



FORM 66 (Rules 16-1 (2) and 21-5 (14))

NO. Court File No. **VLC-S-S-248901**
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

MICHAEL LARES

PETITIONER

AND:

PETER VAN DER HEYDEN and FLYING "L" RANCH LTD.

RESPONDENTS

PETITION TO THE COURT

ON NOTICE TO:

Peter van der Heyden
8050 Birch Way
Halfmoon Bay, B.C. V0N 1Y2

Flying "L" Ranch Ltd.
8554 Nemiah Valley Road
Nemiah Valley, B.C. V0L 1X0

The address of the registry is: 800 Smithe Street, Vancouver, B.C. V6Z 2E1

The petitioner estimates that the hearing of the petition will take 2 days

This matter is not an application for judicial review.

This proceeding is brought for the relief set out in Part 1 below, by

the person named as petitioner in the style of proceedings above

If you intend to respond to this petition, you or your lawyer must

- (a) file a Response to Petition in Form 67 in the above-named registry of this court within the time for response to petition described below, and
- (b) serve on the petitioner
 - (i) 2 copies of the filed response to petition, and
 - (i) 2 copies of each filed affidavit on which you intend to rely at the hearing.

Orders, including Orders granting the relief claimed, may be made against you, without any further notice to you, if you fail to file the response to petition within the time for response.

TIME FOR RESPONSE TO PETITION

A response to petition must be filed and served on the petitioner,

- (a) if you were served with the petition anywhere in Canada, within 21 days after that service,
- (b) if you were served with the petition anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the petition anywhere else, within 49 days after that service, or
- (d) if the time for response has been set by Order of the Court, within that time.

(1) The ADDRESS FOR SERVICE of the petitioner is:

McQuarrie Hunter LLP
Barristers and Solicitors
Suite 1500, 13450 102 Avenue
Surrey, BC V3T 5X3
Attn: Royal J. Morton

Fax number address for service (if any) of the petitioner: N/A

E-mail address for service (if any) of the petitioner: rmorton@mcquarrie.com AND
bpoth@mcquarrie.com

(2) The name and office address of the petitioner's lawyer is:

McQuarrie Hunter LLP
Barristers and Solicitors
Suite 1500, 13450 102 Avenue
Surrey, BC V3T 5X3
Attn: Royal J. Morton

CLAIM OF THE PETITIONER

Part 1: ORDER(S) SOUGHT

1. A declaration that it would be just and equitable that the Flying "L" Ranch Ltd. (the "**Company**") be liquidated and dissolved pursuant to section 324 of the *Business Corporations Act*, SBC 2022, c. 57 (the "**BCA**"), and that it would be appropriate to grant a remedy to Michael Lares ("**Michael**") pursuant to section 227(3) of the *BCA* in lieu of liquidation and dissolution.

2. Pursuant to s. 227(3) of the *BCA*, Peter van der Heyden ("**Peter**") shall sell his shares in the Company to Michael and transfer to the Company the land located at Williams Lake Rural – 20126.000 and legally described as PID 011-216-395 District Lot 199 Range 2 Coast District (the "**80 Acres**"), for the collective price of \$2,000,000 to be paid by Michael to Peter (the "**Court Ordered Buyout**").

3. If the parties are unable to agree on the terms of the Court Ordered Buyout within 30 days, the following terms will apply:

- (a) by no later than 60 days from the date of the Court Ordered Buyout:
 - (i) Michael will pay to Peter's lawyer or notary in trust a non-refundable deposit of \$100,000; and
 - (ii) Peter will transfer his shares in the Company to Michael;
- (b) by no later than 120 days from the date of the Court Ordered Buyout, Michael will pay to Peter's lawyer or notary in trust a second non-refundable deposit of \$50,000;
- (c) by no later than 300 days from the date of the Court Ordered Buyout:
 - (i) Michael will pay to Peter's lawyer or notary in trust the remaining purchase price of \$1,850,000 and
 - (ii) Peter will transfer the 80 Acres to the Company; and
- (d) Peter is entitled to register a mortgage in the amount of \$1,850,000 (the "**Mortgage**") against title to 8554 Nemiah Valley Road, Nemiah Valley, B.C. VOL 1X0 and legally described as:

PID 011-225-661
District Lot 383 Range 2 Coast District
(the "**160 Acres**"),

as security for payment of \$1,850,000 of the purchase price

(the "**Court Ordered Buyout Terms**").

Part 2: FACTUAL BASIS

1. Adopting the defined terms from Part 1 above, the petitioner, Michael, is a rancher and is a co-director and 50% shareholder of the issued and outstanding shares in the Company. Michael lives at 8554 Nemiah Valley Road, Nemiah Valley, B.C.
2. The respondent, Peter, is a businessman and is a co-director and 50% shareholder of the issued and outstanding shares in the Company. Peter resides at 8050 Birch Way, Halfmoon Bay, B.C.
3. The Company is a British Columbia company with a registered office at 8554 Nemiah Valley Road, Nemiah Valley, B.C.
4. Michael and Peter are the sole shareholders and directors of the Company.

Background

5. From approximately July 2011 to today, Michael has either personally or through the Company operated a horse ranch with his wife and two children on the 80 Acres and the 160 Acres (the 80 and 160 Acres are collectively the "**Ranch Land**"). Starting in 2011, Michael leased the Ranch Land from Don and Zelda Beck and Harvey and Cindy Mott. Pursuant to that lease, Michael had the option to purchase the Ranch Land.

The Creation of the Company

6. In or around the fall of 2018, Michael was introduced to Peter by a real estate agent who brought Peter to the Ranch Land because Peter was interested in purchasing it. Michael was not interested in participating in a sale of the Ranch Land at that time, but Peter and Michael continued to communicate with one another.

7. After several discussions, Peter and Michael entered into an agreement, partly oral and partly in writing, in or around April 2019. That agreement provided that Michael and Peter were to become partners and incorporate the Company to own and operate the horse ranch located on the Ranch Land on the following terms:

- (a) Peter would provide \$117,250.00 US to Michael, who in turn would use that money to exercise the option to purchase the Ranch Land;

- (b) Peter and Michael would incorporate a company known as the Flying "L" Ranch Ltd., which would own the Ranch Land;
 - (c) Michael and Peter would each be 50% shareholders and co-directors of the Company, which they agreed would effectively operate as a partnership between Peter and Michael;
 - (d) Michael would live on the Ranch Land with his family and be responsible for the day-to-day business operations and finances of the Company;
 - (e) Peter would be a silent partner and financial investor in the Company; and
 - (f) Michael and Peter would each act in the best interests of the Company.
8. The Company was incorporated on or about June 3, 2019.
9. Section 106 of the Company's articles restricts a shareholder from transferring their shares without the approval of the majority of the directors or shareholders of the Company.
10. The Company purchased the Ranch Land from Don Beck, Zelda Beck, Harvey Mott and Cindy Mott on or about June 28, 2019.
11. Michael has run the Company's day-to-day business operations and finances from its inception in June 2019.
12. In addition to ranching, the Company's business operations also include content creation on social media platforms.

Breakdown of Trust & the First Failed Buyout

13. Throughout 2022, Peter began to raise questions about Michael's management of the Company's finances and asked that the 80 Acres be transferred to him.
14. On or about September 7, 2022, the Company transferred the 80 Acres to Peter as Michael's show of good faith and to support what Michael believed was a good business relationship between him and Peter. By that time, Peter had invested a substantial amount of money into the Company. Michael had invested a substantial amount of labour, time and money into the Company and the Ranch land.
15. The 80 Acres is landlocked and can only be accessed through the 160 Acres.

16. On or about September 3, 2022, Peter granted the Company a right of first refusal in any future sale of the 80 Acres and the right to use the 80 Acres for ranching purposes (the “**First Refusal Agreement**”).

17. In or around August 2023, Peter told Michael that he felt Michael had not been open about the financial management of the Company, that he no longer trusted Michael, and that he could no longer do business with him. Michael disagreed with Peter’s suggestion that Michael had not been forthright with Peter. Michael told Peter that he could no longer trust Peter.

18. After about August 2023, Michael and Peter’s business relationship deteriorated.

19. During and after their call in August 2023, Peter and Michael began negotiations to sell Peter’s shares in the Company to Michael and to transfer the 80 Acres to the Company.

20. On or about March 7, 2024, Peter and Michael signed a memorandum of understanding to sell Peter’s shares in the Company to Michael and transfer the 80 Acres to the Company, for a total price of \$2 million (the “**2024 MOU**”).

21. The 2024 MOU did not bind the parties to complete the transaction upon its terms. Instead, the obligation to complete the transaction was only binding upon a future agreement on the terms of a master purchase agreement.

22. Ultimately, Peter and Michael failed to agree on the terms of the master purchase agreement.

Defamation

23. Beginning in or around the fall of 2023, various third parties (the “**Third Parties**”), began making a series of negative posts on a variety of social media platforms against Michael and by implication, the Company (the “**Initial Negative Posts**”). Many of the third parties are ex-employees or ex-business associates of the Company.

24. Michael and the Company retained McQuarrie Hunter LLP to address these Initial Negative Posts and sent cease and desist letters to these Third Parties. At the time, Michael expected his buy-out of Peter’s shares and the transfer of the 80 Acres to the Company to be completed soon. In response to the cease and desist letters, the Third Parties removed the Initial Negative Posts from the various social media platforms and temporarily ceased making new negative posts.

The Second Buyout Attempt

25. From about May to July 2024, Peter, through counsel, demanded that Michael provide all the accounting and financial documents for the Company and the contents of the defamation file with McQuarrie Hunter LLP. Michael's counsel ultimately provided two file folders of documents to Peter's lawyer pursuant to both requests.

26. Through this correspondence, Michael's counsel informed Peter's counsel that Michael and the Company's defamation file had been closed.

27. In or around June 2024, the Third Parties again began making negative posts about Michael and the Company on various social media platforms, including Instagram.

28. On or about June 30, 2024, Michael watched an Instagram livestream post by two of the Third Parties. During that livestream, one of the Third Parties explained to their viewers that they had heard from "someone legal" that Michael and the Company's defamation claim had been dropped, and they could talk as they wished now. That same Third Party also explained that the "true owner's" (referring to someone other than Michael) daughter's saddle is still at the Ranch Property.

29. Peter appears to have informed some of the Third Parties that the defamation file with Michael's lawyer had been closed.

30. On or about June 25, 2024, Michael, through counsel, proposed to Peter that they schedule a directors' meeting to discuss a proposed directors' resolution to have the Company approve the sale of Peter's shares in the Company to Michael on terms to be agreed and have the Company approve its purchase of the 80 Acres from Peter for fair market value.

31. On or about July 3, 2024, Peter informed Michael through counsel that Peter did not consent as a director of the Company to any further material transactions being conducted by Michael on behalf of the Company without Peter's express consent (the "**Prohibition Against Material Transactions**").

32. On or about August 14, 2024, Michael's counsel sent a letter to Peter's counsel giving notice that the director's meeting would take place on September 9, 2024.

33. The directors' meeting was initially adjourned and eventually cancelled.

34. The parties entered into a settlement agreement by September 13, 2024, for Peter's sale of his shares in the Company to Michael and the sale of the 80 Acres to the Company for \$2,000,000, the terms of which were set out in the following correspondence:

- (a) a letter from Michael's counsel to Peter's counsel dated August 14, 2024;
- (b) an email from Peter's counsel to Michael's counsel dated September 3, 2024;
- (c) a letter from Michael's counsel to Peter's counsel dated September 11, 2024;
- (d) a letter from Michael's counsel dated September 13, 2024; and
- (e) an email exchange between Michael's counsel and Peter's counsel from September 12 to 16, 2024.

35. The terms of this settlement agreement were:

- (a) on October 31, 2024:
 - (i) Michael would pay Peter a non-refundable deposit of \$100,000;
 - (ii) Peter would transfer his shares in the Company to Michael;
- (b) on December 31, 2024, Michael would pay Peter a second non-refundable deposit of \$50,000;
- (c) on July 31, 2025:
 - (i) Michael would pay Peter the remaining \$1,850,000; and
 - (ii) Peter would transfer the 80 Acres to the Company;
- (d) The parties agreed on the following security:
 - (i) The Mortgage against title to the portion of the Ranch Land owned by the Company as security for the \$1,850,000; and
 - (ii) Michael would consider granting a personal guarantee and general security agreement on the basis Peter would be open to subordinating his future Mortgage to give priority to any security that might be needed to obtain the balance of the funds, including a mortgage against the

Company's land or the 80 Acres owned by Peter, but only if Michael needed additional security to obtain the balance of the funds

(the "**Settlement Agreement**").

36. After the parties entered into the Settlement Agreement, Michael arranged to have another lawyer, his solicitor, prepare draft documents including a share purchase agreement for Michael's buy-out of Peter's shares and a transfer of the 80 Acres to the Company.

37. Peter demanded that additional non-negotiable terms be included in the share purchase agreement that Michael and Peter had not previously agreed to be a part of the Settlement Agreement including, *inter alia*:

- (a) that Michael execute an undated Form A transfer of the Ranch Land to Peter to enforce the Mortgage;
- (b) that the Company execute and deliver a general security agreement providing a security interest in all the Company's present and after acquired personal property; and
- (c) that Michael and the Company maintain the confidentiality of the Company's confidential business information unless they receive Peter's prior consent in writing.

38. On or about October 28, 2024, Peter informed Michael through counsel that the Third Parties had previously contacted and shared information with Peter.

39. On or about October 30, 2024, Michael paid his first deposit of \$100,000 to McQuarrie Hunter in trust in accordance with the Settlement Agreement.

40. Michael communicated to Peter through his solicitor on or about October 31, 2024, that Michael was ready, willing and able to complete the Settlement Agreement pursuant to its terms, without further documentation. Michael's solicitor sent Peter's solicitor the executed closing documents.

41. On or about November 14, 2024, Peter informed Michael through his solicitor that Peter refused to complete the Settlement Agreement.

42. On or about November 22, 2024, Michael gave written notice to Peter electing to enforce the Settlement Agreement.

43. On or about December 9, 2024, Peter gave Michael written notice of a proposed directors' meeting of the Company to vote on directors' resolutions for, *inter alia*, Michael to produce additional Company financial and accounting records to Peter and produce an asset listing. Michael refused to attend this directors' meeting and is concerned that Peter will misuse information or attempt to prevent Michael from operating the Company.

44. Michael remains willing to buy Peter's shares in the Company and the 80 Acres for \$2 million in total on terms similar to the Settlement Agreement.

Part 3: LEGAL BASIS

45. The petitioner will rely on:

(a) Rules 1-3, 2-1(2)(c), 14-1 and 16-1, of the *Supreme Court Civil Rules*; and

(b) sections 227 and 324 of the *BCA*.

46. The court may order remedies under s. 227(3) of the *BCA* without first finding oppressive or unfairly prejudicial conduct if it is satisfied that it would be just and equitable to do so under s. 324 of the *BCA*: *Walker v. Betts*, 2006 BCSC 128 at paras. 76-79. The assessment of what is just and equitable or fair under s. 324 of the *BCA* turns to a large extent on the reasonable expectations of shareholders.

47. Section 324 is a lower threshold for relief than s. 227 in that no oppressive or unfairly prejudicial conduct must be found. Instead, the court must be satisfied that at the time of the formation of the business association, had the parties regarded the particular circumstances resulting from the disharmony, they would constitute them to be a termination or repudiation of the business relationship: *Weisstock v. Weisstock*, 2023 BCCA 352 ("*Weisstock*") at para 46. Courts have historically found it "just and equitable" to order relief pursuant to s. 324 where there has been a deadlock among the parties or where the partnership analogy applies: *Weisstock* at para 47.

48. Each of Peter and Michael's reasonable expectations were that Michael would operate the Company's ranch, and Peter would invest funds in the Company and share with Michael in its profits. It would be just and equitable to grant relief to the petitioner here under s. 324 based upon

the operational deadlock between Michael and Peter. Their disharmony prevents them from making decisions collectively on significant matters affecting the business, such as the Settlement Agreement and the Prohibition Against Material Transactions: *Weisstock* at para 82.

49. Furthermore, it would be just and equitable to grant relief to the petitioner under s. 324, as Michael and Peter's business relationship, which resulted in the creation of the Company and was based upon a personal relationship of mutual confidence and trust, has dissolved. Peter and Michael no longer trust each other in respect of the Company: *Weisstock* at para 46.

50. Once a court concludes that it is just and equitable to liquidate and dissolve a company under s. 324(3), the court may order the company to be liquidated and dissolved or make any order under s. 227(3). The court is not limited to orders listed in s. 227(3) as they are illustrative not exhaustive *Antonov v. Gill*, 2022 BCCA 256 ("*Antonov*") at para 26-28. Section 227(3) provides the court with the authority and flexibility to make any interim or final order it considers appropriate to remedy or end the matters complained of: *Weisstock* at para 44. Courts are to take a flexible and discretionary approach to decide on an appropriate remedy under s. 227(3).

51. In this case, the appropriate order pursuant to s. 227(3) of the *BCA* would be for Peter to sell his shares in the Company to Michael and the 80 Acres to the Company in line with the Settlement Agreement the parties already made between themselves. This order would be a fair way to resolve the situation, go no further than necessary to resolve the deadlock in the Company and the breakdown in Michael and Peter's partnership, vindicate the reasonable expectations of the parties in their capacity as corporate stakeholders and would take into account the general corporate law context: *Antonov*, at paras 45-46.

52. The proper interpretation of the Settlement Agreement through an examination of the plain meaning of the words as they are written in the applicable correspondence, and taking into account the surrounding circumstances is that the parties intended to and agreed upon the basic terms for Peter to sell his shares and the 80 Acres: *Bene (Oval) Development Ltd. v. 1148538 B.C. Ltd.*, 2024 BCSC 2080 at para. 113.

53. An order consistent with the Settlement Agreement would be a fair way of dealing with the situation and vindicate both Michael and Peter's reasonable expectations. Michael and Peter agreed to the terms of the Settlement Agreement until Peter made demands inconsistent with it.

54. The Court Ordered Buyout and the Court Ordered Buyout Terms summarized above in Part 1 reflect Michael and Peter's reasonable expectations that Michael would operate the

Company and Peter would be the silent partner. Peter's sale of his 50% interest to Michael with the transfer of the 80 Acres to the Company will allow Michael to continue operating the Company and allow Peter to recover a return on his investment.

55. Michael or Peter cannot sell their shares to a third party without the other's consent due to the corporate structure of the Company and the restriction on the transfer of shares in s. 106 of the Company's articles. Michael is the appropriate buyer, as he has lived and operated the Company on the Ranch Land with his family since 2011. He has run the day-to-day operations of the Company without any operational involvement from Peter since 2019. Peter is the appropriate seller, as this sale will allow him to recover his investment in the Company.

56. A sale of the 80 Acres is necessary as the 80 Acres are landlocked, and absent the Company's approval, Peter would have no access to it. Peter has granted the Company the right of first refusal pursuant to the First Refusal Agreement. Peter therefore cannot sell the 80 Acres to another party without first offering it to the Company, and he has already agreed to sell it to the Company as part of the Settlement Agreement. Given the breakdown of the relationship between Peter and Michael, it is likely that Peter's continued ownership of the 80 Acres would lead to further conflict in any event.

Part 4: MATERIAL TO BE RELIED ON

1. At the hearing of this petition will be read the following, copies of which are served herewith:
 - a. Affidavit #1 of Michael Lares, affirmed December 19, 2024; and
 - b. Affidavit #1 of Barbara Poth, affirmed December 19, 2024.

Date: December 20, 2024



Signature of Lawyer for the petitioner
McQuarrie Hunter
Barristers and Solicitors
for Attn: Royal J. Morton

To be completed by the Court only:

Order made

- in the terms requested in paragraphs _____ of Part 1 of this petition
- with the following variations and additional terms:

Date: _____

Signature of Judge Associate Judge