is a loss to Regent.

[22] Between 2001 and 2007, Regent and Richmond Boat each advanced funds to Vancouver Marina from time to time, but not in equal amounts. Some of these advances were repaid, also in unequal amounts. No interest was charged on these advances. As of August 31, 2007, the amount owed to Richmond Boat actually exceeded the amount owed to Regent by more than $200,000. However, Mr. Law says that calculation does not include the capital expenses that have not been repaid to Regent. If that amount is included and all of the advances were subject to an interest rate of six per cent, he says that Regent is owed $93,258 more in interest than Richmond Boat.

[23] The lease also provides that, if the marina is sold during the term of the lease, Regent is to pay half of the sale proceeds to Richmond Boat. That issue will be dealt with separately as one relating to the base value of Regent.

3. Westside Heights Properties Ltd.

[24] In 1980, Regent acquired all of the shares of Westside Heights Properties Ltd. ("Westside"), a company that owned and developed property in Westbank, B.C. and which had been controlled by Ted Runnalls, the now-deceased ex-husband of one of the petitioners. Regent's acquisition of the shares is evidenced by a consent resolution of Westside's directors, signed by Mr. Runnalls. In 1992, another consent resolution of the directors of Westside, also signed by Mr. Runnalls, purported to "rectify" the share registry by transferring all of Regent's shares of Westside to Mr. Ewachniuk. The value of the shares at the time, based on future income that Westside was entitled to receive, was $171,393.

[25] By the time the Westside shares were transferred from Regent to Mr. Ewachniuk, Westside's assets consisted of its share in a partnership that had been created in 1982. The Westside Regent Ewachniuk Partnership ("WREP") was created because of a stated inability of Westside to pay its dates. The partnership agreement recited that Regent had advanced funds to Westside and had guaranteed the bank loans.

[26] Under the partnership agreement, Westside assigned its land to the partnership and Mr. Ewachniuk

agreed to pay interest on the outstanding bank loan. Profits from the development and sale of property were to be shared, with Westside receiving 25 per cent, to a total maximum of $300,000. Regent was to receive 50 per cent of the profits and Mr. Ewachniuk was to receive 25 per cent. After Westside's maximum payment was reached, all further profits were to be divided between Regent and Mr. Ewachniuk on a 2/3-1/3 basis. In his report, Mr. Law recommends that "the fairness of the consideration received for the contributions made by the various parties involved in the creation of the WREP should be reviewed".

[27] On July 1, 2000, the WREP partnership agreement was amended, with Mr. Ewachniuk signing on behalf of Regent and Westside as well as in his personal capacity. Under the revised arrangement, Regent acquired the right to all but one per cent of WREP profits, in exchange for which it paid Mr. Ewachniuk $888,861. However, the additional income Regent eventually received as a result of that transaction was only $356,974. That additional income was received in the years 2000 through 2007, after which almost all of the Westside development property had been sold.

[28] Mr. Law says that when Regent's additional income is reduced to the present value it would have had in July 2000, there is an overpayment to Mr. Ewachniuk of more than $620,000. However, Mr. Law acknowledges that he relied on hindsight to arrive at that amount. At the time of the transaction, Regent's accountants considered whether the payment represented fair market value. They concluded that the amount paid to Mr. Ewachniuk may have been high, but was still "reasonable".

[29] In 2005, WREP wrote-off a debt of $197,857 that it was owed by Mr. Ewachniuk. Mr. Law says that the debt represented drawings by Mr. Ewachniuk in excess of his partner's equity.

4. Share Transfers

[30] For some years prior to the death of the parties' mother, Sophia Ewachniuk, Mr. Ewachniuk was directing her business and investment affairs. Mr. Law says that Regent's 2001 financial statements (which were not finalized until 2005) recorded that Sophia Ewachniuk traded $702,907 worth of shares in two companies, Viva Gaming and DRC Resources, from her personal brokerage accounts to Regent to offset her shareholder's loan of $164,772 owing to Regent. That left her with a surplus balance of $538,135, which she then gifted to Mr. Ewachniuk and which was applied to fully offset his own shareholder's loan of $526,320. No documentation of the transfer has been found. The shares never left Sophia Ewachniuk's brokerage accounts and Mr. Ewachniuk says that they were held in trust for Regent.

[31] Mr. Law says the $702,907 value attributed to the shares represented their cost, but their market value as of December 2001 was only $125,875. He notes that Sophia Ewachniuk held shares in other companies and he asks why "only shares that suffered a dramatic drop in value in 2001 were chosen" to be transferred to Regent.

5. Investment Losses

[32] In 2002, Regent loaned $50,000 to a company called Big Brews at an interest rate of 24 per cent. No payments were ever made on this loan and it was written off in 2004.

[33] In 2006, Regent loaned $115,000 to a company called Kintyre Capital Inc. There was a further loan of $75,000 in 2007. No payments were noted in the 2006 or 2007 financial records and 60 per cent of the loan and interest was written off in 2007.

[34] Mr. Law says that the interest rates on these loans suggest that they were risky investments and he wonders why "Regent was investing surplus funds in apparently risky securities instead of remitting them to shareholders or placing them in more conservative investments". He says there were also write downs and losses on other securities investments totalling $85,596 in 2007. The total of all these investment losses is therefore $325,596.

6. Interest on Shareholder's Loans

[35] During the period examined by Mr. Law, Mr. Ewachniuk transferred large sums between himself and Regent through his shareholder's loan account. At the beginning of 2001, Mr. Ewachniuk owed Regent $163,520. As of August 31, 2007, the balance owing stood at $26,704. In between, there was a wide fluctuation. Mr. Ewachniuk's debt to Regent reached a high of almost $600,000 in 2005. There were also periods when small amounts were owed by Regent to Mr. Ewachniuk. No interest was paid on those loans. Mr. Law says that if the loans had attracted annual interest, not compounded, on the opening balance for each year, Mr. Ewachniuk would owe the company $41,500.

VI. The Oppression Remedy

1. Reasonable Expectations

[36] The legal rights of a shareholder in a corporation are defined primarily by the governing legislation—in this Province, the *Business Corporations Act*—and by the corporation's own articles. However, shareholders who believe they have been treated unfairly also have recourse to the statutory oppression remedy, which gives the court a "broad, equitable jurisdiction to enforce not just what is legal but what is fair": *BCE Inc. v. 1976 Debentureholders*, 2008 SCC 69 at para. 58.

[37] The oppression remedy is set out in s. 227 of the *Business Corporations Act*. Section 227(2) reads:

> (2) A shareholder may apply to the court for an order under this section on the ground
>
> > (a) that the affairs of the company are being or have been conducted, or that the powers of the directors are being or have been exercised, in a manner oppressive to one or more of the shareholders, including the applicant, or
> >
> > (b) that some act of the company has been done or is threatened, or that some resolution of the shareholders or of the shareholders holding shares of a class or series of shares has been passed or is proposed, that is unfairly prejudicial to one or more of the shareholders, including the applicant.

[38] Section 227(3) sets out a wide range of remedies that the court may award and s. 227(4) reads:

> (4) The court may make an order under subsection (3) if it is satisfied that the application was brought by the shareholder in a timely manner.

[39] In *BCE Inc.*, the Supreme Court of Canada said that oppression remedy is designed to protect the

"reasonable expectations" of corporate stakeholders, at paras. 62-3:

> [62] As denoted by "reasonable", the concept of reasonable expectations is objective and contextual. The actual expectation of a particular stakeholder is not conclusive. In the context of whether it would be "just and equitable" to grant a remedy, the question is whether the expectation is reasonable having regard to the facts of the specific case, the relationships at issue, and the entire context, including the fact that there may be conflicting claims and expectations.
>
> [63] Particular circumstances give rise to particular expectations. Stakeholders enter into relationships, with and within corporations, on the basis of understandings and expectations, upon which they are entitled to rely, provided they are reasonable in the context: see *820099 Ontario; Main v. Delcan Group Inc.* (1999), 47 B.L.R. (2d) 200 (Ont. S.C.J.). These expectations are what the remedy of oppression seeks to uphold.

(The Court in *BCE Inc.* was dealing with the oppression provision in the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44, which, unlike the B.C. statute, makes the remedy available to other parties, such as creditors, in addition to shareholders; hence, the Court's use of the term "stakeholder.")

[40] In order to obtain a remedy for oppression, the claimant must first identify the expectations that he or she claims have been violated; the court must be satisfied that those expectations were reasonable in the circumstances. The Court stated as follows at para. 72:

> [72] Factors that emerge from the case law that are useful in determining whether a reasonable expectation exists include: general commercial practice; the nature of the corporation; the relationship between the parties; past practice; steps the claimant could have taken to protect itself; representations and agreements; and the fair resolution of conflicting interests between corporate stakeholders.

[41] However, not every unmet expectation, even if reasonable, will give rise to an oppression remedy. The conduct complained of must be oppressive or unfairly prejudicial. Those terms refer generally to two different types of conduct, although they will often overlap and intermingle (at paras. 92-3):

> [92] The original wrong recognized in the cases was described simply as oppression, and was generally associated with conduct that has variously been described as "burdensome, harsh and wrongful", "a visible departure from standards of fair dealing", and an "abuse of power" going to the probity of how the corporation's affairs are being conducted: see Koehnen, [*Oppression and Related Remedies* (2004)] at p. 81. It is this wrong that gave the remedy its name, which now is generally used to cover all s. 241 claims. However, the term also operates to connote a particular type of injury within the modern rubric of oppression generally – a wrong of the most serious sort.
>
> [93] The *CBCA* has added "unfair prejudice" and "unfair disregard" of interests to the original common law concept, making it clear that wrongs falling short of the harsh and abusive conduct connoted by "oppression" may fall within s. 241. "Unfair prejudice" is generally seen as involving conduct less offensive than "oppression". Examples include squeezing out a minority shareholder, failing to disclose related party transactions, changing corporate structure to drastically alter debt ratios, adopting a "poison pill" to prevent a takeover bid, paying dividends without a formal declaration, preferring some shareholders with management fees and paying directors' fees higher than the industry norm: see Koehnen, at pp. 82-83.

[42] Although the shareholder's reasonable expectations may go beyond his or her strict legal rights, the analysis must still begin with a consideration of the legal rights of the parties, as defined in the articles. In *Safarik v. Ocean Fisheries Ltd.* (1995), 12 B.C.L.R. (3d) 342 (C.A.), Southin J.A. stressed at para. 54 that the

court is not empowered “to ignore the articles of association which, in themselves, have contractual force”.

[43] As the Court stressed in *BCE Inc.*, directors of a corporation owe a fiduciary duty to the corporation, not to individual stakeholders. At the most basic level, the reasonable expectations of shareholders must be taken to include an expectation that directors will act in the best interests of the company. The extent to which shareholders can reasonably expect more than that depends on the circumstances of each case.

[44] Where an alleged wrong is to the company, the usual remedy is a derivative action under s. 232 of the *Business Corporations Act*, rather than an oppression claim by individual shareholders. However, in a closely held corporation with a small number of shareholders, the same conduct may give rise to either or both remedies because conduct that results in a loss to the company may also have a direct impact on shareholders in their individual capacities: *Malata Group (HK) Ltd. v. Jung* (2008), 89 O.R. (3d) 36 (C.A.).

[45] The petitioners each inherited their first block of shares when they were children. They both say that their mother always told them that the shares would provide them with financial security when they were older. In my previous Reasons for Judgment, I said at para. 31:

> [31] The position of the petitioners in this case is different from that of the petitioner in *Safarik* in that neither Ms. Runnalls nor Ms. Hix has ever been actively involved in the management or the operations of Regent. However, they had a reasonable expectation that their shares would ultimately allow them to benefit from the family wealth and would provide them with financial security. These considerations become more important as the petitioners get older. The relationships within the family have clearly reached the point where Ms. Runnalls and Ms. Hix, rightly or wrongly, do not believe they can trust Mr. Ewachniuk to manage an interest that, for them, is part of their inheritance. …

[46] The equitable rights of the petitioners must therefore be considered in light of their reasonable expectation that the value of their shares would be preserved and enhanced through the preservation and enhancement of Regent’s business and assets. To some extent, those reasonable expectations have been met. The expert reports indicate that, even on the valuation most favourable to Mr. Ewachniuk, he will have to pay each petitioner at least $1 million for her shares. However, the petitioners say that they are entitled to more than that because assets and income have been diverted from Regent to Mr. Ewachniuk, his other companies, and his associates.

[47] The petitioners state in their affidavits that they have, from time to time over the years, attempted to participate in the business and management of Regent, but were rebuffed by Mr. Ewachniuk. That evidence must be considered in light of the basic fact that they are, and have always been, minority shareholders. The articles of Regent give the directors broad power to manage the company as they see fit. It therefore cannot be said that the petitioners had any reasonable expectation of being directly involved in management if the directors did not choose to involve them.

[48] The articles of Regent also specifically permit directors to enter into and profit from transactions with the company, provided that they disclose their conflicting interest. Therefore, the fact that Mr. Ewachniuk has caused Regent to enter into transactions with himself or other companies in which he has an interest cannot, in and of itself, be contrary to the petitioners’ reasonable expectations.

[49] However, the articles also require directors to be elected at each annual general meeting of the company. As a I found in my previous Reasons for Judgment, the corporate records of Regent show that from at least 1979 to at least 2004, directors were purportedly appointed by consent resolutions, which also purported to waive the need for an annual general meeting. Such consent resolutions are valid only if they are unanimous and I found that the petitioners had not signed and had not been asked to sign them. Mr. Ewachniuk cannot, therefore, rely strictly on his legal rights and powers as a director or on the legal validity of actions by the directors collectively because neither he nor anyone else was validly appointed as a director.

[50] Having said that, I cannot and should not ignore the fact that Mr. Ewachniuk has been instrumental in developing and enhancing Regent's assets and in making them profitable. I accept that development and management of a successful marina and property operation has been a lifetime project for him and that he has devoted considerable time, effort, and entrepreneurial ability to it, even though for most of the relevant time he was also carrying on a successful law practice.

[51] Mr. Ewachniuk has, for all practical purposes, acted as director and president of Regent. There is no question that, in any analysis of his conduct, he should be held to the same fiduciary standard that would apply if he had been properly appointed. In a consideration of equitable relief, fairness requires that he be given the corresponding benefit of any protection that would have been provided by the articles.

2. Timeliness

[52] The *Business Corporations Act* is clear that the court can grant relief for oppression only if the application is made in a "timely manner". That provision has no direct equivalent in the oppression remedy section of the federal statute that was before the Supreme Court of Canada in *BCE Inc*. However, the Court at para. 78 inferred a comparable requirement in that, among the factors to be taken into account in determining reasonable expectations, it included the question of whether there were any "steps the claimant could have taken to protect itself". I take that to mean that if the claimant was aware or should have been aware of the conduct in issue and did not take available steps to prevent it, the continuation of that conduct cannot be said to be outside his or her reasonable expectations.

[53] In regard to the specific timeliness provision of the B.C. statute, an application is timely if a course of conduct that constitutes oppression is continuing or if its effects are continuing: *Orr v. Sojitz Tungsten Resources Inc.*, 2010 BCSC 66. However, an oppression claim is still subject to the provisions of the *Limitation Act*, R.S.B.C. 1996, c. 266: *Jaska v. Jaska* (1996), 141 D.L.R. (4th) 385 (Man. C.A.); and *Carr v. Cheng, Dorset College Inc.*, 2007 BCSC 1693.

[54] In *Jaska*, the Manitoba Court of Appeal noted that there is little case authority on the relationship between the oppression remedy and general limitation statutes because oppression claims are "almost by definition, matters of urgency". The Court held that the Manitoba *Limitation of Actions Act*, R.S.M. 1987, applies to all proceedings, including oppression claims.

[55] In *Carr*, this Court dismissed both a derivative action and an oppression claim on a number of grounds, including the fact they had been commenced more than six years after the causes of action arose and after they came within the plaintiff's means of knowledge. The six year period referred to derives from s. 3(5) of the *Limitation Act*, which deals with actions not specifically mentioned in the *Limitation Act* or other statute as having a different limitation period. The six years run from the date the right to bring an action arose, subject to the postponement provisions of s. 6(3), which are based on the date the facts giving rise to the action come within the plaintiff's means of knowledge.

[56] In this case, the petition was filed on March 18, 2008. I have already held there to be oppression based on the facts found in my earlier Reasons for Judgment. But to the extent that the specific transactions now at issue are said to be distinct acts of oppression, I must be satisfied under s. 227(4) that the application was brought in a "timely manner". Although timeliness is a flexible concept that will depend on the circumstances of each case, the clear outer limit of what may be considered timely is the period that would be allowed by the *Limitation Act*.

VII. Analysis of the Transactions at Issue

[57] Having set out what I consider to be the governing legal principles, I now return to the specific transactions alleged in this case.

1. Management and Directors' Fees

[58] Mr. Law identified directors' and management fees paid by Regent to Mr. Ewachniuk and/or his wife, Patricia, totalling $1,451,622 in the years 2001 to 2007. Mr. Ewachniuk has conceded that a payment of $540,000 that was used to pay a judgment debt of his former law practice was improper and there is no question that that money must be returned to Regent. Excluding that amount, the average compensation was approximately $130,000 a year.

[59] In *Low v. Ascot Jockey Club* (1986), 1 B.C.L.R. (2d) 123 (S.C.), a majority shareholder was ordered to return to the company the full amount of a $480,000 payment he had caused the company to make to himself. However, Southin J., as she then was, did not say that the majority shareholder was to be permanently deprived of that money or any portion of it. She noted that there had been no directors' resolution fixing the majority shareholder's remuneration or authorizing its payment. Southin J. ordered the board of directors to meet and determine his salary and bonuses for the relevant period. Southin J.A. later referred to that distinction in *Safarik* when she said at para. 54:

> [54] …[T]he learned judge, in relying on a passage from *Low and Anderson v. Ascot Jockey Club*, *supra*, appears to have overlooked that, there, the president of the company had done that which he had no legal right under the articles to do. He had usurped the powers of the directors. I was not, save in *dicta*, addressing cases in which the alleged wrong was lawful under the articles of association.

[60] Here, there was no properly constituted board of directors because there had been no properly constituted annual meetings to elect one. If there had been such annual meetings, Mr. Ewachniuk would undoubtedly have used his majority to elect himself and his nominees to the board and the fees now at issue

would likely have been authorized. However, the petitioners would at least have been in a position to object and, if their objections were ignored, to bring their oppression action at an earlier date. Therefore, if these management and directors' fees are oppressive or unfairly prejudicial, they flow directly from the oppression in "basic corporate governance" that I have already found.

[61] The question then is whether these payments to Mr. and Mrs. Ewachniuk are so unreasonable as to constitute oppression or unfair prejudice. Mr. Law compares them to the fees charged by a commercial property manager. Assuming a fee of 15 per cent of gross rental income, he says a commercial property manager over the same period would have charged an average of about $55,600 a year. However, in cross-examination on his report, Mr. Law said he was providing those numbers for comparison purposes and was not necessarily suggesting the appropriate amount of compensation.

[62] Mr. Ewachniuk argues that his services have included his entrepreneurial skills and cannot be compared to those of a hired property manager. He says that, in recent years, he has negotiated new leases with commercial tenants, including a major new tenant, and has overseen renovations. He also says that, prior to 2000, he took very little compensation for managing Regent and, in fact, subsidized the company with income from his law practice.

[63] In giving examples of unfairly prejudicial conduct, the Supreme Court of Canada in *BCE Inc.* included "preferring some shareholders with management fees and paying directors' fees higher than the industry norm". In this case, there is no doubt that Mr. Ewachniuk has performed a management role and the minority shareholders have not. As for the value of those services, I am not persuaded that the fees charged by a commercial property manager, who has no equity in the business and may be working for a number of clients, is a valid comparison or that it constitutes evidence of an "industry norm".

[64] A proper comparison would be to the income derived by the owner/operator of a business with similar asset value, income, and cash flow. No such evidence is before me and I suspect it is an area in which it would be very difficult to identify any kind of "industry norm". In the circumstances, I am unable to say that the management and directors' fees, other than the single payment conceded to be improper, are so unreasonable as to be oppressive. The petitioners are therefore entitled to an increase in Regent's value in the amount of $540,000.

2. Vancouver Marina

a) Richmond Boat Management Fees

[65] Richmond Boat, owned by Mr. Ewachniuk and Mr. Short, owns 50 per cent of Vancouver Marina, which leases the marina portion of the Regent property. The lease requires Vancouver Marina to pay rent equal to 50 per cent of its income, after deduction of operating expenses. The operating expenses include a management fee to Richmond Boat—in effect Mr. Short's salary—of $60,000 a year.

[66] Mr. Law says that in each year that he reviewed, Vancouver Marina paid half of its net income, after operating expenses, to Regent as required by the lease. The other half was paid to Richmond Boat as

additional management fees.

[67] Mr. Ewachniuk argues that the effect of that arrangement is that Vancouver Marina pays the marina operating expenses, including a direct salary of $60,000 to Mr. Short, after which Richmond Boat and Regent, as equal owners of Vancouver Marina, split its profits. Richmond Boat receives its half as management fees while Regent receives its half as rent.

[68] I do not think that is an accurate analysis. Mr. Ewachniuk established the corporate structure under which the marina is operated by a corporate entity other than Regent. Under that structure, Regent's relationship to the operating company is that of both landlord and shareholder. Having been given that dual role, Regent is, in my view, entitled to receive income in both capacities.

[69] Vancouver Marina's true profit as a separate company is the amount remaining after payment of all expenses, including the rent it must pay to Regent. That profit is a benefit properly belonging to both its shareholders. The diversion of all of that profit to Richmond Boat, of which Mr. Ewachniuk is a 50 per cent shareholder, deprives the petitioners of the right to share in or benefit from that income and I find that to be unfairly prejudicial within the meaning of the *Business Corporations Act*.

[70] From 2001 to 2009, the total management fees paid to Richmond Boat were $2,022,568. That includes the $60,000 a year management fee to Richmond Boat (Mr. Short's salary) that is specifically provided for in the lease. Deducting that amount, the total that should have been available to be shared by Richmond Boat and Regent was $1,482,568. Regent was entitled to half that amount, or $741,284, and the value of Regent must be increased by that amount.

b) Capital Expenses and Interest

[71] Mr. Law identified capital expenses of $415,928 that were charged to Regent in 2003, but not repaid by Vancouver Marina as required by the lease. He suggests that half of that amount, $207,964, should be considered a loss to Regent and I find that the terms of the lease allow for no other interpretation.

[72] Mr. Law has calculated interest at six per cent per year on that amount. The lease requires unpaid capital to be amortized at prime plus one per cent. I have no evidence of what that would be over the relevant time but I accept Mr. Law's calculation as a reasonable estimate.

[73] Mr. Law has offset that interest against an interest balance in favour of Richmond Boat for other advances that have been made by both shareholders to Vancouver Marina. There is no requirement that related companies pay interest to each other on advances. However, if interest is to be paid on the unpaid capital, which the lease requires, Mr. Law's application of the same interest rate to other intercompany advances actually reduces the total interest that must be included in the compensation amount and achieves greater fairness to all parties. I therefore accept Mr. Law's calculated interest differential of $93,258.

[74] Mr. Ewachniuk argues that the capital cost reimbursement cannot co-exist with the interest and that the compensation amount can only include one or the other. I frankly do not understand that submission because the lease specifically requires repayment of both capital expenses and interest on any portion of

those expenses not repaid within the same year they are incurred. Therefore the compensation amount must include both the unpaid capital of $207,964 and the excess interest of $93,258.

3. Westside Heights Properties Ltd.

a) Share Transfer to Mr. Ewachniuk

[75] Regent's shares in Westside were transferred to Mr. Ewachniuk in 1992. The transfer was accomplished by a consent resolution of Westside directors, signed by Mr. Runnalls, that purported to "rectify" the share registry.

[76] This aspect of the claim provides a good illustration of why the *Business Corporations Act* requires oppression claims to be brought in a timely manner and why any oppression claim must ultimately be subject to the *Limitation Act*. Mr. Ewachniuk says that he was the rightful owner of the shares from the beginning because he personally provided financial assistance to Westside. The evidence to support or refute that claim would date from 1980 or earlier. Mr. Runnalls, who signed the transfer documents, is dead.

[77] Under the *Limitation Act*, the right to bring action in relation to this transaction arose when the transaction occurred in 1992, which means that it became statute-barred in 1998, unless the postponement provisions of the *Limitation Act* apply. The petitioners have the burden of establishing a postponement. They have given no evidence about when they became aware of this transaction or why they could not have learned of it an earlier date. I can infer from the lack of annual meetings that the petitioners generally had difficulty knowing what was happening within the company, but that general inference cannot be a substitute for the evidence required to establish postponement of the limitation period in regard to a specific transaction.

[78] I must conclude that any oppression claim arising from the transfer of Westside shares to Mr. Ewachniuk is barred both by the *Limitation Act* and the timeliness requirement in s. 227(4) of the *Business Corporations Act*.

b) The Partnership

[79] Mr. Law recommends that "the fairness of the consideration received for the contributions made by the various parties involved in the creation of the WREP should be reviewed". That would involve the court in reviewing the fairness of a transaction that took place almost 30 years ago. Such a review is clearly barred by the *Limitation Act*.

[80] The same applies to the sale of Mr. Ewachniuk's shares in the partnership to Regent, which occurred in 2000. The limitation period expired in 2006, subject only to the question of postponement. It may be that this transaction came to light only with Mr. Law's inspection, but the petitioners, who have the burden of proof in establishing any postponement, do not say so in their affidavits. The petitioners argue that Mr. Ewachniuk should never have owned those shares in the first place, but I have already held that claim to be out of time.

[81] In any event, the alleged benefit to Mr. Ewachniuk is said to be the difference between the value placed on the shares in 2000 and the subsequent income received by Regent as a result of property sales through 2007. The fact that subsequent sales did not justify the price does not necessarily mean the initial price was unfair at the time it was fixed. That question could only be determined with evidence of property appraisals and the general real estate market at the time. No such evidence is before me.

[82] The valuation was reviewed in 2001 by Regent's accountants, who considered it reasonable. In the absence of any evidence to suggest that Mr. Ewachniuk was not entitled to rely on that opinion, I cannot conclude the transaction was oppressive.

[83] The final issue relating to Westside is the 2005 write-off of a $197,857 debt that WREP was owed by Mr. Ewachniuk. Regent was the 99 per cent equity partner in WREP at the time. Mr. Ewachniuk says the write-off was reasonable because WREP suffered significant losses as a result of alleged improper activity by the late Mr. Runnalls. Much of the evidence in support of that allegation consists of hearsay, or evidence given at discovery in an action against Mr. Runnalls by a person who is not involved in this matter. No submissions have been made as to the basis for the admissibility of that evidence in this proceeding.

[84] Even if the allegations made against Mr. Runnalls were to be considered, I fail to see how they provide any basis for the loan write-off Mr. Law has identified. Regent's value should therefore be increased by $195,878, being 99 per cent of the amount written off.

4. Share Transfers from Sophia Ewachniuk

[85] Mr. Law has identified a loss to Regent of $577,032 arising from the transfer to Regent of shares in two other companies from Sophia Ewachniuk, described in paragraph 30 above. This loss is the difference between the book value of the shares as of December 31, 2001, and their market value as of that date. Mr. Ewachniuk's affidavit defends the purchase of these shares as having been a reasonable investment at the time. He says that these shares always belonged beneficially to Regent and he has produced a trust declaration signed by his mother and dated May 1, 2001. This document refers to the "past acquisition" of the DRC shares and to the accumulation of Viva Gaming shares.

[86] Some of the shares were purchased in 2000, but there is nothing in Regent's financial statements for that year indicating the existence of any beneficial interest in these shares. Neither the trust declaration nor anything else provides a satisfactory explanation of why the shares, even if beneficially owned by Regent, were then transferred to Regent's legal ownership at a value far in excess of what they were worth at the time of the transfer. The net effect of the transaction was to benefit Mr. Ewachniuk by offsetting his shareholder's loan.

[87] I find that this transaction was not in the interest of the company and unfairly disregarded the interest of the minority shareholders. Although this transaction is recorded in the 2001 financial statements, those financial statements were not completed until 2005. For purposes of the *Limitation Act* and the timeliness requirement, the petitioners could not be expected to have any means of knowledge prior to the production of the financial statements. The value of Regent must be increased by the amount of $577,032 as noted by

Mr. Law.

5. Investment Losses

[88] Mr. Law identified investment losses on what he says were apparently risky loans and investments. Mr. Ewachniuk responds that Regent has always engaged in risky or speculative investments, some of which have been very successful.

[89] Whatever Regent's investment track record may be, Mr. Ewachniuk is quite correct to point out that investing in securities and lending money are included in the objects for which the company was incorporated as set out in the original memorandum of association. There is nothing in the articles that restricts Regent to any particular type of investment or that prohibits investments of a speculative nature.

[90] The petitioners say that the loans were made to companies whose principals were friends and business associates of Mr. Ewachniuk. Mr. Ewachniuk admits that. However, there is no evidence that he personally benefitted from those loans or that he failed to consider Regent's interests when making those investments. The investments were obviously risky, but there appears to have been an opportunity for substantial gain, although unfortunately never realized. I cannot say that these transactions, at the time they were made, constituted oppression of the minority shareholders.

6. Interest on Shareholder's Loans

[91] As said in paragraph 35 above, Mr. Law identified transactions that took place from time to time in Regent's shareholder's loan account and has calculated unpaid interest on those transactions at $41,500. Interest on a shareholder's loan, as on any other loan, is a matter of contract. I have been referred to no provision in the articles or the governing legislation that requires a company to charge interest on loans to its majority shareholder.

VIII. The Compensation Amount

[92] I have found some, but not all, of the transactions at issue to be oppressive. The amount of those transactions should be added to the value of Regent for the purpose of any purchase by Mr. Ewachniuk of the petitioners' shares. Those transactions and the amounts involved are as follows:

Funds taken from Regent, charged as management fees, to pay unrelated personal debt	$540,000
Loss of dividends from Vancouver Marina resulting from excess management fees paid to Richmond Boat and Yacht	$741,284
Unpaid Vancouver Marina cost reimbursement	$207,964
Net interest owing on unpaid capital costs and other advances to and from Vancouver Marina	$93, 258
Write-off of debt to WREP	$195,878

Loss on share transfers	$577,032
Total:	**$2,355,416**

IX. Base Value of Regent

[93] The compensation amount that I have fixed must be added to the base value of Regent. A number of issues have been raised in regard to that valuation.

1. The Sale Proceeds Clause

[94] The lease between Regent and Vancouver Marina provides that if the marina portion of the property is sold during the term of the lease, Regent is to pay half of the sale proceeds to Richmond Boat. Although the 2000 lease expired this year, it gave Vancouver Marina the right to insist on renewal for a further ten years on the same terms. Based on the various valuation scenarios provided by Mr. Blair, giving effect to that provision reduces the value of Regent by an amount in the range of $3 million. The petitioners argue that the provision should be ignored; they say there is no business reason for it and its effect is to divert some of the proceeds of sale of a Regent asset to Mr. Ewachniuk.

[95] Counsel for Mr. Ewachniuk argues that Richmond Boat, which manages the marina, should be entitled to substantial compensation if Regent disrupts its business by selling the underlying property. That argument might have some validity if Richmond Boat was an arms-length company. Here, Mr. Ewachniuk controls all of the companies involved. He could certainly prevent Regent from doing anything to prejudice either Vancouver Marina or Richmond Boat, so there is no real risk from which Richmond Boat needs to be protected or for which it needs to be compensated.

[96] Counsel also argues that the marina has been a lifelong project for both Mr. Ewachniuk and Mr. Short and suggests that they—and in particular Mr. Short—may not have worked as hard as they did to make the marina successful in the absence of that provision. Mr. Short has sworn an affidavit in these proceedings and, if the sale proceeds clause had been something he required or relied upon, I would have expected his affidavit to say so. It does not.

[97] Although the evidence supports the assertion that the existence of the sale proceeds clause is unfairly prejudicial, I cannot ignore the fact that it has been part of the arrangement since at least 1980. The petitioners do not say when they became aware of it. If they were initially unaware of it, they certainly had the means to gain that knowledge and take steps in 1986, when the previous oppression action was commenced and later abandoned. For purposes of the *Limitation Act*, the right to bring an action arose no later than 1986. Any claim in relation to it is barred by the *Limitation Act* and by the timeliness provision in the *Business Corporations Act*.

[98] The valuation must therefore proceed on a basis that recognizes that arrangement and assumes that Regent would receive only 50 per cent of the proceeds from any sale of the marina.

2. The Condition of the Marina

[99] The value of Regent is based primarily on the underlying property, including the marina, which was appraised by Mr. Balderston. Mr. Ewachniuk argues that Mr. Balderston has failed to appreciate the capital costs that will be required in the future for dredging and for replacement of marina floats and other facilities that are nearing the end of their useful life.

[100] Mr. Balderston's report does in fact note that some of the docks show signs of cracking and will "require considerable ongoing maintenance to extend their lives." This observation does not appear to have had any direct impact on his valuation opinion. The question of whether it was or should have been a significant factor could have been answered through cross-examination of Mr. Balderston or by obtaining the opinion of another appraiser. Mr. Ewachniuk, through his counsel, had the opportunity to do either or both of those things and, for whatever reason, chose to do neither.

[101] Several months after this application was heard, Mr. Ewachniuk applied to adduce new evidence in the form of two letters from H. Wayne Stoyko, a mechanical engineer with extensive experience in the marine industry, including management of dredging and dock maintenance operations.

[102] The petitioners argue that this evidence should not be considered, in part because Mr. Ewachniuk has failed to show that this evidence was not or could not have been made available earlier. I will not deal with that issue because, even if the evidence is admitted, it is of no assistance.

[103] A large part of Mr. Stoyko's letter consists of criticism of Mr. Balderston's appraisal and its methodology. Mr. Stoyko is not an appraiser and nothing in his stated training and experience establishes qualifications to provide an opinion in that area. He suggests that the appraiser should retain a marine surveyor to assess the value of the asset. Such an expert may well have been of assistance, but no one has retained one and Mr. Stoyko has no stated qualifications in that area.

[104] Mr. Stoyko estimates a total cost of more than $12 million for dredging and for replacement of the entire marina. I accept that he is qualified to estimate the costs, if one assumes that the work will be necessary. An opinion as to whether any or all of that work is necessary and, if so, when and over what period it needs to be done, could presumably have been provided by the marine surveyor to whom Mr. Stoyko refers. The recommendation that such an expert be retained is, in effect, an admission by Mr. Stoyko that he does not have qualifications to give that opinion. There is therefore no evidence establishing the need for these large capital expenditures and no evidence of any current plans to incur them.

[105] Further, if so much repair and replacement has become necessary, Mr. Ewachniuk has failed to explain why Vancouver Marina's operating profit has not been spent on ongoing upgrades and repairs rather than simply being paid out to Richmond Boat as additional management fees. I therefore accept Mr. Balderston's opinion as the only evidence on the value of the property.

3. The Valuation Date

[106] Mr. Blair, the business valuator, has valued the issued and outstanding shares of Regent as of March

18, 2008—the date of the petition—and as of May 31, 2009. There was a substantial decrease in value between those two dates, the result of a general economic decline. The petitioners seek valuation based on the earlier date, saying that the date of the petition is the usual date for valuation. Mr. Ewachniuk says it would be unfair to ignore the decline in value caused by worldwide economic conditions.

[107] In arguing for valuation as of the date of the petition, the petitioners rely on the trial judgment in *Safarik*, which referred to the decision of the Court of Appeal in *Oakley v. McDougall* (1987), 14 B.C.L.R. (2d) 128 (C.A.). However, the trial judge in *Safarik* made clear that the choice of a valuation date must be based on what is equitable and suitable in the circumstances of the particular case.

[108] In *Livramento v. Millennium Powder Coating*, 2007 BCSC 1282, the company's assets included real property that had increased in value since the date of the petition. The Court said a valuation based on the date of the petition would "take from the plaintiff and unfairly reward the defendant" with the increase in property values (at para. 58).

[109] This case represents the converse situation. The decline in value since the date of the petition is not the result of continued oppression or the conduct of any of the parties. If the petitioners had received the value of their shares on the date of the petition, they would presumably have purchased other investments that would also have been at risk from the general economic decline. It would not be fair to now place the burden of those changes on only one party. I therefore find May 31, 2009 to be the appropriate valuation date.

4. Assessment of the Base Value

[110] According to Mr. Balderston the value of the Regent property, as of mid-2009, was $8 million. This is based primarily on the income approach to appraisal, which considers the net income generated by the property and the capital value of an asset generating that income. He also applied the direct comparison approach, which considers prices actually paid for other comparable properties, but gave it relatively little weight.

[111] Mr. Blair relied on Mr. Balderston's report in arriving at the total value of all issued and outstanding shares of Regent. When using the May 31, 2009 valuation date and giving effect to the sale proceeds clause in favour of Richmond Boat, Mr. Blair puts that value at between $5,460,000 and $5,762,000. The larger amount includes a tax refund that would be received if Regent sold its assets at some future point. There is no evidence of any plans to sell off assets, but given the ages of Mr. Ewachniuk and Mr. Short, that must be seen as a possibility. I therefore except the midpoint of Mr. Blair's range—$5,611,000—as the base market value.

X. Final Assessment of Value

[112] For purposes of fixing the price of the petitioners' shares, the current value that I have adopted from Mr. Blair's report ($5,611,000) must be increased by the compensation amount of $2,355,416 arising from the transactions I have found to be oppressive. The total of those amounts is $7,966,416.

[113] However, the authorities make clear that in fixing a value for purposes of an oppression remedy, the task is not simply to determine the market value, but to determine what is fair in the circumstances: *Diligenti v. RWMD Operations Kelowna Ltd.* (1976), 1 B.C.L.R. 36 (S.C.). The court must make allowance for future prospects, as seen from the valuation date and any effect on the value of the shares caused by the oppression itself: *Oakley*.

[114] In this case, the compensation amount includes funds taken or diverted from Regent over many years. Regent lost the income that could have been generated from investment of those funds, as well as possible increases in the value of assets in which those funds might otherwise have been invested. Those considerations require some increase beyond what I have found to be the pure market value.

[115] Taking into account all of the circumstances and the guidance provided by the expert reports, and recognizing that this can never be an exact science, I conclude that a fair value of all Regent shares is $8.5 million. Based on their percentage interest, each petitioner therefore holds shares worth approximately $1.6 million and I fix that as the amount which Mr. Ewachniuk must pay to each of them to acquire all of their shares.

XI. Interest

[116] An order requiring the purchase of shares as a remedy for oppression is not a pecuniary judgment for purposes of the *Court Order Interest Act*, R.S.B.C. 1996, c. 79, but the court may deem the sale to have taken place at an earlier date and order interest on the purchase price to run from that date until completion: *Safarik*. In this case, it is appropriate that the purchase price attract interest at registrar's court order interest rates from what I have found to be the valuation date of May 31, 2009.

XII. Conclusion and Order

[117] I order that, pursuant to s. 227(3)(h) of the *Business Corporations Act*, the respondent, A. Theodore Ewachniuk, purchase all shares in Regent Holdings Ltd. held by the petitioner, Mary Anne Runnalls, for the sum of $1.6 million plus interest at registrar's rates from May 31, 2009 to the date of completion.

[118] I further order that Mr. Ewachniuk purchase all shares in Regent Holdings Ltd. held by the petitioner, Neeva Gayle Hix, for the sum of $1.6 million plus interest at registrar's rates from May 31, 2009 to the date of completion.

[119] If Mr. Ewachniuk fails to purchase the petitioners' shares within 90 days of the date of these Reasons for Judgment, the petitioners may apply for an order liquidating the company pursuant to s. 227(3)(o). Mr. Ewachniuk may, at the same time, apply for an extension of time to complete the share purchase. Whether such an extension is granted will depend in large part on the nature and sufficiency of his efforts to obtain financing, if necessary, and complete the purchase during the initial 90-day period.

[120] Counsel for the petitioners seeks an order that would also fix the $1.6 million purchase price as the amount each petitioner would receive from the proceeds of any future liquidation. While that may ultimately be the appropriate order, further issues may arise during or as a result of the liquidation process. The

division of proceeds will be better and more fairly determined if and when liquidation takes place. However, I stress that a portion of the $1.6 million purchase price represents the petitioners' share of what I have held to be the compensation amount arising from specific transactions and it is difficult to imagine circumstances under which that portion would be varied or reduced.

[121] The petitioners seek special costs against Mr. Ewachniuk. That issue was not fully argued and, because further proceedings may still be necessary, I am of the view that all costs issues should be deferred until this matter is truly concluded.

[122] I will remain seized of any further applications.

"N. Smith J."