

SUPREME COURT
OF BRITISH COLUMBIA
VANCOUVER REGISTRY

JAN 06 2021



IN THE SUPREME COURT OF BRITISH COLUMBIA

S 210184

No.

Vancouver Registry

IN THE MATTER OF BRYN GWYRDD HOLDINGS INC. and
MYNYDDOEDD HOLDINGS INC.

PETITIONERS

PETITION TO THE COURT

ON NOTICE TO:

Litigation Capital Limited

This proceeding is brought for the relief set out in Part 1 below, by

Bryn Gwyrrdd Holdings Inc. and Mynyddoedd Holdings Inc. (the petitioners)

If you intend to respond to this petition, you or your lawyer must

- (a) file a response to petition in Form 67 in the above-named registry of this court within the time for response to petition described below, and
- (b) serve on the petitioners
 - (i) 2 copies of the filed response to petition, and
 - (ii) 2 copies of each filed affidavit on which you intend to rely at the hearing.

Orders, including orders granting the relief claimed, may be made against you, without any further notice to you, if you fail to file the response to petition within the time for response.

Time for response to petition

A response to petition must be filed and served on the petitioners,

- (a) if you were served with the petition anywhere in Canada, within 21 days after that service,
- (b) if you were served with the petition anywhere in the United States of America, within 35 days after that service,

- (c) if you were served with the petition anywhere else, within 49 days after that service, or
- (d) if the time for response has been set by order of the court, within that time.

(1) The address of the registry is:	800 Smithe Street, Vancouver, BC, V6Z 2E1
(2) The ADDRESS FOR SERVICE of the petitioners is:	c/o Farris LLP 2500 - 700 West Georgia Street Vancouver, British Columbia V7Y 1B3 Attention: Rebecca M. Morse
Fax number address for service (if any) of the petitioners	N/A
E-mail address for service (if any) of the petitioners:	<u>rmorse@farris.com</u>
(3) The name and office address of the petitioners' lawyer is:	Farris LLP Barristers & Solicitors 2500 - 700 West Georgia Street Vancouver, British Columbia V7Y 1B3 Attention: Rebecca M. Morse
Fax number address for service of the petitioner lawyer is:	604-661-9349
E-mail address for service (if any) of the petitioners:	<u>rmorse@farris.com</u>

CLAIM OF THE PETITIONERS

Part 1: ORDERS SOUGHT

1. The Order in the form attached at Schedule "A".

Part 2: FACTUAL BASIS

The Companies

2. Bryn Gwyrd Inc. ("BGHI") is a company incorporated pursuant to the laws of British Columbia with a registered and records office at 2500-700 West Georgia Street, Vancouver, British Columbia.
3. Mynyddoedd Holdings Inc. ("MHI") is a company incorporated pursuant to the laws of British Columbia with a registered and records office at 2500-700 West Georgia Street, Vancouver, British Columbia.
4. BGHI and MHI are collectively referred to as the "Companies".

The Receivership Order

5. On or about 13 November 2007, the Crown Court in Inner London pronounced a confiscation order against Dr. Gerald Martin Smith (the "Defendant") and he was ordered to pay £40,956,911.
6. The Defendant did not satisfy the above-mentioned order and the High Court of England and Wales appointed "Enforcement Receivers", initially Finbarr O'Connell and Jeremy Outen of KPMG by way of an order pronounced on 7 April 2008 (the "April 2008 Order"), and then John Milsom and David Standish (the "Receivers") on 29 May 2013 (the "May 2013 Order").
7. On 7 December 2017, the April 2008 Order was varied (the "Variation Order") to extend the Receivers' appointment over the shares, securities and membership rights in 27 companies, including BGHI and MHI. The Variation Order provides *inter alia*, the following:

- (a) The Receivers shall take possession of and are appointed to management and deal with the Property (as defined in the Variation Order and this term includes the shares and securities of the Companies);
 - (b) The Receivers shall have various powers with respect to the Property, including the power to realize or sell the Property and to transfer any shares, assets, property or ownership rights to themselves or other appropriate persons; and
 - (c) Litigation Capital Limited ("LCL") shall, if requested by the Receivers, execute and deliver stock transfer forms and/or take such further or other steps as may be required by the Receivers so as to convey the shares in certain companies (including the Companies) to the Receivers,
8. Following the Variation Order, and at the Receivers' request, LCL transferred all of the shares in BGHI (which, prior to the Variation Order, had been held by LCL) to PR Realisations 1 Limited ("PR 1"). PR 1 is a company incorporated pursuant to the laws of the British Virgin Islands and the Receivers incorporated PR 1 for the purposes of holding the BGHI shares. PR 1 is wholly owned and controlled by the Receivers.
9. MHI is a wholly owned subsidiary of LCL. LCL is a company incorporated pursuant to the Laws of the Marshall Islands and the shares in LCL are registered in the name of Anthony Smith (who is the brother of the Defendant). Despite various requests made by the Receivers, LCL and Anthony Smith have refused to comply with the Variation Order and the Receivers' requests, and Anthony Smith continues to be the to hold voting control of LCL (which, in turn, is the registered owner of the shares in MHI).

BGHI's Assets & Liabilities

10. On or about January 19, 2018, 3552 Falcon Property Inc. (which is a wholly owned subsidiary of BGHI) sold the property located at 3552 Falcon Crescent, Whistler, British Columbia and legally described as follows:

PID 023-550-350

Lot G and an undivided 68/1000 interest in lot 6 Block G Plan 14389

District Lot 1755 Group 1 New Westminster District Plan LMP 30040

(the "**BGHI Property**") to David Philip Thornhill and Margaret Mary Thornhill. 3552 Falcon Property Inc. was a wholly owned subsidiary of BGHI and was holding the BGHI Lands in trust for BGHI.

11. The proceeds from the sale of the BGHI Property were distributed to BGHI and some of this money was used to pay BGHI's expenses. The balance of approximately \$3.7 million continues to be held by the Receivers and they intend to distribute any amounts owing to BGHI's creditors (and the amount owing to creditors is believed to be approximately \$39,400).

MHI's Assets & Liabilities

12. On or about September 3, 2019, MHI sold the property located at Princess Louisa Inlet, British Columbia and legally described as follows:

PID: 015-870-766

District Lot 3516 Group 1 New Westminster District

PID: 015-870-839

District Lot 3517 Group 1 New Westminster District

PID: 015-870-847

District Lot 3519 Group 1 New Westminster District

(collectively, the "**MHI Property**") to the BC Parks Foundation.

13. Some of the proceeds from the sale of the MHI Property were used to pay MHI's expenses. The balance of approximately \$2.8 million continues to be held by the Receivers and they intend to distribute any amounts owing to MHI's creditors (the Receivers are not currently aware of any creditors of MHI).

Appointment of a Liquidator

14. The Companies have brought this petition seeking the appointment of a liquidator and MNP has consented to act as a liquidator for the Companies.

Part 3: LEGAL BASIS

15. Sections 235, 324-326 of the *Business Corporations Act* [SBC 2002] c. 57 (the "BCA"); and Rule 16 of the *Supreme Court Civil Rules*.

16. Section 324 of the BCA provides the following:

324 (1) On an application ... by the company ... the court may order that the company be liquidated and dissolved if ...
(b) the court otherwise considers it just and equitable to do so.

...

(3) If the court considers that an applicant for an order referred to in subsection (1) (b) is a person who is entitled to relief either by liquidating and dissolving the company or under section 227, the court may do one of the following:

(a) make an order that the company be liquidated and dissolved;

(b) make any order under section 227 (3) it considers appropriate.

(4) If the court orders under this Act that a company be liquidated and dissolved, the court must, in its order, appoint one or more liquidators.

...

17. As mentioned above, the Court may order that a company be liquidated and dissolved if the Court is satisfied that it is "just and equitable" to do so in the circumstances. Further, it has been said that section 324 "confers upon the court a broad discretionary power" to order that a company be liquidated and dissolved.

Vivian v. Firth, 2012 BCSC 517 at para 2
Samra v. Bel-Air Taxi Ltd., 2009 BCSC 548
Gill v. Carr, 2016 BCSC 792 at para 225

18. In *Vivian v. Firth*, the Court noted the following:

64 The words "just and equitable" are of the widest significance and confer upon the court a broad discretion to make a winding-up order under s. 324 or any other order under s.227(3) it considers appropriate... It is not necessary to establish oppressive or unfairly prejudicial conduct to engage the panoply of remedies available under s. 324... The test does not admit of a strict categorical approach. As Lacourciere J.A. observed in *Rogers v. Agincourt Holdings Ltd.* at p. 493, "the Court must be careful not to construe the authorities as setting out a series of restrictive principles which would confine the phrase "just and equitable" to rigid categories, for each case depends to a large extent on its own facts."

Vivian v. Firth, 2012 BCSC 517 at paras 64-68

19. The Court went on to note that the words "just and equitable" are "intended to be elastic in their application". Further, and while there are grounds commonly recognized as giving rise to section 324 relief, the discretion to grant such relief cannot be "restricted to pigeon hole categories" and must be exercised judicially.


Vivian v. Firth, 2012 BCSC 517 at paras 64-68

Part 4: MATERIAL TO BE RELIED ON

1. Affidavit #1 of John Milsom sworn on December 11, 2020;
2. Affidavit #1 of Danica Shoults sworn on January 6, 2021; and
3. Such further and other material as counsel may advise and this Honourable Court may allow.

The petitioners estimate that the hearing of the petition will take 30 minutes.

Dated: 6/Jan/2021


Signature
 Lawyer for Petitioners
Rebecca M. Morse

To be completed by the court only:	
Order made	
<input type="checkbox"/>	in the terms requested in paragraphs _____ of Part 1 of this notice of application
<input type="checkbox"/>	with the following variations and additional terms:
Date: _____	
Signature of	
<input type="checkbox"/> Judge <input type="checkbox"/> Master	

Schedule "A"

No. Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

**IN THE MATTER OF BRYN GWYRDD HOLDINGS INC. and
Mynyddoedd Holdings Inc.**

PETITIONERS

ORDER MADE AFTER APPLICATION

BEFORE) THE HONOURABLE JUSTICE)
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ON THE THIS PETITION OF THE Petitioners Bryn Gwyrrdd Holdings Inc. and Mynyddoedd Holdings Inc. dated January 6, 2021 coming on for hearing at Vancouver, British Columbia on [DATE] and on hearing Rebecca M. Morse, counsel for the Petitioners, Lance Williams for the Liquidator and no one else appearing, and upon reading the material filed herein:

THIS COURT ORDERS that:

1. The Petitioners be liquidated pursuant to s. 324 of the *Business Corporations Act*, SBC 2002, c. 57 (the "BCA") and dissolved;

2. MNP Ltd. be and is hereby appointed as the liquidator of the Petitioners (the "Liquidator");
3. The Liquidator shall have all of the powers and authorities as provided under the BCA and such powers shall include (but not necessarily be limited to) the following:
 - (a) to take possession of and exercise control over the Petitioners' assets, property and undertakings, including the Petitioners' bank accounts (the "Property") and any and all receipts and disbursements arising out of or from the Property;
 - (b) to receive, preserve and protect the Property, or any part or parts thereof;
 - (c) to enter into any agreements, incur any obligations in the ordinary course, or cease to perform any contracts;
 - (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Liquidator's powers and duties, including, without limitation, those conferred by this Order;
 - (e) to receive and collect all monies and accounts now owed or hereafter owing to the Petitioners and to exercise all remedies of the Petitioners in collecting these amounts;
 - (f) to, in the Liquidator's own discretion, realize the assets of the Petitioners and distribute those assets among the Petitioners' creditors and then to John Milsom and David Standish as Receivers of Dr Gerald Martin Smith;
 - (g) to determine, approve the payment of, or compromise any or all of the Petitioners' liabilities, and to determine the adequacy of the Property for discharging such liabilities;
 - (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Liquidator's name or in the

name and on behalf of the Petitioners, for any purpose pursuant to this Order or the relevant statutory authority of the Liquidator;

- (i) to report to, meet with and discuss with such affected persons as the Liquidator considers appropriate on all matters relating to the Property and the Petitioners' business, and to share information, subject to confidentiality terms as the Liquidator considers appropriate; and
- (j) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations,

and in each case where the Liquidator takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other persons, including the Petitioners, and without interference from any other person.

- 4. No proceeding or enforcement process in any court or tribunal shall be commenced or continued against the Liquidator except with the written consent of the Liquidator or with leave of this Court.
- 5. The Liquidator shall incur no liability or obligation as a result of its appointment or by carrying out the provisions of this Order, save and except:
 - (a) For any harm caused by any gross negligence or wilful misconduct on its part; or
 - (b) in respect of obligations imposed specifically on liquidators by applicable legislation.

LIQUIDATOR'S ACCOUNTS

6. The Liquidator shall be paid its fees and disbursements pursuant to its standard hourly rates as set out in the engagement agreement between the Liquidator and the Petitioners (the "**Engagement Agreement**").

7. The Liquidator and its legal counsel, if any, are granted a charge (the "**Liquidator's Charge**") on the Property as security for the payment of their fees and disbursements in accordance with the Engagement Agreement, whether incurred before or after the making

of this Order. The Liquidator's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person.

8. Unless the Petitioners' otherwise consent, the Liquidator and its legal counsel shall pass their accounts from time to time, and for this purpose, the accounts of the Liquidator and its legal counsel are referred to a judge of the Supreme Court of British Columbia and may be heard on a summary basis.

9. Prior to the passing of its accounts, the Liquidator shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements (in accordance with the Engagement Letter) and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

10. Nothing in this Order shall prevent the Liquidator from acting as a receiver or licensed insolvency trustee of the Petitioners or their respective estates.

11. The Liquidator remains at liberty to apply for orders or directions in the course of the liquidation and dissolution of the Petitioners.

Signature

Lawyer for the Petitioners
Rebecca M. Morse

Signature

Lawyer for the Liquidator
Lance Williams

By the Court

Registrar