

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Ghahroud v. Mirage Trading Corporation*,
2026 BCCA 276

Date: 20260608
Docket: CA51109

Between:

**Rouzbeh Rabiei Ghahroud, MAJ Enterprises Inc., and
Teknocal Properties Inc.**

Appellants
(Respondents)

And

Mirage Trading Corporation

Respondent
(Petitioner)

And

**Norseyl Properties Ltd., AXA Consulting Services Inc., and
Pan Pacific Business Corporation**

Respondents
(Respondents)

Before: The Honourable Madam Justice Fenlon
The Honourable Madam Justice Horsman
The Honourable Justice Winteringham

On appeal from: An order of the Supreme Court of British Columbia, dated
October 7, 2025 (*Mirage Trading Corporation v. Ghahroud*, 2025 BCSC 1955,
Vancouver Docket S244258).

Oral Reasons for Judgment

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Place and Date of Hearing:

Vancouver, British Columbia
June 3, 2026

Place and Date of Judgment:

Vancouver, British Columbia
June 8, 2026

Summary:

The appellants appeal the order of a chambers judge on a petition for an oppression remedy. The chambers judge ordered the appellant MAJ to purchase the respondent's shares at a price to be determined by a chartered business valuator. HELD: Appeal allowed in part. The chambers judge erred in delegating the determination of share value to a chartered business valuator without the need for court approval and with no means for the appellants to challenge or appeal the valuator's determination. The order of the chambers judge is varied to provide that an application must be made to the court to fix the fair value of the shares after the chartered business valuator has completed their report.

[1] **HORSMAN J.A.:** This is an appeal from an order of a chambers judge granted on a petition for an oppression remedy under s. 227 of the *Business Corporations Act*, S.B.C. 2002, c. 57. Specifically, the chambers judge ordered the appellant MAJ Enterprises Inc. ("MAJ") to purchase the respondent's shares at a price to be determined by a chartered business valuator. The order did not include any term requiring the court to approve the valuation.

[2] On appeal, the appellants contend the judge erred in delegating the question of the value of the shares to a valuator. Instead, the appellants say that the chambers judge should have retained authority to make a final determination of the share value following a further evidentiary hearing.

Background

[3] The appellant Teknocan Properties Inc. ("Teknocan") is a limited partner in two limited partnerships developing condominium towers in North Vancouver known as Seylynn Village and Seylynn Gardens. Teknocan owns 51.7% of the equity in both partnerships.

[4] Teknocan has two registered shareholders. The respondent Mirage Trading Corporation ("Mirage") holds 10% of Teknocan's shares and the appellant MAJ holds 90 percent. The respondents Pan Pacific Business Corporation, Norseyl Properties Ltd. and AXA Consulting Services Inc. collectively claim a beneficial ownership in half the shares registered to Mirage. This claim is being pursued in a separate legal proceeding.

[5] On June 21, 2024, Mirage filed a petition alleging that MAJ, and Rouzbeh Rabiei Ghahroud (“Mr. Rabiei”), the sole director and principal of MAJ, had engaged in conduct that was oppressive and unfairly prejudicial to Mirage, including by unlawfully excluding Mirage from the management of Teknocan, refusing to produce audited financial statements, and selectively repaying millions of dollars in shareholder loans to MAJ to the exclusion of payments to Mirage. The relief sought in Part 1 of the petition included an order requiring the purchase of Teknocan shares held by Mirage on the following terms:

11. An order directing MAJ Enterprises, or in the alternative, Teknocan, to purchase the shares registered in the name of the Petitioner at a value to be fixed by a Chartered Business Valuator to be appointed by the court, whose costs shall be borne solely by MAJ Enterprises;

[6] The path to the hearing of the petition was not smooth. The procedural history is detailed in the judge’s reasons. As reviewed by the chambers judge, there were a series of interlocutory applications, including Mirage’s application for an interim injunction (which was granted) and MAJ’s two applications to vary the injunction (which were dismissed). MAJ was slow to comply with terms of the injunction order, including in relation to the production of financial records to Mirage. MAJ was found to have violated other terms of the injunction order, leading to a finding of contempt of court.

[7] Another complicating feature of the proceeding was the parties’ changing positions—up to and during the hearing—particularly on the question of remedy.

[8] By the time of the hearing of the petition, the appellants were consenting to an order for a buyout of Mirage’s shares, with the value of the shares to be determined by a chartered business valuator. There was dispute over certain other terms relating to the buyout, including the valuation date and who would pay for the valuation.

[9] Mirage, for its part, changed the nature of the terms of the order it sought in relation to the buyout from what was pleaded in paragraph 11 of Part 1 of the petition. Instead of having the court appoint a chartered business valuator, Mirage

requested an order for the appointment of an interim receiver over Teknocan to facilitate the share purchase process. Mirage proposed that the receiver would retain and instruct the chartered business valuator. During the petition hearing, counsel for Mirage provided the chambers judge with a draft receivership order.

The chambers judgment

[10] On October 7, 2025, the chambers judge issued reasons for judgment: *Mirage Trading Corporation v. Ghahroud*, 2025 BCSC 1955 (“RFJ”).

[11] The chambers judge found that the appellants had engaged in conduct that was unfair and prejudicial to Mirage. He concluded, as conceded by the appellants, that two payments to MAJ of approximately \$6 million and \$11 million without corresponding payments to Mirage were contrary to Mirage’s reasonable expectations. The chambers judge additionally found that the appellant’s failure to provide Mirage with Teknocan’s audited financial statements for the years 2021–2023 in a timely manner amounted to oppressive conduct.

[12] The chambers judge then turned to the question of remedy. He noted that the appellants consented to a buyout of Mirage’s shares, with the dispute narrowed to certain ancillary orders.

[13] In relation to its request for the appointment of an interim receiver, Mirage’s position was that the “core mandate of the receiver would be to access and verify Teknocan’s financial records, and assist in the independent valuation of Teknocan for the purposes of the buyout”: RFJ at para. 67. The chambers judge agreed that the appointment of a receiver was necessary to ensure that Mirage was provided with the information it needed in a timely manner, and to keep Mirage “fully in the loop throughout the valuation process”: RFJ at para. 70. He largely endorsed the terms of the draft receivership order that Mirage had provided during the hearing.

[14] The chambers judge fixed the share valuation date as the “date the receiver issues its report to this Court”: RFJ at paras. 61, 115. While not entirely clear on the material, it appears that both parties have operated on the assumption that the

“report” the chambers judge is referring to is the written accounting report the receiver is to prepare under paragraph 4(e) of the receivership order.

[15] The chambers judge directed that the valuation would be based on the assumption that MAJ had returned the payments of \$6 million and \$11 million, along with any other funds removed from Teknogan without Mirage’s consent. He also ordered that the price methodology would be based on a fair valuation of Teknogan as an operating business, not on fair market value, and no minority discount would be applied.

[16] Beyond these terms, and the direction that the valuator would be retained and instructed by the receiver, the order of the chambers judge provides limited guidance regarding the process for the share valuation.

[17] On the issue of costs, Mirage requested that its costs of the petition be assessed as special costs.

[18] The chambers judge found the appellants’ conduct during the proceeding had unnecessarily prolonged the litigation, and that some of their litigation conduct was reprehensible. This included: Mr. Rabiei’s “sharp and misleading” evidence on the injunction applications; the actions of the appellants in frustrating Mirage’s efforts to access documents provided to Teknogan’s auditor; and the appellants’ advancement of unmeritorious submissions that unnecessarily added to the complexity and cost of the litigation. The chambers judge concluded:

[114] In my view, there was nothing “normal” or reasonable about the Teknogan Respondents’ litigation conduct, recognizing that litigation of this kind is often “hard fought” and contentious. There was a consistent pattern of sharp conduct throughout that led to unnecessarily protracted and costly litigation which consumed an extraordinary amount of judicial resources. I accordingly award special costs to Mirage for the entirety of the proceeding.

[19] These findings, and the special costs award generally, are not challenged on appeal.

[20] Finally, the chambers judge granted the parties leave to apply to him for directions “with respect to the terms of these orders”: RFJ at para. 116.

The post-judgment hearing before the chambers judge

[21] On November 4, 2025, the parties appeared before the chambers judge to settle the form of order. The appellants were represented by new counsel.

[22] Mirage presented a draft form of order that tracked the language of the orders in the RFJ.

[23] The appellants proposed a different form of order, including the following term that was not in the RFJ:

Following completion of the valuator's report, an application will then be made to this court to have the fair value of the shares fixed by this court unless such fair value is agreed to by the parties in writing.

[24] The appellants took the position that there needed to be a further hearing that would permit the parties to make submissions and tender expert evidence on the share valuation. Counsel for the appellants sought to provide the chambers judge with a book of authorities in support of the proposition that it is the obligation of the court to determine the fair value of shares where there is a forced sale of shares under an oppression remedy. The appellants maintained that their submissions were within the term of the order permitting the parties to reappear to seek directions. Alternatively, they sought an adjournment to allow time for a reconsideration application to be brought.

[25] The chambers judge declined to entertain the appellants' submissions, or to allow them a further opportunity to bring a reconsideration application. He settled the order on the terms suggested by Mirage. The order as entered includes these terms:

3. McEown and Associates Ltd. ("**McEown**") is appointed as an interim receiver under s. 227(3) of the Act, on the terms attached hereto as Schedule "A";

[...]

7. Subject to the terms of the Consent Stay Order, MAJ is directed to purchase the shares of Mirage in Teknogan on the following terms:

- (a) the value of the shares will be determined by a Chartered Business Valuator retained and instructed by the Receiver, and the costs of the valuation will be paid by MAJ;

- (b) the valuation date will be the date the Receiver issues its report to this Court, and the valuation will be performed following the receipt of that report;
- [...]

[26] The order does not provide any role for the court in determining the share price. As presently structured, the order will compel the appellants to purchase Mirage's shares at a future price to be determined by the valuator.

The parties' positions on appeal

[27] The appellants contend that in delegating the power to determine the value of the shares to a chartered business valuator, the chambers judge erred in law and principle and otherwise made a decision that was clearly wrong and works an injustice.

[28] The appellants acknowledge that the court exercises a broad discretion in crafting an oppression remedy. However, the appellants say that appellate intervention is warranted in this case because the chambers judge overlooked his responsibility to make a judicial finding of the fair value of the shares. The appellants say that in determining value, the court may be guided by expert evidence but the court cannot be bound by such evidence. A judge need not accept the expert valuations and is entitled to make their own calculations to arrive at a fair value. The appellants cite a number of authorities in support of these propositions, including: *Beaubien v. Campbell*, 2003 SKQB 213 at paras. 99–100; *Cullain v. Wilcox*, 2025 ONSC 1739 at paras. 92–93; *Brant Investments Ltd. v. KeepRite Inc.*, [1987] O.J. No. 574, 1987 CanLII 4366 (H.C.J.) at para. 113, aff'd [1991] O.J. No. 683, 1991 CanLII 2705 (C.A.); and M.J. Cumming and D.H. Peterson, *Shareholder Remedies in Canada*, 2nd ed. (Toronto: LexisNexis, 2009) (loose-leaf updated 2025, release 109) Ch. 17 at §17.231.

[29] The appellants do not appear to go so far as to argue the court has no jurisdiction ever to make an order that shares will be valued by a valuator or appraiser without further court involvement. For example, the appellants acknowledge that the court could issue a consent order to that effect. However, the

appellants say that such an order would be exceptional in light of the obvious fairness concerns in binding parties to a future determination of value by an as-yet unknown valuator that they are unable to critique or challenge, and which cannot be appealed.

[30] In this case, the appellants emphasize that the sums in issue are significant and the valuation process will be complex. The profits from only one of the three residential towers comprising the Seylynn Village are projected to be \$76.7 million. Seylynn Gardens is in the midst of a rezoning phase, which complicates its valuation. The appellants say that in these circumstances, an order that binds them to a yet to be determined share valuation by a chartered business valuator who has yet to be identified would be unfair and unprecedented.

[31] In response, Mirage makes essentially two arguments in seeking to uphold the order of the chambers judge.

[32] First, Mirage says that the appellants are raising a new issue that was not raised before the chambers judge in the original hearing. Instead, the appellants consented to an order for a buyout of the Mirage shares based on a value determined by a chartered business valuator. The appellants did not argue to the chambers judge at the original hearing that he could not delegate the valuation of the shares to a business valuator. In these circumstances, Mirage argues that the court should not permit the appellants to raise a new issue on appeal simply because the appellants have new counsel who want a different order than the one they consented to before the chambers judge.

[33] Second, Mirage says that if the appellants are permitted to raise the new issue, they have not demonstrated any basis for appellate interference. Mirage emphasizes that s. 227(3) of the *Business Corporations Act* provides the court with “broad, equitable jurisdiction to enforce not just what is legal, but what is fair”: *BCE Inc. v. 1976 Debentureholders*, 2008 SCC 69 at para. 58. Mirage emphasizes the deference that is owed to such an exercise of discretion on appeal.

[34] Mirage notes that s. 227(3) does not mandate that the court must fix value whenever it orders the sale of shares. Instead, it authorizes the court to make any order it considers appropriate to remedy the oppression and bring matters to an end. Mirage argues that the history of the proceeding—including the appellants’ reprehensible litigation conduct—justified an order putting an end to unnecessarily protracted and costly litigation that had already consumed a significant amount of judicial resources. Mirage says there is precedent for such an order in these circumstances, citing *Melcer Estate*, 2018 BCSC 775 [*Melcer Estate 2018*] and *Melcer Estate v. Boxer*, 2020 BCSC 1686 [*Melcer Estate 2020*], aff’d 2022 BCCA 143 [*Melcer Estate BCCA*] (collectively, the “*Melcer Estate Litigation*”).

[35] To the extent there is any concern with a lack of judicial oversight in relation to the share valuation, Mirage says that concern is addressed by the appointment of a receiver who will, as an officer of the court, instruct the valuator and supervise the buyout. Further, under the receivership order, the receiver may apply to the court for “advice and directions”. Mirage maintains that the involvement of the receiver obviates the need for further judicial involvement in approving the sale price or convening further hearings with competing valuation evidence.

Discussion

[36] I will first address Mirage’s argument that the appeal raises a new issue that requires leave from this Court to advance, and that leave should be refused.

[37] As a general rule, a party cannot raise a new issue on appeal. An appellate court may depart from the general rule and entertain a new issue only where “the interests of justice require it and where the court has a sufficient evidentiary record and findings of fact to do so”: *Quan v. Cusson*, 2009 SCC 62 at para. 37, quoting *Wasauksing First Nation v. Wasausink Lands Inc.* (2004), 184 O.A.C. 84 at para. 102, 2004 CanLII 15484. In exercising its discretion, the court undertakes three inquiries: (i) is the issue truly new; (ii) is the existing evidentiary record sufficient for the court to address the new issue; and (iii) do the interests of justice support making an exception to the general rule that a new issue cannot be raised

on appeal?: *1193652 B.C. Ltd. v. New Westminster (City)*, 2021 BCCA 176 at para. 86.

[38] As to the first inquiry, the issue that the appellants raise on appeal is not “truly new” in the sense that it was never raised before the chambers judge. At the post-judgment appearance, the appellants did attempt to make submissions to the chambers judge about the propriety of an order that delegated the share valuation to a business valuator. As the chambers judge declined to entertain the submissions, there are no reasons from the lower court on the issue the appellants now wish to raise. In my view, the responsibility for this rests with the appellants, who failed to advance the argument in a timely way at the hearing of the petition. Thus, even if the issue is not “truly new”, I accept that the appellants’ delay in advancing it has compromised this Court’s appellate role.

[39] As to the second inquiry, Mirage does not argue that the existing evidentiary record is insufficient for this Court to address the issue the appellants seek to advance on appeal. The issue raises a question of principle that does not require additional factual findings to be made.

[40] I consider the third inquiry to be the critical one in this case. It would be manifestly unfair to deny the appellants the opportunity to raise an issue in this Court that goes to the fundamental fairness of a process that will dictate the amount they will be compelled to pay in the forced buyout of the Mirage shares. In this regard, I make three observations.

[41] First, the order of the chambers judge lacks guarantees of procedural fairness for both parties. Neither party has a right to participate in the selection of the chartered business valuator or their instructions; those responsibilities are assigned to the receiver. Neither party has a right to challenge the valuation through evidence or submissions to the court. The parties are bound to accept the valuation regardless of any flaws that may be apparent in the process or methodology employed by the valuator.

[42] As the appellants emphasize, valuation is more of an art than an exact science. There may be a range of opinions on the question of fair value given the complexity of the valuation question in this case: the value of shares in a company that holds 51.7% of the equity units in two limited partnerships that in turn own two large, multi-million dollar developments, one of which is in a rezoning process. Yet the order as crafted binds the parties to the opinion of a single chartered business valuator without any means to test it.

[43] Mirage maintains that the receiver can ensure the fairness of the valuation process, including by receiving submissions from the parties and instructing the chartered business valuator to correct errors identified by the parties if necessary. However, none of this is set out in the order, including in the terms of the receivership order. The scope of the receiver's obligation to "instruct" the valuator is undefined. It is no answer to the fairness concerns raised by the appellants that the parties can hope the receiver will establish a process that meets fairness requirements.

[44] Second, and regardless of the process adopted by the receiver, the point remains that the determination of share value would occur without the direct involvement of the court. This has important implications for appeal rights. As the final value of the Mirage shares is to be determined by a chartered business valuator and not the court, neither party would have any ability to appeal the valuation, including on the basis that the process leading to it was procedurally unfair.

[45] Third, and perhaps most critically, it is generally the court's responsibility to determine the fair value of shares where a forced buyout is ordered. As the appellants emphasize, while the opinions of experts are of assistance to the court in determining fair value, a court is not bound by those opinions. Even where experts are highly qualified and employ the same methods, they may reach different opinions. The court exercises judgment in making the ultimate determination of fair value with a view to ensuring that the remedy that is granted is just and equitable. It is difficult to see how the court can exercise its remedial discretion on a principled

basis when the buyout order binds the parties to a presently unknown determination of value by an as-yet undetermined third party.

[46] I do not agree with Mirage that the *Melcer Estate* Litigation provides a precedent for the type of order made in this case, or that it supports that such orders are consistent with “established practice in British Columbia” as Mirage argues in its factum.

[47] In *Melcer Estate 2018*, Forth J. made a number of orders to resolve a deadlock in the management of a company and a dispute between its two shareholders. One of the orders provided the respondent with an option to purchase the petitioner’s interest in the company based on a valuation prepared by an independent valuator. The order required the parties to jointly retain the valuator and provide joint instructions to them. If the respondent chose not to purchase the shares, then the company would be wound-up and its assets sold. The relevant circumstances are detailed in *Melcer Estate 2018*. Accordingly, the first point of distinction is that the order in the *Melcer Estate* Litigation did not direct a forced buy-out of shares. Instead, it gave the respondent the option to purchase shares. The parties also retained some measure of input and control because the order required the valuator to be jointly retained and instructed.

[48] The second point of distinction is that in the *Melcer Estate* Litigation, the court retained authority to determine whether the valuator’s report reflected a fair value for the shares. *Melcer Estate 2020* involved the parties’ applications for directions from the court in relation to the instructions that should be given to the valuator before he finalized his report. The respondent asked the court to direct the parties to instruct the valuator to correct inadequacies before the report was finalized. The petitioner objected to such instructions. Justice Forth considered arguments on the merits of the alleged inadequacies, and received expert evidence on these issues, before ordering the valuator to finalize his report without correction. The nature of the process before Forth J., and the extent of her role in deciding the valuation issue, was described by this Court in *Melcer Estate BCCA* as follows:

[51] Before addressing the appellants' arguments in more detail, it is worth noting that they are based on the premise that the valuation contains "errors". Further, the arguments attempt to characterize the judge's resolution of the two issues raised as an error of mixed fact and law attracting appellate intervention. The arguments reflect a misunderstanding of the nature of the valuator's role in providing an opinion of value and of the judge's role in making the Order.

[52] The appellants' arguments suggest that there must be one *correct* answer to the valuation question. But the valuator was selected by the parties for his professional expertise to provide an *opinion* of value of the Estate's share. The judge's role was a limited one. She was not tasked with making findings of fact. She was to consider the submissions of the parties and determine the instructions to be provided to the valuator. In doing so, she had to decide whether it was necessary to direct the valuator to reconsider his opinion in order to arrive at a just and equitable remedy to resolve the deadlock.

[53] As with any other expert opinion, the valuator's report was based on underlying assumptions. The appellants tried to challenge those assumptions, but after receiving a considerable amount of evidence, including conflicting expert opinion, the judge concluded that the valuation was not unreasonable and that it could form the basis for the resolution of the dispute either through the appellants' exercise of the Option or through winding up of the company. She concluded that it would be just and equitable to resolve the dispute by accepting the opinion of the valuator who had been jointly appointed by the parties. In doing so, she was exercising her discretion as she was called on to do by the parties.

[Emphasis added.]

[49] It is evident, accordingly, that the *Melcer Estate* Litigation involved the type of valuation process the appellants argue is missing here: an opportunity for the parties to adduce evidence at a hearing before the court to challenge the valuation, a final determination by the court on the question of fair value, and an ability to appeal.

[50] I note that the order issued in *Melcer Estate 2018* did not include an express term requiring final court approval of the valuation. The case came back before the court in *Melcer Estate 2020* as an application for directions because the parties could not agree on the instructions to be given to the valuator to finalize his report.

[51] The order of the chambers judge in the present case included a term that permits the parties to seek directions "with respect to the terms of these orders": RFJ at para. 116. At the post-judgment hearing before the chambers judge, Mirage maintained that this term only permitted the parties to seek clarification about what

the terms of the order meant rather than directions on the procedure that may be required to implement them. The chambers judge appears to have acceded to Mirage's interpretation in declining to entertain further submissions from the appellants about the process.

[52] In the result, the chambers judge has made an order that effectively delegates the valuation of the Mirage shares to a chartered business valuator who is retained and instructed by a receiver. The order does not anticipate that the court will play any further role in determining the buyout price, even though the buyout order represents an exercise of the court's jurisdiction to determine a just and equitable remedy for the oppressive conduct. It is not clear to me from the record that the parties fully turned their minds to the implications of the order, or that they assisted the chambers judge in focussing on the implications.

[53] Mirage contends that even if the buyout order can be characterized as exceptional, it is justified by the exceptional circumstances of this case. As found by the chambers judge, the appellants have engaged in reprehensible litigation conduct designed to increase costs and make the litigation more difficult than it ought to have been. Mirage says that allowing the appeal would only "extend the process for years longer and undermine the finality the Court intended to achieve".

[54] I do not agree that these circumstances justify the order that was made in this case. There is no question that the appellants' litigation conduct has, at times, been egregious. However, they have been sanctioned by the court for that misconduct in the form of an award of special costs. The appellants have not, by virtue of their litigation misconduct, forfeited their entitlement to a fair valuation process. Furthermore, the objectives of finality and judicial economy do not, on their own, justify an order that delegates judicial responsibilities to a chartered business valuator.

[55] For these reasons, I conclude that the chambers judge erred in principle in his exercise of remedial discretion in this case by delegating the determination of share value without retaining any judicial role in determining the final share price.

Remedy

[56] In their factum, the appellants seek an order setting aside paragraph 7(a) of the order of the chambers judge and replacing it with these terms:

- i. a Chartered Business Valuator will be retained and instructed by the Receiver to prepare a valuation of the shares of Teknocan, and the cost of the Valuation will be paid by MAJ;
- ii. following completion of the valuator's report, an application will then be made to the court to have the fair value of the shares fixed by the court (the "**Application**"), unless such fair value is agreed to by all parties in writing; and
- iii. the parties are at liberty to retain and tender their own valuation reports for the purpose of any such an Application as well as cross-examine the experts for the purpose of the Application.

[57] I agree that paragraph 7(a) should be varied in the manner reflected in the first and second of the proposed terms to address the error I have identified. These proposed terms clarify that responsibility for determining value rests with the court and not the chartered business valuator. However, I do not agree that this Court should order the addition of the third proposed term. It is for the chambers judge to decide on the process for the hearing to fix the fair value of the shares. Rather than binding the chambers judge to a specific process, I would add a term granting the parties leave to seek directions from the chambers judge regarding the process for the Application.

[58] In their notice of appeal, the appellants additionally sought an order varying paragraph 9 of the chambers judge's order to expand the circumstances in which the parties could more generally seek directions from the court. The orders I propose to make in relation to paragraph 7(a) are responsive to the issues raised on appeal. I see no basis for this Court to further vary paragraph 9 of the chambers judge's order.

Disposition

[59] I would allow the appeal to the extent of setting aside paragraph 7(a) of the order of the chambers judge and substituting these terms:

- i. a Chartered Business Valuator will be retained and instructed by the Receiver to prepare a valuation of the shares of Teknocan, and the cost of the Valuation will be paid by MAJ;
- ii. following completion of the valuator's report, an application will then be made to the Court to have the fair value of the shares fixed by the Court (the "Application"), unless such fair value is agreed to by all parties in writing; and
- iii. the parties are at liberty to seek directions from the Court regarding the process to be followed on the Application.

[60] **FENLON J.A.:** I agree.

[61] **WINTERINGHAM J.A.:** I agree.

[62] **FENLON J.A.:** The appeal is allowed to the extent of setting aside paragraph 7(a) and substituting the terms described in these reasons.

"The Honourable Madam Justice Horsman"