

**IN THE SUPREME COURT OF BELIZE, A.D. 2016**

**ACTION NO: 6 OF 2016**

**IN THE MATTER OF VILLAS AT DEL RIO LIMITED**

**AND**

**IN THE MATTER OF SECTION OF 130(1)(F) OF THE COMPANIES ACT**

**CHAPTER 250 OF THE LAWS OF BELIZE**

**AND**

**IN THE MATTER OF THE COMPANIES (WINDING UP) RULES 1909**

**Keywords:** Petition for the Compulsory Winding-Up of a Private Company; Just and Equitable; Disputes Between Shareholder and Company; Proper Title to Units; Proper Books of Accounts; Denial of Access to Common Areas; Articles of Association of Company; Unjust Restriction on Ownership and Transfer of Interest; Unfair and Unreasonable Keeping Shareholder out of Running of Business; Misconduct by Director; Probity, Good Faith and Mutual Confidence; Costs of Winding-Up.

**Before the Honourable** Mr. Justice Courtney A. Abel

**Hearing Dates:** 15<sup>th</sup> November 2017.  
17<sup>th</sup> November 2017.

**Appearances:**

Mr. Said Musa, SC, for the Petitioner.

Mrs. Ashanti Arthurs Martin for Villas at Del Rio Limited.

## WRITTEN JUDGMENT

Of an Oral Judgment delivered on the 17<sup>th</sup> day of November 2017

### Introduction

- [1] This is an opposed, indeed strongly contested, Petition for the compulsory winding up of a private company, Villas At Del Reo Limited (“the company”).
- [2] The Company, which was incorporated in Belize on the 12<sup>th</sup> June 2003, then owned Lots 12 and 13 on Del Rio Estate, San Pedro Town, in the well-known, and popular Tourist Island, Ambergris Caye, Belize District, Belize (“the Lands”).
- [3] At the above location the Company has since then carried on the business of a resort hotel, restaurant, bars and coffee shops, called Villas Del Rio.
- [4] The Petition herein was filed on the 23<sup>rd</sup> February 2016 by a husband and wife, David and Alexandra Hauptli, which persons were then alleging that they were shareholders of the Company and were therefore entitled, as shareholders, to file this Petition. This has since changed, as will be observed later, as the David Hauptli has been substituted as the sole Petitioner.
- [5] The basis for the winding up of the Company is stated to be that it is generally just and equitable for it to be wound up.
- [6] The specific grounds raised by the Petitioners for the winding-up may be summarized as follow:
- (a) That the Petitioners have not be granted proper title to the Units which they purchased as they were led to expect by the Developers?
  - (b) That no proper books of accounts nor proper accounts have been kept nor have they been presented to the Petitioners nor have they been allowed to inspect such books, and no disclosure has been made by the Company as to the basis or how water bills had been charged for etc?
  - (c) That the Petitioners, and their guests, have been denied access to common areas of the resort, namely the Bar known as ‘Cocos Locos’

and that the Petitioner's view and their unimpeded access to the sea was interfered with?

- (d) That by Articles of Association of the Company which have unjustly, and arbitrarily been imposed against the Petitioners, which constitute an unjust restriction on the ownership and transfer of their interest, and have even threatened to have them removed as shareholders without compensation thereby depriving them of security of tenure of the Petitioners use of their Unit?
- (e) That the Petitioners have been unfairly and in breach of duty, and while discriminating against them, been kept out of the running and decision-making of the Company?

[7] The other members of the company, representing 9 out of 10 blocks of shares ("the Opponents"), apparently, consider, that the Company ought not to be wound up by this court.

### **Issues**

- [8] The questions raised for the determination of this court, as raised by the parties, is whether the petitioners have proved any or all of the following issues, and should wind up the Company:
- (a) Whether the Petitioners have not be granted proper title to Units which they purchased?
  - (b) Whether proper books of accounts and accounts have not been kept nor presented to the Petitioners etc.?
  - (c) Whether the Petitioners have been denied access to common areas of the resort?
  - (d) Whether Articles of Association of the Company have unjustly been imposed which restrict the use of the Petitioners use of their Unit?
  - (e) Whether the Petitioners have been unfairly and in breach of duty to them been kept out of the running of the Company?
  - (f) Whether in all the circumstances of the case it is just and reasonable to wind up the company?

## **Background**

- [9] The Company was incorporated in Belize on 12<sup>th</sup> June 2003. It has nominal paid up capital of \$100.00 divided into 10 blocks of 10 shares at \$1.00 each. A share is held by 10 members each of whom holds 10 shares.
- [10] The Land, under the system of lands registration which has been established in the San Pedro, is now known respectively as Parcels 5216 and 5217, Block 7 in the San Pedro Registration Section. It houses a 'condominium' type development known locally as "Bermuda Palms".
- [11] The 'condominium' development comprises 10 units, and each block of 10 shares in the Company gives a member the exclusive right to possess, occupy and exercise all ownership rights in relation to a specific unit at Bermuda Palms. The Petitioner exercises such ownership in relation to Unit 5.
- [12] The development is said to be a condominium type development because by its Articles of Association the Company is structured to imitate or mimic a strata title arrangement but with the use of shares in the Company instead of by using any strata title arrangement that has been established by law.
- [13] The Petitioner asserts that he is a member of the Company and has made several allegations in support of his Petition.
- [14] Undoubtedly there has been an on-going series of disputes between the initial Petitioners and the management of the Company over the years, some of which are set out in the Issues above, which has obviously resulted in an on-going and bitterly acrimonious relationship between them.
- [15] It is indeed unfortunate and regrettable that these disputes have not only been confined to them but has affected third parties, including tourists and/or guests of the development. An example of one such situation is set out in an email dated 30<sup>th</sup> July 2013 from one Lillian Wendt to the Kama Lounge. In this email it is alleged by the writer that she and her family experienced and witnessed shouting and swearing between the staff of Coco Lounge and of an adjacent bar serving the writer and her family, which

obviously made the latter feel uncomfortable and unwanted; and apparently also resulted in the complainant's daughter being physically assaulted.

[16] The dispute has also involved an allegation by the Opponents of the Petition that the Petitioner is not a member of the Company and has no standing to present this Petition.

[17] Concerning this question of standing, initially shares in the Company were issued to the Hauptli Family LTD Partnership U.A.D being supposedly the name of an overseas family Trust. This name was provided by the Petitioners and/or the mother of David Hauptli, who together at first purported to and were accepted by the Company as exercising the rights of such trust.

[18] But it now appears, as testified by Mr. Hauptli, that no such trust had been established and as a consequence on the 21<sup>st</sup> November 2016 this court, on the application of the Mr. David Hauptli, ordered that said David Hauptli be substituted as Petitioner in place of this trust.

[19] In any event it is now clear to this Court that the Hauptli family, or some of them, are the owners of a single block out of 10 shares in the Company, and have been so acknowledged and permitted to attend its meetings, and are entitled to bring this Petition, by order of this court, and that by a letter dated 25<sup>th</sup> July 2010 David Hauptli had been authorised to act on behalf of this family.

[20] Therefore having seen and heard the witnesses and examined all the evidence in the case, this court has summarily determined that for the purpose of these proceedings only, it is prepared to accept that David Hauptli is entitled to bring this Petition in relation to the shares in the Company which are owned by him and/or his family.

[21] Concerning quite another question which has been raised by the Petitioner, this court notes a letter dated 2<sup>nd</sup> July 2014 by the Ambergris Caye Local Building Authority by which the Company, via Steve Blair, was notified, that it had constructed an illegal structure without its approval namely an extension to a bar, and to remove such structure. As a result of this letter,

written by an independent person to the present disputes, this court summarily considers that on balance it considers that such an extension was built.

- [22] By an email dated 17<sup>th</sup> October 2015 Cheryl Bowen notified Barbara and Dave Hauptli that because of their failure to provide certain documentation Central Bank has requested that a letter be sent to the effect that the Hauptli trust “*be removed as a shareholder and eliminated from the Company Registry*” and that “*Central Bank will then approve the nine shareholders that have been compliant and the corporation as a whole.*” Such a letter was then stated that “*if you are removed as a shareholder, you lose exclusive rights of occupancy, possession and governance*”. Specific language was indicated in the Articles of Association to address this issue.
- [23] Concerning the question of whether the Petitioners have been granted proper title to the Units which they purchased, as they were led to expect by the Developers, this court summarily has determined, having seen and heard all of the witnesses and looked at all of the evidence, that no assurance was given to the Petitioner or any of the Hauptli family, that such title would be granted to any of them.
- [24] This court has also summarily determined that the issue of the company moving to strata title, after the laws were changed to permit the same (apparently passed in 1990 and commenced in 1994), had undoubtedly been discussed by the shareholder of the Company, home owners of the Development. This court is also satisfied, on the evidence, that it is the decision of the Company that the Company should not convert their ‘condominium’ arrangement to strata title; or certainly that for the time being, such conversion ought not to take place.
- [25] Having seen and heard the witnesses and considered all the other evidence in the case, this court has also summarily determined that the Petitioners have not been unfairly and in breach of duty, kept out of the running and decision-making of the Company. This is so despite the Company, or its servants or agents, because of the on-going disputes between the

Petitioner and his family and the Company on the other hand, may have, perhaps, even unwisely, been discriminated against, but that such discrimination was not necessarily in breach of duty.

- [26] The Opponents of this Petition contend that the other allegations made against the Company and its officers are untrue and unsubstantiated, that the Petition is unmeritorious, and requests that the Court ought not to exercise its discretion to Order the winding up of the Company.

### **The Court Proceedings**

- [27] The Petition herein was filed by Hauptli Family Partnership UAD, Ltd. on 23<sup>rd</sup> February 2016 seeking an Order that Villas at Del Rio Limited (“the Company”) be wound up pursuant to section 130(1) of the Companies Act, Chapter 250 of the Laws of Belize.
- [28] The Petition was verified by an Affidavit of David Hauptli and Alexandra Hauptli sworn to and filed on the 23<sup>rd</sup> February 2016.
- [29] A Notice of Intention to Appear was filed on behalf of Eight (8) members of the Company who oppose the winding up of the Company.
- [30] An Affidavit of Newel Bowen opposing the winding up Petition was sworn to and filed on the 1<sup>st</sup> April 2016.
- [31] This Petition was managed by the court from around 14<sup>th</sup> April 2016 and in the process audited account for 2016 was ordered. The Petitioner’s shares were also ordered to be valued, which apparently was done, and the contested Petition went to mediation. The mediation did not result in a settlement of any of the issues. The audited accounts and the valuation of the Petitioner’s shares were never presented to the court.
- [32] A further Affidavit of David Hauptli, verifying the Petition was sworn to on the 20<sup>th</sup> April and filed on the 21<sup>st</sup> April 2016.
- [33] An Affidavit of Cheryl Bowen, a Director and Secretary of the Company, was sworn to and filed in opposition to the Petition on the 28<sup>th</sup> April 2016.
- [34] An Affidavit of Louis Cappello, one of the initial developers of the Lands, was also sworn to and filed by the Petitioners on 6<sup>th</sup> May 2016 to verify and in support of the Petition.

- [35] On the 31<sup>st</sup> October 2016 the Chief Justice ordered that the Register of Members of the Company be rectified by striking out the name of Hauptli Family Limited. Partnership U.A.D., as the holder of one Block of 10 Shares in the Company, and by inserting in lieu thereof the name of David Hauptli, as the holder of the said block of 10 Shares in the Said Company. By this decision, which this court considers had the effect of being retroactive, and therefore relates back to the original filing of the Petition. As a result this court has concluded that the very recently, and this court considers unduly late jurisdictional point being taken or raised by the Opponents, after all the evidence in the case has been taken, which was based on certain statutory time limits, is bad and cannot therefore be upheld.
- [36] On the 21<sup>st</sup> November 2016 it was further ordered by this court that David Hauptli be substituted as Petitioner herein in place of Hauptli Family Partnership U.A.D. Ltd.
- [37] A further Affidavit of David Hauptli, verifying the Petition was sworn to by him on the 30<sup>th</sup> November 2016, and filed herein on the 2nd December 2016.
- [38] On the 16<sup>th</sup> December 2016 a further Affidavit of Cheryl Bowen, in opposition to the Petition for winding up, was sworn to and filed by her on the 19<sup>th</sup> December 2016.
- [39] An Affidavit of Christian Barenfanger, the other developer of the Lands, was also filed 10<sup>th</sup> October 2017 in opposition to the Petition.
- [40] An Affidavit of Mickey Sparks was also filed 10<sup>th</sup> October 2017 in opposition to the Petition.
- [41] The Petition was heard on the 15<sup>th</sup> November 2017 on which occasion all persons, except for Alexandra Hauptli, testified, with David Hauptli and Louis Cappello being called by the Petitioners.
- [42] This court found the evidence of Mr. Christian Barenfanger and Mr. Louis Cappello to be of particular assistance in arriving at its conclusions, as they were the original developers, and were somewhat impartial persons giving evidence (as this court so found them to be).



**Whether proper books of accounts and accounts have neither been kept  
nor presented to the Petitioners etc?**

- [43] Articles 61- 63 of the Articles of Association of the Company, provides for true accounts in accordance with approved accounting standards to be kept with respect to all sums of money received and expended by the Company and of the assets and liabilities of the Company. Also that such books of accounts, which may be audited, to be kept at the registered office of the Company and available for inspection.
- [44] Since the institution of this Petition on the 23<sup>rd</sup> February 2016, as already noted, audited accounts have been prepared and presented in 2017 by the Company for the year 2016 only.
- [45] This court has concluded having seen and heard the witnesses and having considered all the evidence in the case, that proper books of accounts may not have been kept by the Company until said audited accounts were presented as aforesaid, after the filing of the Petition herein.
- [46] This court also considers, on a balance of probabilities that prior to such Audited accounts, proper accounts may not therefore have been kept by the Company and indeed, as a result, were likely not presented to the Petitioner.
- [47] This court also considers that, as required by the Articles of Association, neither has the Petitioner, nor his family, been allowed to inspect books of accounts prior to accounts being presented above; and neither has any proper disclosure been made by the Company to them as to the basis of how water bills having been charged.
- [48] All of such conclusions, this court finds, are in violation of Articles 61- 63 of the Articles of Association of the Company.
- [49] Therefore this court considers that as a result of the conclusions which it has reached, that but for the filing of the Petition herein the provisions of Articles 61- 63 of the Articles of Association of the Company may not have been complied with, or may have continued not to be complied with, and

therefore by this Petition the Petitioners have achieved a not insignificant result.

**Whether the Petitioners have been denied access to common areas of the resort?**

- [50] Articles 68 – 69 of the Articles of Association of the Company, provides that each member is guaranteed the Exclusive Rights of Occupancy, possession and Governance to his Villas; including certain common rights to land and common improvements thereon; are ensured the peaceful enjoyment of the property; are entitled to promote and protect the value of the property; all of which rights may not be separated by any part, nor for any reason, from the shares to which they are attached, and are to be transferred immediately and entirely at the time of registration of the name of a Member in the register.
- [51] This court has already summarily determined that the Company had illegally constructed an extension to a bar, and has also summarily determined that on balance it considered that such an extension was built.
- [52] As a result of the last finding this court has concluded that the Petitioner's access or path to what was previously established as a common area, may have been impeded.
- [53] In relation to the allegation by the Petitioner of his denial of common and un-impeded access, this court therefore considers that Articles 68 – 69 of the Articles of Association of the Company, may have been violated and that the Petitioner, and his guest's guaranteed and exclusive rights of occupancy, possession to his Villa 5, his common rights to land and common improvements thereon, and his right to enjoy the peaceful use of his property, may have been violated. Also that as well the same may have resulted in the Company not promoting and protecting the value of the Petitioner's Villa, as ought to have been done, or as required by the said Articles.
- [54] The evidence in relation to this issue is otherwise somewhat conflicting and confusing. Therefore having and seen and heard the witnesses this court

is unable to otherwise conclude that the Petitioners, and their guests, may, as a result of the erection of this structure, have been denied access to common areas of the resort, namely the Bar known as 'Cocos Locos', and that the Petitioner's view, and their un-impeded access to the sea, may have been impeded.

[55] However from the email from Lillian Wendt, of the 30th July 2013, and the events already noted in the background facts, this court has noted with some considerable concern, and has concluded, that such events likely arose from the ongoing dispute which had been taking place between the Company (by its officers) and the Petitioner and his wife, which disputes set the stage or provided the climate for such events.

[56] This court finds the situation described in the said email of Lillian Wendt, totally unacceptable and disturbing and would attribute a certain part of culpability to the Company, and the climate in relation to such dispute which it failed to properly manage, by failing to ensure that it did not spill into a situation which would affect guests of the Petitioner, as lawful and proper users of the common areas of the resort.

[57] Also this court has also concluded, having seen and heard the witnesses and considered all the evidence in the case, that the Company by its servants and/or agents, namely Cheryl Bowen, had indeed, by the email dated 17<sup>th</sup> October 2015, based on the claimed communication of the Central Bank, threatened to have the Petitioner and/or his family removed as shareholders without compensation. This would undoubtedly have had some effect on the Petitioner and his security of tenure and the possible peaceful use and enjoyment of Unit 5, together with the common rights attaching to it.

[58] As already noted by this court during oral arguments to Counsel for the Parties, that this court could find no proper or indeed any basis, which was presented to this court, by way of admissible evidence in support thereof, for such a letter from the Central Bank.

[59] This court has therefore concluded that this letter by Cheryl Bowen, in her capacity as Secretary of the Company, and also a Director, was a vindictive, or even a malicious, act by and/or on behalf of the Company, which had the potential effect of derogating from the peaceful and happy enjoyment of the Petitioner, his family and/or his guests of Villa 5, and the rights associated with it under the Articles of Association.

**Whether Articles of Association of the Company have unjustly been imposed which restrict the use of the Petitioners use of their Unit?**

[60] Articles 82 of the Articles of Association of the Company provides that alterations to the exterior of any building or improvement must be approved by a unanimous vote of Company members. Also that no structure may be erected on the Property that will obstruct existing views of the sea from the front of any Villa. Also that the Property exists for the peaceful and healthy enjoyment of the Members and their assigns and that all would be done to preserve and protect the natural beauty and essence of the environment, the common area and the Villas and the sea.

[61] Having carefully considered the provisions contained in this Article (82) this court has concluded that these relate to alterations or improvements which are undertaken by members and not by the Company. As a result this court considers that this Article has no application in the way in which the Petitioner has sought to apply it: by denying the Petitioner's access and use of pool in the Common area.

[62] However this court does consider that the email of Cheryl Bowen, dated 17<sup>th</sup> October 2015 may indeed have also infringed this Article of Association of the Company by unjustly, and arbitrarily imposing, or seeking to impose against the Petitioner, by the threat, a restriction, which likely constituted an unjust restriction on the ownership and transfer of the Petitioner's interest in his Unit.

**Whether the Petitioner have been unfairly and in breach of duty to him  
been kept out of the running of the Company?**

- [63] Articles 45-50 of the Articles of Association of the Company provides for the rotation of Directors. These provision of the Article allow for Directors to be rotated annually.
- [64] Upon review of the list of directorships over the years, which was presented to the court, it is readily apparent that the same persons appear to be annually appointed directors of the Company.
- [65] Although this court cannot find that this was contrary to the Articles of Association on the evidence and/or in breach of duty this court certainly considers that its use, simply by the use of this device contained in these provisions of the Articles of Association, that perhaps a lot of acrimony may have been contained within the management of the Company.
- [66] The use of a simple rotation may have resulted in preventing the spilling out of the bad feelings of the Petitioner or his family members about the management of the Company, into the open, into court proceedings, and causing the difficulties which have been experienced by guests of the resort.
- [67] Although this court is not in a position to give any direction in this regard it certainly expresses the hope that the shareholder may consider electing the Petitioner to the Board of Directors as a possible resolution of the ongoing dispute while and until a more long term solution (such as a possible sale of the Petitioner's Unit is explored) to bring about a possible temporary solution and respite to the underlying personality conflicts which appear to have arisen, and may have centred on the Petitioners wife.

**Whether in all the circumstances of the case it is just and reasonable to  
wind up the company?**

- [68] Under Section 130(1)(f) of the Companies Act<sup>1</sup>:

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<sup>1</sup> Chapter 250, Revised Edition 2000, Laws of Belize.

*“A company may be wound-up by the court if the court is of opinion that it is just and equitable that the company should be wound-up”*

[69] The meaning of the words ‘just and equitable’:

*“..are in recognition of the fact that a limited company is more than a mere legal entity, with a personality in law of its own: that there is room in company law for recognition of the fact that behind it, or amongst it, there are individuals, with rights expectations and obligations inter se which are not necessarily submerged in the company structure. That structure is defined by the companies Act and by the articles of association by which shareholders agree to be found. In most companies and in most contexts, this definition is sufficient and exhaustive, equally so whether the company is large or small. The “just and equitable” provision does not, as the respondents suggest, entitle one party to disregard the obligation he assumes by entering a company, nor the court to dispense him from it. It does, as equity always does, enable the court to subject the exercise of legal rights to equitable considerations; considerations, that is of a personal character arising between one individual and another, which may make it unjust, or inequitable, to insist on legal rights, or to exercise them in a particular way.*

*.... There are very many of these where the association is a purely commercial one, of which it can be safely be said that the basis of association is adequately and exhaustively laid down in the articles. The superimposition of equitable considerations requires something more, which, which typically may include one, or probably more, of the following*

*elements: (i) an association formed or continued on the basis of a personal relationship, involving mutual confidence.....<sup>2</sup>*

[70] It is to be noted that values of probity, good faith, and mutual confidence are inherent in considering what is just and equitable<sup>3</sup>.

Also that:

*“It is these, and analogous, factors, which may bring into play the just an equitable clause, and they do so directly, through the force of the words themselves. To refer, as so many of the cases do, to “quasi-partnerships” or “in substance partnerships” may be convenient but may also be confusing.<sup>4</sup>”*

[71] Thus where there has been misconduct by directors such that the relief of winding-up may be appropriate, in the absence of other remedy, for the benefit of a shareholder or contributory, as being just and equitable, the court may order such a winding-up<sup>5</sup>.

[72] As this court has already observed or noted during the oral arguments, that the Petitioner owning some 1/10 of the shares, and it appearing that he is the only person with an on-going and unresolved dispute with the Company, that this is not an appropriate basis for the company to be wound-up.

[73] This court considers that the present situation is somewhat removed from a situation in which this court properly and seriously consider that the company ought to be wound-up. There being other possible solutions, or reliefs, to the difficulties which are being faced between the Petitioner and the Company which would result in a satisfactory resolution to the apparent impasse which the Company and the Petitioner are facing.

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<sup>2</sup> Ebrahimi V Westbourne Galleries Limited & Others [1973] A.C. 360 per Judgment of Lord Wilberforce at 379-380.

<sup>3</sup> Ibid.

<sup>4</sup> Ebrahimi V Westbourne Galleries Limited & Others [1973] A.C. 360 per Judgment of Lord Wilberforce at 379-380.

<sup>5</sup> Halsbury's Laws of England; Fourth Edition 1996 Reissue; Volume 7(3) paragraph 2208.

- [74] It certainly cannot be said that the rights of the Petitioner cannot be recognised within the Company's structure and within the existing Articles of Association.
- [75] Though the Company, by its servants and agents may have misconducted themselves by disregarding the obligations it owes to the Petitioner in a number of ways (including its accounting requirements and many not always have been acting in good faith and probity such as to inspire mutual confidence), and there may therefore have been some legitimate reasons for bringing this Petition, this court considers that the equitable considerations are not so unfair and unjust as to make a finding by this court that the Company is unworkable (such as if the substratum of the company is gone or that it is impossible for the Company to carry on business at a profit) or has been operating in an arbitrary or secretive manner, or that the Petitioner has been locked out of the decision-making of the company.
- [76] Having carefully considered all of the specific grounds raised by the Petitioners for the winding-up and which I have considered, and given the determinations already made; and also having considered the general basis, or grounds raised by the Petitioners in support for the winding up of the Company that it is just and equitable for the Company to be wound up, this court has determined that on balance it is neither just and/or equitable to wind up the company.
- [77] This is despite the court having considered that in all the circumstances of the case, the Petitioners did have some basis or grounds, based on possible misconduct of the directors, for filing this Petition and therefore for bringing this application.
- [78] This court considers that perhaps if the Petitioner had been allowed to have a greater part to play in the decision making process of the Company, by ordinary process of rotation of directors, as provided for by Article 45 of the Articles of Association, a lot of the disputes which have arisen could have been ventilated within the Company, and much of the



disputes may have been avoided. That if properly managed within this forum of the Company's meeting, many of the disputes may have prevented.

[79] This court also considers that by a simple attempt to include the Petitioner into the decision-making process the escalation of bad feelings may have been prevented and not have spilled out into a public fora, including various litigation as well as the filing of the present Petition and other claims, which have happened. Much of this may have been obviated, including and so much of the public ventilation of such disputes, may have been avoided, and much time and distress saved, along with expense and public acrimony.

[80] This court is also not satisfied that enough has been done, in good faith, by both the Petitioner and the Company, to sever the ties which bind them, by a sale of the Petitioners shares, at a reasonable price, which has apparently now been determined, and by which simply expediency much of the on-going dispute would in all probability have dissipated.

### **Costs**

[81] In the circumstance of the present case and having heard the submissions of the parties in relation to costs, this court has determined that, because of the equities which this court has found, that there should be no order as to costs – in effect that each party should bear their own costs.

### **Disposition**

[82] In all the circumstance of the case as found by this court this court will dismiss the Petition with no order as to Costs.

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**The Hon. Mr. Justice Courtney A. Abel**

**22nd November 2017**