

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *SHP Capital, LCC v. Medipure Holdings Inc.*,
2026 BCSC 1330

Date: 20260716
Docket: S222819
Registry: Vancouver

Between:

SHP Capital, LLC

Petitioner

And

**Medipure Holdings Inc., Medipure Pharmaceuticals Inc.,
Lorne Nystrom, Daniel L. Gelinas and Dr. Nihar Pandey**

Respondents

Before: The Honourable Mr. Justice Milman

Reasons for Judgment

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Place and Dates of Hearing:

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I. INTRODUCTION

[1] This is an application by the petitioner, SHP Capital, LLC (“SHP”), seeking leave under Rules 6-1 and 6-2(7) of the *Supreme Court Civil Rules* to add five new individuals as respondents in this proceeding and to file a further amended petition advancing new claims against them.

[2] SHP filed the original petition on April 5, 2022. It alleged that the affairs of the two corporations originally named as respondents, Medipure Holdings Inc. (“MHI”) and Medipure Pharmaceuticals Inc. (collectively, “Medipure”), were being conducted in a manner that was oppressive to SHP, as a senior secured creditor and a putative investor in Medipure. The petition sought various kinds of relief under s. 227 of the *Business Corporations Act*, S.B.C. 2002, c. 57 [BCBCA], to remedy the associated prejudice to SHP, including, among other things, an order directing Medipure to repay the amounts Medipure had received from SHP for shares in Medipure that SHP never received.

[3] Since filing the petition, SHP has taken no steps to advance it, at least not until recently. Instead, it initiated separate bankruptcy proceedings, eventually overtaken by proceedings under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36 [CCAA], through which it ultimately acquired most of Medipure’s assets. It is only after reviewing the books and records of Medipure over the following two years that SHP concluded that it had cause to amend the petition (which it has already done once, without obtaining leave and without filing a notice of intention to proceed, despite the delay) and to apply to amend it again, but this time in conjunction with a companion application to add the proposed new respondents as parties – the application now before me.

[4] Of the five respondents originally named in the petition, three (namely, the two Medipure corporations and one of their directors, Lorne Nystrom) are now bankrupt, which means that proceedings against them are stayed. Another of the original individual respondents, Daniel Gelinas, has since died leaving no substantial assets in his estate. The last of the originally named respondents, Dr. Nihar Pandey,

remains an active party of record. He does not oppose the relief being sought on this application.

[5] SHP seeks to add the proposed new respondents so that it can seek damages against them for their role in the alleged oppression. Those damages are now alleged to include not just the amounts that SHP gave to Medipure in exchange for shares that were never received, but also the balance, with accrued interest, owing to SHP on loans it extended to Medipure in 2021 and 2022, which remain unpaid.

[6] The application is opposed by three of the proposed new respondents, Walter Berukoff, Mark Donahue and Denis Gallagher (the “Application Respondents”). The other two, Boris Weiss and Christopher Condon, were served with the application pursuant to an alternative service order but have filed no response.

[7] The Application Respondents argue that that application should be refused on the basis that:

- a) the new claims that SHP seeks to advance against them are “bogus subordinate claims” that are, in any event, too stale to be properly advanced now; and
- b) adding them as parties would not be “just and convenient”, inasmuch as:
 - i. there is an insufficient connection between the new claims and the relief that SHP was seeking in the petition as originally filed;
 - ii. SHP has not provided an adequate explanation for the delay in advancing those claims; and
 - iii. prejudice to them is presumed, given the expiry of the limitation period for any fresh action that SHP might advance against them now.

[8] For the reasons that follow, I have concluded that the application should be refused.

II. PROCEDURAL HISTORY

[9] Medipure was incorporated under the *BCBCA* on June 20, 2014. Mr. Weiss, Mr. Donahue and Mr. Nystrom became directors that same month. Until the events that are the subject of these proceedings, it was in the business of developing cannabis-based pharmaceutical products.

[10] In November 2014, Medipure became a reporting issuer on the Canadian Securities Exchange, but one year later, on November 4, 2015, the British Columbia Securities Commission (“BCSC”) issued a cease trading order (“CTO”) in response to alleged irregularities in its financial filings.

[11] Subsequently, the BCSC issued a partial revocation of the CTO to allow for a private placement whereby GCB Capital LLC (“GCB”), whose principal was Mr. Condon, acquired a large ownership stake in Medipure. SHP alleges that, for many years, nearly all of Medipure’s capital came from that source. SHP alleges that Mr. Condon acted as a *de facto* director thereafter. In June 2021, Mr. Berukoff and Mr. Gallagher also became directors.

[12] SHP is an investment vehicle whose principal is Craig Anderson. Mr. Anderson has deposed that in June 2021, Mr. Condon approached him to invest in Medipure and, in doing so, made various misrepresentations about Medipure’s business with a view to inducing that investment. As a result of those discussions, SHP invested in Medipure in a number of ways.

[13] First, on July 16, 2021, SHP entered into two stock purchase agreements with GCB, which called for SHP to purchase 5.5 million of GCB’s common shares in Medipure for US\$8.35 million. Pursuant to those agreements, SHP paid US\$5.1 million to Medipure and US\$3.3 million to GCB but received no shares in return, because no shares could be issued while the CTO was in effect. SHP alleges that the parties entered into a term sheet prohibiting SHP from using those funds to pay Medipure’s debts to Mr. Weiss or his company, but that promise too was breached when some of those funds were indeed applied in that manner.

[14] Next, on October 21, 2021, SHP entered into a term sheet pursuant to which SHP agreed to lend Medipure US\$2 million, secured by a promissory note. SHP alleges that some board members insisted on approving the issuance of stock options for themselves as a condition of approving that term sheet. Both Mr. Gallagher and Mr. Weiss resigned from the board at that time. According to SHP, Mr. Gallagher resigned because Mr. Anderson would not agree to let him receive as many stock options as he wanted.

[15] Finally, in March 2022, SHP increased the loan to US\$11 million. That same month, Messrs. Berukoff and Donahue resigned from the board.

[16] Despite these large capital infusions, Medipure continued to lose money and was unable to meet its financial obligations, including payroll and CRA source deductions.

[17] On March 31, 2022, SHP's counsel sent a letter to Mr. Donahue and others advising of SHP's intention to commence several proceedings against Medipure, Mr. Weiss, Mr. Weiss' company, GCB and Mr. Condon, as well as a derivative action on behalf of Medipure against Mr. Nystrom, Mr. Berukoff and Mr. Gallagher. The letter stated that SHP would seek in those proceedings, among other things, to recover its losses from the present and former directors of Medipure for their alleged breaches of fiduciary duty and their duty of care, for failing to act in Medipure's best interest to preserve enterprise value and to monitor and oversee fraudulent dealings by Mr. Weiss.

[18] SHP filed the petition initiating this proceeding less than one week later, on April 5, 2022. As originally filed, the petition named Medipure and its then current directors, Mr. Nystrom, Mr. Gelinas and Dr. Pandey, as respondents. The relief sought included the following items:

- a) declarations that SHP is an appropriate person to seek oppression relief, and that the conduct of the respondents is oppressive or unfairly prejudicial to or unfairly disregards the interests of SHP;

- b) an order prohibiting Medipure from entering into any transactions with Mr. Weiss or his companies;
- c) an order removing the individual respondents as directors;
- d) an order appointing a receiver pending election of a new board;
- e) an order directing Medipure to repay SHP for monies it advanced to Medipure for shares;
- f) an order requiring the respondents to produce audited financial statements for the most recent fiscal year;
- g) an order directing an investigation into dealings between Medipure, on the one hand, and Mr. Weiss and Mr. Condon and their respective companies, on the other;
- h) leave to file a derivative action on behalf of Medipure against Mr. Donahue, Mr. Berukoff and Mr. Gallagher (who are described in the paragraph seeking that relief as “individual respondents”, but were not formally named as such); and
- i) an order that a meeting of the shareholders of Medipure be called.

[19] The petition was set for hearing on May 13, 2022. Rather than proceed on that date, SHP chose instead to adjourn the matter generally because Mr. Anderson had learned that Medipure was in discussions with a potential new lender, HFS Management Inc. (“HFS”). Mr. Anderson’s hope was that with that new source of funds, Medipure could pay out SHP and arrange for the CTO to be lifted so that SHP could receive its shares.

[20] In the event, however, the new funding never came through. On the contrary, Mr. Anderson learned that HFS was associated with Mr. Condon and that Medipure had been failing to remit its source deductions to CRA, thereby accumulating a growing debt that ranked ahead of SHP.

[21] Armed with that knowledge, SHP changed tack and abandoned the petition in favour of insolvency proceedings. It filed bankruptcy applications in respect of Medipure in early May 2022. Those applications were pre-empted when, on May 11, 2022, Medipure filed a notice of intention to make a proposal under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3. On August 19, 2022, Medipure obtained an order to convert the proposal proceeding into a proceeding under the CCAA, but its restructuring efforts proved unsuccessful and the CCAA proceeding became a liquidation. On October 31, 2022, SHP, through one of its affiliates, purchased most of Medipure's assets through that process. The monitor then assigned Medipure into bankruptcy.

[22] In the meantime, on October 11, 2022, SHP commenced an action against Medipure (even though it was then covered by the CCAA stay), Mr. Weiss, Mr. Condon and GCB, alleging fraudulent misrepresentation, but never served it.

[23] Mr. Anderson deposed that, after acquiring Medipure's assets, he spent the next two years reviewing its book and records personally. Based on what he learned, he says, he caused an amended petition to be filed on December 2, 2024.

[24] Those amendments eliminated the requests for interim relief and for leave to commence a derivative action. Instead, they advanced new claims against the individuals who are proposed to be added as respondents on this application, although no such application was brought at the time and no "notice of intention to proceed" was filed or served, as required by Rule 22-4(4).

[25] The new claims advanced against the respondents, as summarised in the notice of application, include failing to do the following:

- a) be diligent in supervising and managing Medipure's affairs;
- b) detect fraud and material misrepresentations;
- c) fully discharge their legal and fiduciary duties to act honestly, and with integrity;

- d) avoid conflicts of interest and self-dealing;
- e) make reasonable inquiries into the activities of Mr. Weiss, Dr. Pandey, and others;
- f) put the interests of Medipure's shareholders and other stakeholders ahead of their own personal interests;
- g) remit source deductions to the CRA as required in a timely manner; and
- h) pay employees in a timely manner.

[26] In addition to the original claim seeking the return of funds advanced in exchange for shares, SHP added a new claim seeking to be compensated for the loans it advanced, with accrued interest, which remain unpaid.

[27] SHP filed this application on June 19, 2025.

III. LEGAL FRAMEWORK

[28] SHP brings its application to add respondents under Rule 6-2(7), which states, in relevant part, as follows:

Adding, removing or substituting parties by order

(7) At any stage of a proceeding, the court, on application by any person, may, ...

...

(b) order that a person be added or substituted as a party if

(i) that person ought to have been joined as a party, or

(ii) that person's participation in the proceeding is necessary to ensure that all matters in the proceeding may be effectually adjudicated on, and

(c) order that a person be added as a party if there may exist, between the person and any party to the proceeding, a question or issue relating to or connected with

(i) any relief claimed in the proceeding, or

(ii) the subject matter of the proceeding

that, in the opinion of the court, it would be just and convenient to determine as between the person and that party.

[29] Where, as here, a new defendant/respondent is proposed to be added or a new cause of action pleaded after the expiry of a limitation period, s. 22 of the *Limitation Act*, S.B.C. 2012, c. 13, is engaged. That provision states as follows:

22 (1) If a court proceeding has been commenced in relation to a claim within the basic limitation period and ultimate limitation period applicable to the claim and there is another claim (the "related claim") relating to or connected with the first mentioned claim, the following may, in the court proceeding, be done with respect to the related claim even though a limitation period applicable to either or both of the claims has expired:

...

(d) new parties may be added or substituted as plaintiffs or defendants.

[30] The authorities addressing the interplay between those two pieces of legislation were recently summarised by Iyer J.A., writing for the Court, in *Ridley Island Energy Export Facility Limited Partnership v. Trigon Pacific Terminals Limited*, 2024 BCCA 398, as follows:

[21] In *Smithe Residences Ltd. v. 4 Corners Properties Ltd.*, 2020 BCCA 227, this Court summarized the two conditions that must be met for a judge to exercise the discretion in R. 6-2(7)(c):

[49] The judge may order a person be added as a party if two conditions are met: first, there may exist between the person and any party to the proceeding a question or issue relating to or connected with (i) any relief claimed in the proceeding or (ii) the subject matter of the proceeding; and second, that in the opinion of the court, it would be just and convenient to determine that question or issue.

[Emphasis in original].

[22] The threshold for the first condition is low: *Smithe Residences* at para. 50. It is confined to determining that the question or issue is real, rather than frivolous. There is no assessment of the merits of the claim: *Madadi* at para. 45.

[23] The second condition, which requires assessment of justice and convenience, is a fact-specific inquiry. In my view, the following non-exhaustive list of factors can be distilled from the authorities:

- The extent of, reasons for, and any prejudice caused by delay in bringing the application;

- The extent of the connection between the existing claims and the party seeking to be added;
- The nature of the proceeding;
- The plaintiff's position on the proposed addition; and
- The impact on the action of adding the proposed party, including uncertainty, expense, and delay.

See generally: *Madadi*; *Smithe Residences*; *Le Soleil Hotel & Suites Ltd. v. Nomani*, 2007 BCCA 545; *Kitimat (District) v. Alcan Inc.*, 2006 BCCA 562; *Giesbrecht v. British Columbia (Attorney General)*, 2020 BCSC 174; *Rastad v. Cienciala*, [1956] 19 W.W.R. 623, 1956 CanLII 595 (B.C.S.C.).

IV. DISCUSSION

A. Does SHP seek to raise a “real”, as opposed to a “frivolous”, issue relating to or connected with the original petition?

[31] SHP argues that the new claims that it seeks to advance against the proposed new respondents fall within the subject matter of the original petition, namely, oppressive conduct by Medipure and its principals, and its impact on SHP. In its submission, those claims are sufficiently meritorious to satisfy the low standard applied on this first branch of the test.

[32] The Application Respondents disagree. They say that the new claims are frivolous, for the following reasons:

- a) they are “bogus subordinate claims” (as described in *Lui v. West Granville Manor Ltd.*, [1987] B.C.J. No. 332 (C.A.), 1987 CanLII 164 at p. 18), inasmuch as they have no real connection to the subject matter of the original petition;
- b) the current pleading is a nullity, inasmuch as SHP failed to give notice of its intention to proceed under Rule 22-4(4) after having taken no steps in the litigation for more than a year;
- c) the proposed new claims have not been brought to court “in a timely manner”, as required by s. 227(4) of the *BCBCA* (citing *Pettitt v. Misty Ridge Community Water Company Ltd.*, 2022 BCSC 416, in which it was

held that a claim brought after the expiry of the limitation would not be “timely”);

- d) the conditions set out in the jurisprudence for extending personal liability to directors in the context of an oppression action are not satisfied (citing *Budd v. Gentra Inc.*, [1998] O.J. No. 3109, 1998 CanLII 5811 (C.A.), for the requirement that the pleading must connect specific directors to specific acts of misconduct, and *Wilson v. Alharayeri*, 2017 SCC 39, for the factors to be considered when the court considers whether directors should be held personally liable for oppression); and
- e) SHP seeks relief not listed in s. 227(3) of the *BCBCA*.

[33] While I agree with the Application Respondents that the proposed new claims are problematic in various ways, both procedurally and substantively, I cannot say that those problems rise to a level sufficient to render the claims frivolous.

[34] First, I agree with SHP that they relate directly to the subject matter of the original petition. They are not “bogus subordinate claims” inasmuch as they refer to the same course of dealings and the same category of misconduct alleged in the original petition.

[35] With respect to procedure, I agree that SHP’s failure to file a notice of intention to proceed as required by Rule 22-4(4) was in breach of that Rule. SHP responds that there was no one to serve, but that is no answer. Even if that were so, SHP was required at least to *file* the notice. Moreover, it was not so. Mr. Nystrom did not assign himself into bankruptcy until June 11, 2025, *after* SHP filed the amended petition on December 2, 2024. Dr. Pandey has remained an active party of record throughout. Both should have been served with the notice.

[36] That being said, SHP’s failure to comply with Rule 22-4(4) gave rise to an irregularity. None of the existing respondents, who have cause to complain about it, have raised the matter. In the circumstances, I am not persuaded that the irregularity suffices to render the claim a frivolous one for this purpose.

[37] On the issue of timeliness, I accept that, as was held in *Pettitt*, an oppression claim brought outside the limitation period cannot be said to have been brought in a timely manner. However, the issue posed here is not quite the same. There is an existing proceeding that was brought within the limitation period. At issue here is whether SHP can properly obtain oppression relief in that proceeding against respondents, added after the expiry of the limitation period, without running afoul of the timeliness requirement in s. 227(4) of the *BCBCA*. The parties were unable to find any authority on that point.

[38] There is also authority holding that the timeliness requirement in s. 227(4) is to be assessed with reference to criteria that are different from those pertaining to limitation periods. In *Brockman v. Valmont Industries Holland B.V.*, 2022 BCCA 80, Harris J.A. described the distinction as follows:

[12] The judge began her analysis under the somewhat misleading heading of “Timeliness”. The parties agree oppression claims are subject to two different timing requirements. First, oppression claims must be brought in a timely manner. Second, they must be brought within any applicable limitation period. The two requirements are not the same. The criteria for deciding if a claim has been brought in a timely manner call for a fact-driven analysis of the conduct of the parties, and reflect a policy that parties should deal with oppression claims expeditiously, and not allow them to become stale or fester. The limitation issue is different. It involves an analysis of when a party discovered its claim, and sets an outside limit for commencing a proceeding. It follows that courts should rely cautiously, if at all, on cases dealing with timeliness when addressing a limitation issue.

[39] Although I will have more to say about the timeliness requirement in s. 227(4) when I consider the second branch of the test, I am not persuaded that the timing of this application suffices to render the claim a frivolous one.

[40] I have reached a similar conclusion on the alleged frailties of the new claims, as pleaded, on the merits. The amended petition identifies acts and omissions of individual directors. It may ultimately be determined those claims can only properly be advanced in the form of a derivative action, as, indeed, they were in the original version of the petition. However, those two avenues of relief are not necessarily mutually exclusive. In *Runnalls v. Regent Holdings Ltd.*, 2010 BCSC 1106,

N. Smith J. observed at para. 44 that a wrong done to a closely held company may also affect shareholders individually, so as to render both remedies potentially available. Likewise, the test set out in *Wilson* is multi-faceted and context-driven. Finally, I agree with SHP that the claim cannot be said to be frivolous merely because some of the relief it seeks is not specifically enumerated in s. 227(3), given that the list set out in that provision is not an exhaustive one.

[41] In summary, I agree with SHP that it has satisfied this first branch of the test, inasmuch as it seeks to advance claim that are:

- a) sufficiently connected to the subject matter of the petition as originally filed; and
- b) “real” rather than frivolous.

[42] SHP is not required to prove its case on the merits beyond demonstrating that its claims are not frivolous. Insofar as the Application Respondents’ objections may be relevant to one or more of the other elements of the test, apart from the merits, they are more appropriately addressed in greater detail under the second branch, to which I turn next.

B. Would it be just and convenient to add the proposed new respondents despite the resulting loss of their limitation defence?

1. Delay

[43] SHP argues that the delay in issue here was not lengthy and has been adequately explained.

[44] In measuring the length of the delay, SHP relies on *McIntosh v. Nilsson Bros. Inc.*, 2005 BCCA 297. In that case, Lambert J.A. noted that in assessing delay and prejudice on an application of this kind, the relevant comparison is to the period lasting until one year after the limitation period has expired, given that a plaintiff may wait one year after commencing an action to serve it on the defendant. Measuring the relevant period of delay in this case on that basis, SHP says that it would have had two years, or until the spring of 2024, to file the claim before the limitation period

expired, plus a further one year-period after that to serve it. Because this application was filed on June 19, 2025, it is argued, the relevant period of delay can be measured in weeks.

[45] The difficulty I have with that submission is that this is not an action for damages of the kind that Lambert J.A. was considering in *McIntosh*, but rather a petition seeking oppression relief. As I have already noted, oppression claims are required by statute to be brought forward in a timely manner, regardless of the limitation period. A petitioner seeking oppression relief does not have the luxury of simply waiting out the limitation period to commence the proceeding, let alone a further year after doing so to serve the petition on the respondent.

[46] When viewed through that lens, the delay at issue here was indeed a lengthy and inordinate one, particularly given that SHP was already in a position in 2022 or earlier to advance the same claims it seeks to advance now.

[47] SHP argues that it has presented a satisfactory explanation for the delay. Mr. Anderson says that he needed two years to review Medipure's books and records in order to adduce affidavit evidence particularising the various breaches of duty of the individual directors as he now has.

[48] I do not find that argument persuasive. In those two years, SHP did not learn very much relevant to its claim that it did not already know in 2022. SHP knew then of the financial irregularities and misrepresentations that it now complains about. Mr. Anderson had already formed his view about the directors' misplaced interest in securing stock options for themselves, rather than prioritising the needed refinancing.

[49] Indeed, SHP was already advancing its allegation that the directors had failed to oversee the business to the requisite standard in the original petition, but in the form of an application for leave to file a derivative action. It could have proceeded with that relief at the time without having to establish its claim on the merits summarily in affidavit form.

[50] In summary, I have concluded that, having regard to the nature of the proceeding, the delay in issue is indeed lengthy, inordinate, and inadequately explained. This factor weighs against the application.

2. Prejudice

[51] The Application Respondents have adduced no direct evidence of prejudice arising from the delay. Rather, they rely solely on the fact that prejudice is presumed, given the expiry of the limitation period. Moreover, this is not a case where the litigation is at an advanced stage, such that adding new parties will unduly complicate matters.

[52] Although I accept that the presumed prejudice flowing from the timing of the application is a factor to consider, I do not place a great deal of weight on it, given the absence of any evidence of actual litigation prejudice.

3. Connection to the Original Petition

[53] Although I have found that there is a sufficient connection between the new claims and the original petition to satisfy the first branch of the test, the more detailed analysis called for on this second branch significantly undermines the strength of that connection.

[54] As I have already noted, the new claims arise from the same course of dealings. The essential complaint continues to be about the oppressive manner in which Medipure's business was operated and the impact of that conduct on SHP.

[55] However, the amendments also recast the nature of the claim in fundamental ways. Gone are the requests for interim relief that characterised the proceeding at its inception. This is no longer a proceeding designed to regularise Medipure's governance so that its business can proceed on a more stable footing. SHP now has complete control of the business and can do with it as it wishes.

[56] Although there was an ancillary claim for damages in the original petition, the claim for damages has now taken centre stage. Moreover, the nature of the

damages sought is also different. Gone is the focus on SHP's status as a putative shareholder, seeking only the return of monies it paid to acquire shares that it never received. SHP now seeks, in addition, repayment of its loans with interest.

[57] That fundamental change in the nature of the claim being advanced weighs against the application.

4. Other Factors

[58] SHP argues that an important factor weighing in favour of the application is the fact that it will effectively lose its claim if the relief it seeks is not granted and the new respondents are not added. That submission reveals the true nature and purpose of the proposed amendments. SHP has been frustrated to date in its efforts to recover on its investment. There are no deep pockets to access among the present group of respondents, so SHP now seeks to cast the net more broadly.

[59] Having commenced this proceeding in 2022, SHP decided not to proceed with it and chose instead to pursue the bankruptcy route. It now seeks to revive this proceeding after many years, having, in the interim, pursued and obtained other relief, through which it now controls the business that this proceeding was originally brought with a view to stabilising.

[60] In these circumstances, I find the following remarks in *Wilson*, at para. 54, to be apposite:

Third, any order made under s. 241(3) may serve only to vindicate the reasonable expectations of security holders, creditors, directors or officers in their capacity as corporate stakeholders (*Nanef*, at para. 27; *Smith v. Ritchie*, 2009 ABCA 373, at para. 20 (CanLII)). The oppression remedy recognizes that, behind a corporation, there are individuals with “rights, expectations and obligations inter se which are not necessarily submerged in the company structure” (*Ebrahimi*, at p. 379; see also *BCE*, at para. 60). But it protects only those expectations derived from an individual's status as a security holder, creditor, director or officer. Accordingly, remedial orders under s. 241(3) may respond only to those expectations. They may not vindicate expectations arising merely by virtue of a familial or other personal relationship. And they may not serve a purely tactical purpose. In particular, a complainant should not be permitted to jump the creditors' queue by seeking relief against a director personally. The scent of tactics may therefore be considered in determining whether or not it is appropriate to impose personal liability on a

director under s. 241(3). Overall, the third principle requires that an order under s. 241(3) remain rooted in, informed by, and responsive to the reasonable expectations of the corporate stakeholder.

[Emphasis added.]

[61] The “scent of tactics” is also, in my view, a relevant factor in the determination of what is just and convenient on an application of this kind. In this case, it is another factor weighing against the application.

V. SUMMARY AND CONCLUSION

[62] Having considered and weighed the factors set out above, I have concluded that it would not be just and convenient to add the proposed new respondents as parties to this proceeding. I am therefore refusing the application.

[63] As the successful parties, the Application Respondents are entitled to their costs.

“Milman J.”