



S H E A N E R L A N D

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INSIGHTS

Liquidation and Dissolution of a Corporation as a Remedy for an Aggrieved Shareholder

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In the recent past, I wrote about the oppression remedy. See "[A Brief Overview of the Oppression Remedy](#)" (April 2017) and "[Director Liability in Oppression Actions](#)" (August 2017). Those articles serve as a helpful, but not necessary, lead-in to this article, which focuses on an alternative way by which an aggrieved shareholder may wish to exit an incorporated business absent oppression or shareholder agreement terms that may be utilized. On that latter topic, have a look at my articles on "shot-gun" clauses, "[Shot-Gun Clauses: Important but Draft Carefully and Use with Care](#)" (July 2017), and on rights of first refusal, "[ROFR Rights and Obligations](#)" (October 2017).

This article focuses squarely on the ability of an aggrieved shareholder to seek a liquidation and dissolution of the corporation, using the recent British Columbia decision of [Sohi v. Best Choice Blueberry Farms](#) ("*Sohi*") as a case on point.

Sohi involves an applicant who was in a blueberry farm business with his two brothers. At some point in time, the parties had a falling out, with the brothers voting to remove the applicant as a director. The reasons for that vote are not important for the purpose of this article. Suffice it to say that the brothers felt they have a valid reason and that the applicant disagreed. The applicant filed a lawsuit against the brothers claiming that he was oppressed as a shareholder because (among other things) of the way the removal vote proceeded and more fundamentally because his being a director formed an integral part of his shareholder rights. He sought a buy-out of his shareholding by his brothers. The Court dismissed the oppression claim on the basis that it had insufficient evidence before it to find oppression and instead turned its focus to the applicant's alternative argument for liquidation and dissolution of the corporation.

Legislation allows for a liquidation and dissolution of a corporation (also known as a "wind up") if doing so is "just and equitable". Although this standard affords a court broad discretion, judges have ruled consistently that such discretion must be used carefully in recognition of courts' reluctance to interfere in the internal workings of corporations.

The "partnership analogy" is one category where a court may be inclined to order a wind up if deadlock among the parties ensues. The applicant needs to prove that the shareholders entered into and ran the business as if they were partners. This can often be established where the shareholders had a pre-existing personal relationship (family or friends) or actually did have a partnership which they ultimately incorporated. (See my article on partnerships generally, "[The Elements of a Partnership](#)", December 2017).

Once the partnership analogy is made out, the applicant must then establish that there was a breakdown of the relationship among the shareholders such that they no longer had mutual trust and confidence. The applicant will be aided in making out the claim if it cannot be said that he or she is

using the winding up device simply as a means to monetize an investment. There has to be a real breakdown in the shareholders' relationship.

In *Sohi*, the Court found that a winding up was just and equitable. Interestingly, however, the Court honed in on the fact that the farm business was functioning and successful and that the brothers had no desire to quit. The Court, in the result, found it most appropriate for there not to be a winding up but instead for the applicant's shares to be purchased by the two brothers.

Invitation for Discussion:

If you would like to discuss this blog in greater detail, or any other business litigation matter, please do not hesitate to contact [Mohamed Amery](#).

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Note that the foregoing is for general discussion purposes only and should not be construed as legal advice to any one person or company. If the issues discussed herein affect you or your company, you are encouraged to seek proper legal advice.