



No. 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

APPLICATION RESPONSE

Application response of : McQuarrie Hunter LLP ("McQuarrie")

THIS IS A RESPONSE TO the Notice of Application of the Petition Respondent, Peter van der Heyden ("Mr. van der Heyden")

McQuarrie estimates that the application will take one day.

Part 1 ORDERS CONSENTED TO

McQuarrie consent to the granting of the orders set out in NONE of the paragraphs of Part 1 of the Notice of Application.

Part 2 ORDERS OPPOSED

McQuarrie opposes the granting of the orders set out in ALL paragraphs of Part 1 of the Notice of Application.

Part 3 ORDERS ON WHICH NO POSITION IS TAKEN

McQuarrie takes no position on the granting of the orders set out in NONE of the paragraphs of Part 1 of the Notice of Application.

Part 4 **FACTUAL BASIS**

Overview

1. There is no basis to remove McQuarrie as counsel for the petitioner, Michael Lares (“**Mr. Lares**”) for conflict of interest and contrary to the wishes of its client.
2. The underlying Petition concerns the breakdown in relationship between the two, equal shareholders of the respondent, Flying “L” Ranch Ltd. (the “**Company**”). The issues to be determined on the Petition are narrow; both shareholders agree that a purchase by one of the parties of the other’s shares is the appropriate remedy to address their situation, although they disagree how this sale should proceed. The Company is named as a respondent in the Petition because the relief sought affects it, but not adversely.
3. The sole basis suggested by the applicant and petition respondent, Mr. van der Heyden, for McQuarrie’s removal is McQuarrie’s engagement by the Company and Mr. Lares on a brief defamation matter (which did not result in litigation) over the course of a few months. This defamation matter is not related to the Petition.
4. The Company itself has not brought this disqualification application and has not filed a response to the Petition. The Company is not a party of record.
5. McQuarrie did not receive information from the Company which could be considered to be confidential as between the Company, Mr. Lares and Mr. van der Heyden. There is no risk of prejudice to the Company which would require McQuarrie to be disqualified contrary to the wishes of its client, Mr. Lares.

Background to the Company and the Share Sale Negotiations

6. The Company was incorporated on or around June 3, 2019 and operates a horse ranch and related business located in Nemiah Valley, B.C. Mr. Lares and Mr. van der Heyden are directors of and equal shareholders in the Company.
7. Since the Company’s inception, Mr. Lares has run the Company's day-to-day business operations and finances, while Mr. van der Heyden has remained as a silent investor. The company has no employees.
8. Beginning in or around 2022, Mr. van der Heyden began to question Mr. Lares’ financial management of the Company. On or around September 7, 2022, Mr. Lares agreed that the Company would transfer a portion of its lands, known as the “**80 Acres**”, to Mr. van der Heyden as a gesture of good faith and as an attempt to maintain a good business relationship.
9. Beginning in or around August 2023, Mr. Lares and Mr. van der Heyden began negotiations for Mr. van der Heyden to sell his shares in the Company to Mr. Lares and to transfer the 80 Acres back to the Company, as their relationship had broken down.
10. Mr. Lares retained Cameron Nicol, a solicitor at McQuarrie, to represent him in these share negotiations in January 2024.

11. On or around March 7, 2024, Mr. Lares and Mr. van der Heyden signed a non-binding memorandum of understanding to sell Mr. van der Heyden's shares in the Company to Mr. Lares, and transfer the 80 Acres to the Company, for a total price of \$2 million (the "**2024 MOU**"). As a result of the 2024 MOU, Mr. Lares understood that he would shortly be buying out Mr. van der Heyden from the Company.
12. Beginning in or around May 2024, Mr. van der Heyden, then represented by Yvan Guy Larocque, began demanding the Company's accounting records from Mr. Lares.
13. In response to Mr. van der Heyden's requests for information, McQuarrie sent a letter to Mr. Larocque on July 26, 2024, which enclosed a Sharelink file with financial and corporate documents received from Mr. Lares. In the same Sharelink file, McQuarrie also provided a portion of its file related to the "Defamation Matter", as further explained below.
14. McQuarrie continued to represent Mr. Lares in negotiations for a share sale in 2024.

The Petition

15. On December 20, 2024, Mr. Lares filed the Petition. Mr. Lares seeks an order pursuant to the *Business Corporations Act*, SBC 2002, c. 57 ("**BCA**") on terms similar to or informed by a settlement agreement reached by Mr. Lares and Mr. van der Heyden by September 13, 2024 (the "**Settlement Agreement**") by which Mr. van der Heyden will sell his shares in the Company to Mr. Lares and transfer the 80 Acres to the Company for a total price of \$2 million.
16. As part of the terms of the Settlement Agreement, Mr. Lares is to pay the \$2 million to Mr. van der Heyden across three payments, and Mr. van der Heyden is entitled to register a mortgage against title to the other lands owned by the Company, known as the "**160 Acres**", as security for the final payment. In the Petition, Mr. Lares pleads that Mr. van der Heyden failed to complete this Settlement Agreement and seeks an order consistent with its terms.
17. McQuarrie is Mr. Lares' counsel of record in the Petition proceeding as well as other proceedings involving Mr. Lares.
18. Mr. van der Heyden filed his Response to Petition on February 19, 2025. Mr. van der Heyden takes the position that no Settlement Agreement was reached for his sale of shares to Mr. Lares. Mr. van der Heyden instead seeks a shotgun sale, or in the alternative, the appointment of a Chartered Business Valuator.
19. In the Petition proceeding, both Mr. Lares and Mr. van der Heyden agree an order under s. 324(1) of the *BCA* must be issued. Section 324(1)(b) provides that the court may order, on an application, that a company be liquidated and dissolved if the court orders it just to do so.
20. However, and significantly, neither Mr. Lares nor Mr. van der Heyden seek an order actually liquidating and dissolving the Company. Instead, both agree that the court should

specifically make an order under s. 324(3)(b) of the *BCA*. This provision allows the court, on an application pursuant to s. 324(1)(b), to “make an order under s. 227(3) it considers appropriate.”

21. The only disagreement in the Petition is the appropriate remedy the court should make under s. 227(3) of the *BCA*. As explained above, Mr. Lares seeks a court-ordered sale in line with the terms of the Settlement Agreement between the parties. Mr. van der Heyden seeks a shotgun sale, or in the alternative, the appointment of a Chartered Business Valuator.
22. Both parties seek an efficient resolution to the deadlock between the shareholders.
23. The Company is named as a respondent in the Petition for the purposes of declaratory relief. However, it is not represented by counsel nor has it filed a Response to the Petition. The Company has not brought this application to disqualify McQuarrie as counsel for Mr. Lares.

McQuarrie’s Engagement on the Defamation Matter

24. On or around January 15, 2024, McQuarrie was retained by Mr. Lares and the Company to respond to defamatory social media postings made by third parties against Mr. Lares and the Company (the “**Defamation Matter**”). No litigation was commenced at this time.
25. McQuarrie’s engagement was limited to review of these third party defamatory publications and issuing letters to those parties and social media companies. McQuarrie was not engaged, nor did it act, for the Company in any negotiations of the sale of Mr. van der Heyden’s shares to Mr. Lares, or the transfer of the 80 Acres Lands by Mr. van der Heyden, in the course of the Defamation Matter or at all. Furthermore, McQuarrie did not act for the Company with respect to any matter adverse to Mr. van der Heyden.
26. In fact, McQuarrie’s representation of the Company was incidental to its representation of Mr. Lares. At that time in January 2024, Mr. Lares believed his buy-out of Mr. van der Heyden’s shares in the Company was imminent. As a result, Mr. Lares provided McQuarrie with instructions on behalf of the Company in the Defamation Matter, pursuant to a directors resolution dated January 18, 2024 which he alone signed.
27. Mr. Lares paid for McQuarrie’s services. While two payments totalling \$4,000 were made from the Company’s VISA card towards one of McQuarrie’s invoices in February 2024, Mr. Lares fully repaid the \$4,000 to the Company in October and November 2024. Contrary to paragraph 7 of the Notice of Application, Mr. Lares made a further, additional payment in October 2024 to cover an additional \$604.80 which was paid by the Company.
28. When it became apparent that Mr. Lares’ buy-out of Mr. van der Heyden’s shares was not going to be complete without a court order, McQuarrie opened a new file for Mr. Lares alone on or around April 18, 2024. McQuarrie continued to represent only Mr. Lares in responding to further defamatory online content, and in his shareholder dispute with Mr. van der Heyden.

29. The original file for both Mr. Lares and the Company relating to the Defamatory Matter was held in abeyance by March 2024. The file was considered closed by May 2024. Formal file closing procedures were completed on February 24, 2025.
30. On or around July 26, 2024, in response to a request from Mr. van der Heyden, McQuarrie provided to Mr. van der Heyden's counsel, Mr. Larocque, part of its file for the Defamation Matter. This file contained communications with third parties, defamatory content and miscellaneous documents and searches relating to the defamatory content.
31. On or around January 29, 2025 and in response to a further request from Mr. van der Heyden, McQuarrie provided Mr. van der Heyden with additional materials related to McQuarrie's engagement in the Defamation Matter. These additional materials included copies of the retainer letter and directors' resolution for the Defamation Matter, as well as redacted copies of three reporting letters issued to the Company and Mr. Lares. Redacted items were provided due to Mr. Lares' concern that Mr. van der Heyden would misuse these materials. Mr. Lares has since then provided all the documents requested by Mr. van der Heyden's counsel, and more.

Mr. van der Heyden Did Not Seek for the Company to Retain its Own Counsel

32. In the letter dated January 29, 2025, McQuarrie advised Mr. van der Heyden's counsel, Drummond Lambert:

As for the Company consenting to McQuarrie acting against it in this proceeding, we do not agree that we are acting against the Company. The Company is named as a respondent in the proceeding, but the declaratory relief is ultimately for a buy-out of Mr. van der Heyden's interests. In such situations where there is now a deadlock, the Company typically remains neutral. Although separate counsel could be retained if both directors agree, we would not see any need for that expense here.
33. In a responding letter dated February 19, 2025, Mr. Lambert wrote that "we are currently considering the conflict of interest issue and the potential need for the company to obtain independent legal advice."
34. Mr. van der Heyden did not proceed with any steps to have the Company appoint its own independent counsel.

Part 5 LEGAL BASIS

Principles on an Application to Disqualify Counsel

35. The test that is typically applied on an application to disqualify counsel has been described as whether a reasonably informed person would conclude in the circumstances that a disqualifying conflict of interest exists such that there is a possibility of real mischief if counsel is not removed: *MacDonald Estate v. Martin*, [1990] 3 S.C.R. 1235.

36. This involves two questions: (1) did the lawyer receive relevant confidential information from its former client arising from the solicitor-client relationship, and (2) is there a risk that the information will be used to the prejudice of that client's interests: *Canadian National Railway Co. v. McKercher LLP*, 2013 SCC 39 at para. 24 [*McKercher*].
37. To be considered confidential information, the information must be capable of being used against the client (or former client) in some tangible manner: *McKercher* at para. 54
38. The fundamental issue is whether the previous retainer is "sufficiently related" to the present retainer. If it is, the court will infer confidential information was imparted unless the lawyer discharges the burden of satisfying the court that no relevant information was received: *Sandhu v. Mangat*, 2018 BCCA 454 at para. 427 [*Sandhu*].
39. Most applications to have counsel removed are brought by a client seeking to have his or her former lawyer disqualified from acting against him or her. A third party bringing such an application does not have the same interest in and cannot assert the client's rights and privileges. The third party's principal interest on a removal application must be whether there is "a substantial risk of a compromised trial process": *Gichuru v. Purewal*, 2017 BCCA 281 at para. 16 [*Gichuru*].
40. In this case, the application is not being brought by the Company, by Mr. Lares, or by Mr. van der Heyden purporting to act on behalf of the Company. This is important, as the interests of respondent shareholders are often not the same as the respondent corporation: *Yen v. Ghahramani*, 2023 BCCA 403 at paras. 49-52.
41. A removal order is "an extraordinary remedy, to be approached with great caution and rarely invoked": *Gichuru* at para. 17. The standard to be met is high. British Columbia courts have taken a cautious approach to ordering the removal of counsel contrary to the wishes of the clients, acknowledging the right of a litigant to his or her choice of counsel: *Coutu v. Jorgenson*, 2004 BCCA 400 at para. 31.
42. Disqualification of a lawyer carries significant consequences for the lawyer, law firm, and the client they will be disqualified from representing. Disqualification is "generally the only appropriate remedy" where there is a need to prevent misuse of confidential information: *McKercher* at para. 63. When disqualification is considered solely to protect public confidence in the integrity of the administration of justice, but where there is no overriding concern about misuse of confidential information, other factors must be weighed. Countervailing considerations could include protecting a client's right to choose their lawyer, and a lawyer's right to employment mobility: *Wiebe v Jonet Construction Ltd.*, 2021 BCSC 617 at para. 38.
43. Ultimately, the competing interests are the maintenance of high standards of the legal profession and the integrity of the system of justice, versus the right of the parties to be represented by counsel of their choosing: *Jacks v. Victoria Amateur Swimming Club*, 2003 BCSC 845 at para. 12.

McQuarrie Did Not Receive Confidential Information Relevant to this Proceeding

44. The Defamation Matter and the current Petition proceeding are not sufficiently related such that McQuarrie could have received information that was confidential as between the Company, Mr. Lares and Mr. van der Heyden, or at all.
45. The concerns about the misuse of confidential information are not engaged in the absence of sufficiently related retainers. The onus is on the party asserting a conflict to show that the two retainers are sufficiently related: *Sandhu* at para. 46. A bald assertion of a sufficient relationship will not suffice; the evidence of the relationship must be clear and cogent: *Le Soleil Hospitality Inc. v. Louie*, 2010 BCSC 1954 at para. 32, aff'd 2011 BCCA 120 (in Chambers) and 2011 BCCA 196 (on review).
46. In determining whether the two retainers are related, the relevant relationship is that between the claim made by the party formerly represented by the lawyer and the claim made in the retainer from which the applicant seeks disqualification: *Malii v British Columbia (Attorney General)*, 2019 BCSC 2060 at para. 67 [*Malii*], aff'd 2021 BCCA 140.
47. The following factors have been considered in determining whether there is a sufficient relationship to presume that confidential information has passed:
 - (a) whether the prior retainer resulted in an understanding of the applicant's strengths and weaknesses;
 - (b) whether the points of connection between the retainers might involve confidential information relating to the present litigation;
 - (c) whether counsel's insight into the former client's character and personality traits is a matter of legitimate concern; and
 - (d) whether counsel may have gained insight into litigation strategy that is relevant to the present litigation: *Malii* at para. 36.
48. None of these factors are present here. Mr. van der Heyden has not shown how the Defamation Matter is connected to the Petition such that there is any risk of McQuarrie receiving relevant confidential information that could cause prejudice to Mr. van der Heyden or to the Company. The Defamation Matter related to defamatory social media posts made by third parties with respect to Mr. Lares and the Company. The Petition relates to an internal shareholders dispute and the termination of the business relationship between Mr. Lares and Mr. van der Heyden.
49. Indeed, contrary to the assertions in the Notice of Application, the Petition does not rely on the Defamation Matter, or the work done by McQuarrie in the Defamation Matter, as the basis for its relief sought. A court-ordered buyout of Mr. van der Heyden's shares consistent with the terms of a Settlement Agreement is wholly unconnected with the Company's response to defamatory postings on Instagram. Rather, the facts in the Petition

included references to the Defamation Matter as part of the history of Mr. Lares' operation of the Company.

50. The terms of a share sale between shareholders do not depend on McQuarrie's review of and response to online defamatory social media postings. There is no risk that any relevant confidential information was received such that McQuarrie should be disqualified.

There is No Risk of Prejudice to the Company

51. McQuarrie's engagement for the Company does not prejudice the Company in the current Petition. The Company is not a party of record, nor does it have any independent interest in the relief sought.
52. Further, at no point has Mr. van der Heyden sought to have the Company appoint its own legal counsel. That is because the relief sought in this Petition, by both Mr. Lares and Mr. van der Heyden, does not materially impact the Company.
53. One term of the Settlement Agreement reflected in the relief sought permits Mr. van der Heyden to register a mortgage against title to the 160 Acres owned by the Company, as security for Mr. Lares' final payment for his shares. However, despite the allegations in the Notice of Application, the granting (or not) of this mortgage does not depend on the receipt of confidential information by McQuarrie in the course of the Defamation Matter, and does not make the Company adverse to Mr. Lares in the litigation. Mr. van der Heyden has not shown how the Company would be prejudiced if this term was sought by McQuarrie acting for Mr. Lares.
54. In any event, this term was included as part of the relief sought solely for the benefit of Mr. van der Heyden. If Mr. van der Heyden believes this term is improper, he can forgo its benefits.
55. There is no risk of prejudice to the Company from McQuarrie's continued engagement by Mr. Lares.

There is No Substantial Risk of a Compromised Trial Process


56. The issues in this Petition are narrow. Determination of the appropriate relief does not depend on any issue engaged by the Defamation Matter.
57. Contrary to paragraph 41 of the Notice of Application, Mr. van der Heyden has no basis to assert any other issues arising from McQuarrie's representation of Mr. Lares. McQuarrie was properly engaged by Mr. Lares on behalf of the Company in the Defamation Matter.
58. McQuarrie has disclosed all the documents requested by Mr. van der Heyden (and more) regarding the Defamation Matter.
59. Mr. van der Heyden has no grounds to disqualify McQuarrie as counsel for Mr. Lares. Any such allegations of impropriety are purely tactical and should be ignored.

Part 6 MATERIAL TO BE RELIED ON

1. Affidavit # 1 of Michael Lares, made December 19, 2024;
2. Affidavit # 2 of Michael Lares, made May 16, 2025;
3. Affidavit # 1 of Benjamin Morley, made May 16, 2025;
4. Affidavit #2 of Barbara Poth, made May 16, 2025; and
5. The Petition and Petition Response filed herein.

The Application Respondents have filed in this proceeding a document that contains the Application Respondent's address for service.

Dated: 16-May-2025



Signature of
 Application Respondent
 Lawyer for Application Respondents

CORRY A. CLARK

The Solicitors for McQuarrie Hunter LLP is Fasken Martineau DuMoulin LLP, whose office address and address for delivery is 1800-13401 108 Avenue, Surrey, BC V3T 5T3. Telephone: +1 604 631 3131 Facsimile: +1 604 631 3232 E-mail: cclark@fasken.com (Reference: Corry A. Clark/247744.00008)