

JUN 30 2011

FILED / DÉPOSÉ

**SUPREME COURT OF YUKON**

Citation: *Harvey v. 5505 Yukon Ltd. et al*, 2011  
YKSC 54

Date: 20110610  
Docket S.C. No.: 08-A0004  
Registry: Whitehorse

BETWEEN:

**SHARMAN HARVEY, Administrator of the Estate of  
ROBERT RICHARD HARVEY, Deceased**

Plaintiff

AND:

**5505 YUKON LIMITED, ROY A. SLADE,  
and CHRISTINE DOKE**

Defendants

Before: Mr. Justice R.S. Veale

Appearances:

James Vilvang

Appearing for the Plaintiff  
via teleconference

Andrew Hladyshevsky

Appearing for the Defendants  
via teleconference

Jim Bazant

Appearing on behalf of Garth Howell  
via teleconference

**RULING ON APPLICATION ON SEVERANCE OF TRIAL  
DELIVERED FROM THE BENCH**

[1] VEALE J. (Oral): I have decided to allow the application to sever the liability and damages issues. The liability trial will proceed on November 28 to December 2, 2011, with Deputy Justice O'Connor presiding.

[2] In reaching this decision, I have been guided by the useful decision, *Emtwo Properties Inc. v. Cineplex (Western Canada) Inc.*, 2009 BCSC 1592. The onus is on the plaintiff and it is somewhat higher than a simple test of just and convenient.

[3] I am satisfied that the liability issue of whether the unanimous shareholder's

agreement of June 17, 1997 remains binding, and whether it provides for a payment of a million dollars to the plaintiff, is a discrete issue that can be determined by the trial judge.

[4] In my view, it is not inextricably intertwined with the damage issue. The damages issue, should the plaintiff not succeed, is a question of the value of Mr. Harvey's interest in 5505 Yukon, and will require an investment of significant time and money, which may not be required at all.

[5] I am advised that the parties have had a mini-trial/settlement conference. In my view, the liability trial has the potential to result in a settlement of the action.

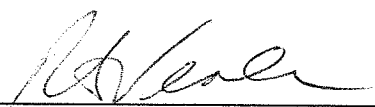
[6] There is also a somewhat unique aspect to this case in that I have ordered a pre-trial examination of the lawyer representing 5505 Yukon Limited. This too may enhance the settlement prospects when that is completed and the issue of solicitor-client and litigation privilege relating to the defendants' document production has been resolved.

[7] I will not address the issue of costs, unless counsel wish to speak to it now, or at a later date. Counsel?

[8] MR. HLADYSHEVSKY: I think we can speak to it at a later date.

[9] THE COURT: Is that agreed, counsel?

[10] ALL COUNSEL: Yes.

  
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VEALE J.