SUPREME COURT OF YUKON

Citation: *Orian Inc v Hartter Holdings Inc*, 2025 YKSC 42

Date: 20250711
S.C. No. 24-A0166
Registry: Whitehorse

BETWEEN:

ORIAN INC.

PETITIONER

AND

HARTTER HOLDINGS INC. and KEISH STREET DEVELOPMENTS INC.

RESPONDENTS

Before Justice J.S. Little

Counsel for the Petitioner	Jordanna Cytrynbaum and Danielle DiPardo
Counsel for the Respondent Hartter Holdings Inc	James Tucker and Luke Faught
Counsel for the Respondent Keish Street Developments Inc	No one appearing

This decision was delivered in the form of Oral Reasons on July 11, 2025. The Reasons have since been edited for publication without changing the substance.

ENDORSEMENT OF ORAL DECISION

I. Nature of Application

[1] Orian Holdings Inc. (Orian) petitions for relief under s. 216 of the *Business Corporations Act*, RSY 2002, c 20 ("*Act*"), including the liquidation and dissolution of Keish Street Developments Inc. ("KSDI").

[2] By way of background, both Orian and Hartter Holdings Inc. (“Hartter”) are long-established holding corporations involved in construction and had worked on projects together. Orian, through its subsidiary NGC Builders Ltd. (“NGC), was primarily the general contractor for those projects with Hartter, through its subsidiary Arcrite Northern Ltd. (“Arcrite”), as an electrical subcontractor.

[3] The two found a potential real estate development opportunity in Whitehorse for the construction of a 36-unit mixed-use condominium complex. They formed a joint venture for that purpose, incorporating KSDI as the corporate vehicle for the purchase and ownership of the property. Orian is a 40% shareholder and Hartter is a 60% shareholder. The principals of Orian (Mr. Gilday) and Hartter (Mr. Trotter) are its two directors.

[4] Also included in the terms of a Joint Venture Agreement (“JVA”) dated May 21, 2021 are that:

- Orian would invest capital of $500,000 and act as the general contractor;
- Hartter would contribute all remaining capital;
- capital would flow through KSDI and be treated as shareholder loans (with interest as agreed by the parties) to be repaid after construction expenses and before profit distribution;
- each of the parties, through their respective subsidiaries (NGC and Arcrite) would provide services to KSDI for construction of the project at cost plus 10%;
- the residential units would be sold and the main floor commercial would be kept by KSDI or a new corporation held in the same 60/40 percentages;

- in the case of disputes, the parties would first mediate. Failing mediation, they may arbitrate, but neither is prevented from seeking recourse from the courts;
- the parties could agree to dissolve and wind up KSDI for any reason. Third party debts would be paid first, followed by debts to the parties, followed by any remaining funds to the parties according to their shareholder percentages.

[5] Construction of the project is complete. The residential condo units are sold. There are long-term leases in place for the main floor commercial, occupied by two tenants paying base rent of about $250,000 per year.

[6] But unhappy differences have arisen between the parties respecting accounting for the project. Each claims to be owed money for its services rendered during construction. In its petition, Orian states that it is owed about $1.9M for unpaid invoices and Hartter is owed about $1M.

[7] In its simplest terms, Orian claims that Hartter, by withdrawing funds from KSDI to pay off its construction loan with interest, violated the terms of the JVA, which requires payment to third parties before shareholder loans.

[8] Hartter claims that it has not received sufficient documentation from Orian to justify funds paid by KSDI for Orian's cost plus its 10% markup and has sued Orian for damages flowing from its alleged breaches of the JVA.

[9] KSDI has cash of approximately $1.99M plus whatever equity is in the two commercial units registered to it. It is liable on a mortgage of about $1.54M on for the

commercial units, with payments of $11,500 per month paid by the $21,000 monthly rent of the commercial units.

[10] The parties agree that they are deadlocked in the management of KSDI as a result of their dispute respecting payments to each other. That deadlock results in difficulties having KSDI pay third-party obligations such as insurance, with the parties able to communicate only through counsel to get cheques countersigned.

II. Parties' Positions

[11] Orian claims an entitlement to this equitable remedy under s. 216 of the *Act*, the applicable portion of which reads as follows:

> Section 216:
>
> (1) The Supreme Court may order the liquidation and dissolution of a corporation or any of its affiliated corporations on the application of a shareholder, if satisfied …
>
> (c) that it is just and equitable that the corporation should be liquidated and dissolved.

[12] Counsel for Orian argues that in the case at hand it is just and equitable to order liquidation and dissolution on one or all of the following non-exhaustive grounds, citing *Weisstock v Weisstock*, 2023 BCCA 352:

1. That the shareholders are irrevocably deadlocked in managing and operating the affairs of KSDI.
2. That the shareholders are in a partnership in the guise of a private company and that there has been a breakdown of the mutual trust and confidence on which the undertaking was founded.

3. That both shareholders have experienced a justifiable lack of confidence in the conduct of the affairs of KSDI.

4. That there has been a loss of substratum in respect of KSDI.

[13] I use the term “non-exhaustive” advisedly because the Court of Appeal for British Columbia in *Weisstock* at paras. 48 and 49 cautions that the words “just and equitable” are not capable of an exclusive categorization and may, as an example, be used more liberally in a family situation than in a commercial situation.

[14] As part of its relief, Orian seeks the appointment of a liquidator under s. 219 of the *Act*, at the expense of KSDI, to value the assets of KSDI, determine its income and expenses, and essentially conduct a forensic audit of payments made to each party during construction to determine how those should be allocated under the JVA.

[15] Hartter does not take issue with the test from *Weisstock* but disagrees with its application to the facts in this case and argues that:

1. The application for this kind of relief is premature.

2. Orian only sought this relief after Hartter sought leave of the court to file a statement of claim against Orian, which it has now filed.

3. Because Orian is seeking an equitable remedy, it must have “clean hands” and in this case has caused the rift as a result of its refusal to provide documentation required under the JVA.

4. The real dispute is over financial disclosure, and a proper exchange of documentation would permit the parties themselves to determine any required adjustments as between themselves and their respective entitlements to the remaining net assets of KSDI.

III. Deadlock

[16] As I stated earlier, the parties acknowledge that they are deadlocked. By the terms of the JVA, each party is entitled to one director, initially Mr. Trotter and Mr. Gilday. Neither party, therefore, can be said to control the management of KSDI. Thus even routine, though important, decisions such as paying insurance premiums on the commercial unit held by KSDI, are problematic. The problems are not insurmountable, however. The evidence is that those types of payments to third parties are being made by a workaround. So, the deadlock is not absolute.

[17] I would have greater concern if the deadlock had occurred in the midst of construction of the project. Had the two principals then not been able to make the myriad decisions required in connection with a major commercial construction project, the consequences would likely have put the project in peril. As it stands now, however, the only material financial decision that needs to be made is who owes whom and how much.

[18] Nor is the deadlock necessarily irrevocable. In comparison to the reported cases cited by counsel, the deadlock here, in what now amounts to a corporation earning only passive income, is relatively fresh.

IV. Partnership in the Guise of a Private Company

[19] Counsel for Orian cites a number of cases where parties used a partnership analogy to persuade courts to exercise their equitable jurisdiction where the business organization, though in corporate form, amounted to a partnership. The reason that is important is that partners, unlike shareholders, owe fiduciary duties to one another and, because they participate in the business at least to some extent, they have to have

confidence in one another. If that confidence is broken, it may be fair and equitable to dissolve the business organization.

[20] *Boffo Family Holdings Ltd*. *v Garden Construction Ltd*., 2011 BCSC 1246, is a case where certain members of a corporate group, parts of which had been in business for forty years and comprised of brothers, cousins, and friends, sought relief under the oppression remedy section of the BC legislation. Justice Goepel referred in para. 122 to a court's option to exercise its jurisdiction under the just and equitable grounds in cases of partnership analogy. But at para. 155, he declined to determine whether the relevant corporation could be considered a "quasi-partnership" such that the removal of a representative from the corporate board could be considered to be the basis for invoking the "just and equitable" ground for a wind up.

[21] In *Vivian v Firth*, 2012 BCSC 517, two men incorporated in 2005 with equal shareholdings. There was disagreement over whether they had discussed a partnership/joint venture or a corporation. The corporation carried on business for about five years before unhappy differences arose and one party petitioned for a wind up. Justice Fitch, at paras. 92-97, rejected the partnership analogy for a number of reasons, including that the corporation was formed not on the basis of a personal or familial relationship but was a purely commercial arrangement, there was no conversion of a pre-existing partnership, and the corporation was not run like a partnership.

[22] In *Ten Hoeve v Beukens*, 2020 BCSC 1194, Justice Weatherill accepted the partnership analogy in the case of a family-owned farm corporation which began as a partnership and in some ways and by some of its members was still considered a partnership. Litigation had been ongoing for a decade, and it was found to be just and

equitable to accept a petition for wind up as the only way to permit the owners of a half share in the farm to monetize their investment, given that they could not sell their shares.

[23] Similarly, in *Petersen v Hawley*, 2021 BCSC 2348, Justice Branch applied the partnership analogy to a corporation owned equally by two brothers for about thirty years and granted an application for liquidation and wind up as being the only equitable solution to a deadlock resulting in a breakdown of the mutual trust necessary to continue that kind of business relationship.

[24] In short, the quasi-partnership analogy is applied successfully more often to family businesses that began as informal or formal partnerships and converted to a corporate form.

[25] Arguably, KSDI as the nominee of the joint venture, does share some of the characteristics of a partnership. While its joint venturers were corporations, both joint venturers were expected to participate in the business through their principals. They got together for this venture because they had worked with each other on different projects and therefore knew and trusted one another, at least professionally. There were some restrictions on the sale or other disposition of their shares in KSDI.

[26] It is clear that the principals have lost confidence in each other, will not communicate with each other, and that therefore the relationship has broken down.

[27] But unlike the cases I refer to above, these parties have been together for only about four years and litigating for only about a year. They are deadlocked, but the consequences of that deadlock are not as severe as in clearer cases of quasi-partnerships.

V. Justifiable Loss of Confidence in the Conduct of the Affairs of KSDI

[28] As I stated earlier, the two principals of the parties have lost confidence and trust in the other. Each blames the other for the mess that they find themselves in. They communicate only through counsel and cannot even agree on the simplest decision such as the registered office for KSDI.

[29] It is therefore appropriate to deal here with a point argued by both counsel, namely whether the "clean hands" doctrine has any bearing on whether a party is entitled to relief under s. 216 of the *Act*.

[30] It is clear to me from the cases cited by both counsel that there are situations where consideration of the conduct of a party seeking relief is of relevance. In *Ben 102 Enterprises Ltd. v Ben 105 Enterprises Ltd.*, 2007 BCSC 1069, one of the petitioners was denied the relief sought on the basis that its conduct "would render it inequitable or unjust to grant the relief sought" (para. 82), though other relief was granted. I note, though, that Justice Barrow in that decision conducted an extensive review of the facts. Without the benefit of such a review in this proceeding, I prefer the approach of Justice Branch in *Petersen v Hawley,* 2021 BCSC 2348 at para. 75, who found that while he may not have had all the facts, it was sufficient for his purposes to find that there was "fault to be shared", a determination upheld on appeal (2022 BCCA 169).

[31] I do not find that Orian is disentitled to the relief it seeks even if I accept Hartter's argument that Orian brought about the distrust by its refusal to fully "open its books" to Hartter's scrutiny. Here, too, there is fault to be shared.

VI. Loss of Substratum

[32] Counsel for Orian argues that the loss of substratum, meaning that the original purpose of the company's business has been exhausted (*Weisstock v Weisstock,* 2022 BCSC 1886 at para. 74) is one of the indicia for consideration in determining whether a wind up is just and equitable. I accept that proposition. I note, though, that in *Weisstock* where four siblings were unable to agree on management of a real estate portfolio, Justice Betton, at para, 75, found that that portfolio still existed and required management. I, too, find that the original purpose for which these parties' enterprise was formed has not been exhausted. While the focus of the parties for approximately two years was the construction and development of a mixed-use condominium (JVA Article 3), it was also contemplated that the two parties would keep the main floor retail:

> JVA Article 11.2: It is the intention of the Parties that the main floor, being developed as a commercial Unit, will be retained by the Joint Venture Corporation on completion of Unit sales, or within a new corporation on a 60/40 ownership basis …

[33] Thus, while one purpose of the company's business has been completed, namely construction of the project, the joint venture still owns an asset which was contemplated to be retained post-construction.

VII. Is the Application Premature?

[34] Counsel for Hartter argues that it is.

[35] One of Orian's most significant claims against Hartter is that Hartter paid the mortgage principal and interest on its construction financing when that should have been treated as a shareholder loan with interest payable as agreed by the parties. And Hartter has not disclosed the cost of the interest.

[36] One of Hartter's most significant claims against Orian is that Orian was entitled to charge its cost plus 10% for construction but has not fully disclosed its cost.

[37] There is now a formal action by Hartter against Orian. It is in the course of that litigation that the parties will have an opportunity to compel each other to produce the documents that each needs to assess its claim against the other or defend its claim from the other.

[38] Counsel for Orian argues that this leads to a multiplicity of lawsuits and that the better approach is for a qualified liquidator to seek that documentation from each party, failing which it could seek court-ordered production. But that is no different from the parties themselves having to seek the court's assistance in document production except that a third, paid professional is then in the mix.

[39] I am not persuaded that dissolving KSDI will resolve the litigation between the parties. More likely, that litigation ultimately will result in the parties determining their accounts without reference to their nominee KSDI, the assets and liabilities of which may then be settled, at which time KSDI, having served its purpose, may be dissolved as contemplated in the JVA.

VIII. Order for Production of Documents

[40] Counsel for Hartter relies upon the Saskatchewan Court of Appeal case of *Gordon v White, 2020* SKCA 129, to argue that I ought to dismiss Orian's petition but order specific document production. In *Gordon*, a chambers judge found oppression and ordered production of certain documentation but declined to order dissolution on the basis that she did not have sufficient information about the financial situation of the corporation. That decision was upheld on appeal.

[41] Counsel for Hartter argues that a similar option is available to this Court in these proceedings by virtue of s. 216 (2) of the *Act* which reads:

> (2) On an application under this section, the Supreme Court may make any order under this section or section 243 it thinks fit.

[42] As I advised counsel, however, I do not read that subsection so broadly. It is Orian, not Hartter, which has made the application under s. 216 (1)(c). There is no cross-application by Hartter. A better reading of subsection (2) is that the Court may make additional orders ancillary to the terms of an order sought and granted under s. 216(1)(a), (b), or (c). But independent relief under subsection (2) is not available unless the Court is satisfied as to one of the grounds under s. 216 (1). This Court is not.

IX. Conclusion

[43] I am not persuaded that Orian has satisfied its onus to demonstrate that the liquidation and dissolution of KSDI would be just and equitable.

[44] The parties are deadlocked, but that has been for a relatively short period of time such that I do not consider it irrevocable. In any event, given the limited role KSDI now plays in the relationship between the parties, its deadlock is not as problematic as it would be if it had to continue to play the role it did during construction.

[45] I do not see that the relationship between these two sophisticated businessmen who came together for a specific, time-limited project is akin to a partnership, such that their current animosity requires dissolution of the relationship.

[46] I do not see that introducing a third-party into the mix at this stage would accomplish more than the parties could accomplish on their own without the additional complication, court monitoring, and expense of a liquidator. Admittedly the introduction

of an experienced liquidator/accountant as a sort of expert might bring the parties together if that person is given full access to the books and records of the joint venture. But the parties themselves could retain such an expert independently in their litigation if they are genuinely motivated to resolve their differences, though given the failure of mediation and the rejection of arbitration, it appears more likely that conventional litigation is the route they will continue to travel, with each calling such experts to give evidence at a trial if they go that far.

[47] Nor do I see dissolution as preventing serial litigation. The parties already are both represented by competent counsel in a lawsuit to which KSDI is not a party, and dissolving KSDI would not resolve that lawsuit.

[48] For those reasons, I am dismissing the petition.

[49] The parties are free to make brief written submissions to me respecting costs if they are unable to agree.

[50] Thank you again to all counsel for your thoughtful briefs and compelling oral advocacy.

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LITTLE J.