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Three Lessons from Recent Decisions in Shareholder Disputes

Shareholder disputes are often complex and multi-faceted, and no two are identical. Despite their unique nature, recent Commercial List decisions have identified and reviewed issues common to many shareholder disputes at different stages. In this blog, we review key takeaways from three recent Commercial List decisions that broadly apply to litigating and resolving complex shareholder disputes.

1. Settlement Agreements – *Matas Management Services Inc v Voreon Inc*

In any settlement agreement, parties must be mindful of all terms and carefully consider how the agreement is likely to unfold. This is especially important in shareholder disputes, where settlements frequently involve overlapping issues and multiple steps over longer periods of time (e.g., valuation issues, deferred compensation, or other forms of consideration).

In Matas, the parties to a private company dispute entered into a settlement agreement in early 2016. The settlement terms included removing certain mortgages, an initial payment from the sale proceeds of a property, and a share transfer upon receipt of these initial proceeds.

Nine years later, the parties had not carried out all the steps under the agreement, and the applicant sought to enforce the transfer of shares contemplated under the agreement. Despite the 2016 settlement, the parties had become involved in separate, related, and ongoing litigation.

The respondent resisted the application on the basis that ongoing litigation between the parties could impact the share transfer component of the settlement. Justice Steele agreed. Her Honour found that because of the connection between the settlement and the ongoing litigation, and the potential impact on the settlement term, the Court should defer the enforcement proceedings to the hearing of (or immediately after) the other outstanding proceeding. As summarized at paragraph 64:

> Similar to Koehnen J., I am concerned that if the Settlement Agreement is enforced without the other pieces of this intertwined puzzle being considered contemporaneously, there may be other issues that arise. Accordingly, I am of the view that this matter should be heard either contemporaneously with or immediately following (at the discretion of the judge hearing the

matters) the PSA Action with viva voce evidence.

While the specific facts of Matas are unique, it is a good reminder that entering into a settlement agreement does not guarantee the end of shareholder disputes, particularly where settlement agreements contain multiple steps and where the parties to them are involved in other litigation. Parties to shareholder disputes should think carefully about the terms of any settlement, their enforceability, and the likelihood of future litigation that may impact the agreement.

2. Financial Records – *Allison v CMC Consumer Credit Limited*

While an individual shareholder's entitlement to corporate documents is often governed by their shareholders' agreement, it is common for disputes about documentary entitlements to arise, particularly in the early stages of shareholder litigation.

The Commercial List recently addressed this precise scenario in Allison. There, the plaintiff sought an order for the production of certain financial documents he claimed he was entitled to under a shareholders' agreement, as a trust beneficiary, or as an intended director. The plaintiff moved for production within an underlying oppression claim, prior to discoveries. The defendant resisted the motion on several grounds, including that the request was for pre-discovery disclosure, and that the plaintiff was not a shareholder.

Justice Dietrich found for the plaintiff and ordered production of the records. In reaching her decision, Justice Dietrich helpfully reviewed many of the principles regarding shareholder entitlements to corporate documents, noting:

- The Court may order production of relevant, non-privileged documents at any time.
- Where an individual enters into a contract in the name of or on behalf of a corporation before it comes into existence, that individual is personally bound by the contract and entitled to its benefits.
- Where a party is a beneficial shareholder, they retain, as a trust beneficiary, a proprietary right to all records necessary to understand how their investment has been dealt with.

The decision reinforces the multiple ways a party to a shareholder dispute may be entitled to corporate records. In the right circumstances, courts will not hesitate to order production of these documents and will award costs for refusing that disclosure.

3. Misrepresentations – *Tripodi v Susglobal Energy Corp*

While claims of misrepresentation are common in shareholder disputes, whether a statement amounted to a representation, and whether that representation was false, are highly fact-specific questions. In *Tripodi*, Justice Kimmel addressed this issue, reviewing a plaintiff's claim that the individual defendant misrepresented the value of the defendant corporation's shares, the health of the company, and aspects of a future public listing.

Justice Kimmel found that the alleged representations were not misrepresentations, and that the plaintiff's reliance on them was unreasonable in any event. In reaching this determination, Her Honour helpfully reviewed the law on misrepresentation in the context of share sales and private companies, noting among other things:

- A defendant need not be a fiduciary to have a special relationship with a plaintiff. A special relationship may develop on the facts where a defendant, as here, "was in a position of superior knowledge" regarding the subject investment.
- Notwithstanding any special relationship, a party expressing optimism or hope alone about a company's growth or share value does not constitute a misrepresentation, particularly where this aligns with the disclosure provided.
- Courts must consider alleged misrepresentations in the full context of all the facts, including the nature of the investment (e.g., in this case, the investment was an "emerging growth company").
- Statements about a future state of affairs may form the basis for a claim of misrepresentation, but only if they imply that the opinion, forecast, or prediction was prepared using reasonable care and skill from available information that supports the opinion, forecast, or prediction. In *Tripodi*, the statements were casual comments made over text message and could not reasonably be viewed as constituting a representation intended to be relied upon.

Prospective plaintiffs should carefully consider the full factual circumstances of their communications with their fellow shareholders and the nature of the business when assessing a potential claim.