

SUPREME COURT OF YUKON

Citation: 47162 Yukon Inc. (Klondike Bench
Placer)(Re), 2016 YKSC 11

Date: 20160205
S.C. No.: 15-A0110
Registry: Whitehorse

IN THE MATTER OF an application under s. 216
of the *Business Corporations Act*, R.S.Y. 2002, c. 20

RODNEY ADAMS

Petitioner

Before Mr. Justice R.S. Veale

Appearances:
Meagan Hannam
Darryl Carey

Counsel for the Petitioner
Appearing on his own behalf
and assisted by Barry Ernewein

REASONS FOR JUDGMENT

[1] VEALE J. (Oral): This is an oral judgment in this matter.

INTRODUCTION

[2] This is an application by Mr. Adams for the liquidation of the assets of 47162 Yukon Inc., pursuant to s. 216 of the *Business Corporations Act*, RSY 2002, c. 20. The corporation is the owner of 25 placer mining claims in Dawson City, Yukon, and is jointly owned by Mr. Adams and Mr. Carey. There is no dispute that the parties are deadlocked and that the corporation should be liquidated and dissolved.

[3] However, the remedy is in dispute, as Mr. Adams proposes the shareholders submit sealed bids to the Court for the purchase of the claims. Mr. Carey says that this

would be unfair, as Mr. Adams has greater financial resources and Mr. Carey is the miner. He proposes a split of the claims with Mr. Adams receiving nine claims in two blocks and with Mr. Carey receiving 16 claims on one block which the parties have mined to some extent. He proposed that the remaining ore could be sluiced with the profits being shared equally.

THE FACTS

[4] The following facts are not in dispute:

1. Rodney Adams is a businessman in Whitehorse.
2. Darryl Carey is a miner residing in Whitehorse.
3. 47162 Yukon Inc. is a Yukon corporation.
4. In or about June 2012, Mr. Adams and Mr. Carey agreed to jointly purchase 25 placer claims in the Dawson City Mining District from Vicbi Placers Ltd.
5. On or about October 18, 2012, Mr. Adams and Mr. Carey incorporated 47162 Yukon Inc. for the purpose of purchasing the Claims. Mr. Adams and Mr. Carey are equal shareholders in 47162 Yukon Inc. They are also both directors of the corporation.
6. 47162 Yukon Inc. mined the Claims in 2013.
7. 47162 Yukon Inc.'s profits from the 2013 mining season were paid out equally to Mr. Adams and Mr. Carey.
8. 47162 Yukon Inc. currently has no assets other than the Claims. It also has no liabilities.
9. The Claims have not been mined by 47162 Yukon Inc. since 2013.

10. At the end of the 2013 season, a dispute arose between Mr. Adams and Mr. Carey. Their persistent disagreement has made it impossible for them to cooperate.
11. To cure the deadlock, both Mr. Adams and Mr. Carey have expressed an interest in purchasing the Claims from 47162 Yukon Inc.

THE LAW

[5] Section 216 of the *Business Corporations Act* states as follows:

- (1) The Supreme Court may order the liquidation and dissolution of a corporation or any of its affiliated corporations on the application of a shareholder, if satisfied ...
 - (c) that it is just and equitable that the corporation should be liquidated and dissolved.

[6] There is no question that a deadlock between two equal shareholders makes it just and equitable to order the liquidation and dissolution of 47162 Yukon Inc.

[7] In the case of *Gilliss v. Phillips*, 2008 SKCA 120 at para. 2, the Saskatchewan Court of Appeal found a deadlock, where:

...two equal shareholders had lost trust and confidence in each other, were no longer able to work together, and were unable to agree on how to sell or otherwise dispose of either the company's shares or its assets.

[8] In the case of *Callahan v. Callahan*, 2011 BCSC 40 at para. 48, the Court found:

[48] It will be "just and equitable" to order the liquidation and dissolution of a company when there is a deadlock in the company...

ANALYSIS

[9] I turn to the remedy of sealed bids. The use of sealed bids permitting the shareholders to bid with the highest bid being accepted by the Court is a well-established principle in business law. In *Vallée v. Pickard* (2006), 28 B.L.R. (4th) 149

(ONSC), the Court found that each shareholder should be treated equally without giving either shareholder a preference over the other. It found that as equal shareholders, they should be treated equally by way of sealed bids.

[10] The sealed bids procedure was also followed in *Mostyn v. Schmiing*, 2011 BCSC 275.

[11] As indicated earlier, Mr. Adams prefers the sealed bid method of liquidation. Mr. Carey objects that this gives Mr. Adams an unfair advantage because Mr. Adams is better able to finance such a purchase. I point out that there is no evidence for this allegation, but it certainly is Mr. Carey's perception.

[12] Mr. Carey's proposal, given as sworn evidence in the hearing with the assistance of two helpful maps of the location of the claims, is that Mr. Carey take the 16 claims that are contiguous to claims he owns personally and that have already been partially mined with Rod Adams. Rod Adams would receive two blocks totalling nine claims that have not been mined.

[13] There are three difficulties with this proposal.

[14] Firstly, it is the Court imposing the solution favoured by Mr. Carey. I point out that Mr. Carey and Mr. Adams have had extensive discussions on alternative arrangements to resolve matters and it would not be fair to prefer Mr. Carey's choice.

[15] Secondly, there has been no proving up or drilling to assess the respective values of the 16 placer claims versus the 9 claims proposed to be split by Mr. Carey. Neither the shareholders nor this Court can determine the fairness of such a proposal and the respective values that would be assigned to each block of claims.

[16] Thirdly, the requirement to complete some sluicing and share profits would be ordering the parties to do what they have been unable to do, i.e., work together, the very reason that they are in court.

[17] I conclude that the sealed bid approach is the fairest resolution.

[18] Counsel for Mr. Adams has proposed a \$500,000 upset or a minimum price to ensure that the claims are reasonably valued. There was no objection from Mr. Carey on this matter.

[19] Counsel for Mr. Adams proposed that the sealed bids be filed by February 15, 2016, and opened seven days later. This is a very short timeframe dictated more by the desire to get a water licence and mine this year. While I appreciate the urgency, fairness dictates that both parties have a reasonable time to arrange the financing to support a bid for the claims.

DECISION

[20] I therefore order as follows:

1. Each party may file with the Court a sealed bid on or before February 29, 2016 at 4 p.m. in which the party offers to purchase the claims with an upset or a minimum price of \$500,000, and includes for that purpose a certified cheque in the amount of the purchased price or, in the alternative, evidence of approved financing for the amount of the purchased price.
2. The Court will open the sealed bids in Chambers on Thursday, March 3, 2016 at 10 a.m.

3. The Court will grant an order of sale to the highest bidder, provided that if the highest bidder fails to complete the purchase within 10 business days then upon application of the lowest bidder, the Court may grant an order of sale to the lower bidder.
4. The costs of the transfer of the claim shall be borne by the purchasing party.
5. Upon the completion of the sale of the claims, the remaining assets of 47162 Yukon Inc., including the proceeds of the sale, shall be divided and paid out equally to each of the shareholders.
6. 47162 Yukon Inc. shall be dissolved.

VEALE J.