



SUPERIOR COURT OF JUSTICE

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Date: February 27, 2015

RE: GRACE AD SHADE ET AL. v. TDCI BRACEBRIDGE INC., ET AL.
COURT FILE NO.: CV-10678-00CL

Please contact Gladys Gabbidon at (416) 327-5052 if you do not receive all pages. Thank you.

CITATION: Adshade v. TDCI Bracebridge, 2015 ONSC 1275
COURT FILE NO.: CV-10678-00CL
DATE: 20150227

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Grace Adshade, Beaver Valley Holdings Limited and Premiere Self Storage Inc., Applicants

AND:

TDCI Bracebridge Inc., Clive Figueira and Carol Tarback, Respondents

BEFORE: L.A. Pattillo J.

COUNSEL: *Kevin Fisher and Holly LeValliant*, for the Applicants

John P. Ormston, for the Respondents TDCI Bracebridge and Carol Tarback

HEARD: February 25 and 26, 2015

ENDORSEMENT

Introduction

[1] The applicants, Grace Adshade (“Adshade”), Beaver Valley Holdings Limited (“BVHL”) and Premiere Self Storage (“Premiere”) seek a number of orders in respect of the respondents including the appointment of BDO Canada Ltd. (“BDO”) as Receiver/Manager of TDCI Bracebridge Inc. (“TDCI”).

[2] Adshade lives in Collingwood and is the majority shareholder and the sole officer and director of BVHL, an investment company. Adshade is also the sole officer, director and shareholder of Premiere, a self-storage company operating in Bracebridge, Ontario. She is 79 years of age.

[3] The respondents Clive Figueira (“Figueira”) and Carol Tarback (“Tarback”) are husband and wife. Tarback is currently the sole officer and shareholder of TDCI. Figueira is the general manager and is the person running the business.

[4] This application initially came before me in September 2014. On September 11, 2014, the parties agreed to a consent order which provided, among other things, that the respondents would maintain the status quo of TDCI and Premiere until the hearing of the application or further order and particularly would not further encumber, transfer or convey TDCI or Premiere property without consent or further order. The consent order further provided that the respondents would disclose all information in their possession or control concerning the issues raised to BDO who would have access to the premises and records of TDCI and Premiere.

[5] BDO subsequently prepared and filed two reports concerning its investigation dated October 8, 2014 and January 27, 2015, respectively.

[6] Adshade and Figueira have each filed a number of affidavits in the application. Further, Tarback and a representative of BDO were cross-examined and a former employee of Premiere was examined as a witness in aid of the application.

[7] Both Adshade and Figueira were cross-examined before me at the hearing. Their evidence of their relationship and Adshade's involvement in TDCI between 2008 and 2014 is diametrically opposite. Unless otherwise stated, I prefer the evidence of Adshade to that of Figueira. I find her explanation of events to be more credible when considered against the documents in the record. I also found Adshade to be direct and straightforward in her answers during cross-examination. In contrast, I consider Figueira's evidence of what occurred not to be credible. For the most part, it is not supported by the record or by BDO's reports. He was argumentative and evasive in his responses to questions during cross-examination. He refused to answer a number of the questions.

[8] Figueira has not been represented during the proceedings and, specifically, was unrepresented at the hearing. Although he attended to be cross-examined, he did not otherwise attend and was not present during final submissions.

Background

[9] Adshade and Figueira met in 2005.¹ In 2008, Figueira approached Adshade about becoming partners in the purchase and subsequent development of the former Dura Automotive Systems (Canada) Ltd. plant and lands comprising a 116,000 square foot building and approximately 124 acres of land in Bracebridge,

¹ Unless otherwise noted, statements of fact in these reasons are findings of fact.

Ontario (the "Property"). At the time, Figueira said he was asset rich and cash poor. Adshade agreed to become involved.

[10] Figueira told Adshade that the Property was in receivership and he believed that the Property could be developed and the building on the Property could be used to set up a storage facility with self-storage lockers, warehouses etc. utilizing Premiere Self Storage lockers. At the outset, they agreed Adshade would provide the deposit funds (\$100,000) to purchase the Property, monies for legal fees (\$15,000) and some other financial assistance to start up Premiere. They further agreed that Premiere would be owned 50/50 between them and that Adshade's company, BVHL, would receive a 25% interest in TDCI.

[11] TDCI was incorporated on June 4, 2008. Initially, the sole director, officer and shareholder was Tarback. In May 2009, Adshade received 25% of TDCI's shares which were issued to BVHL. As her investment in TDCI increased beyond what had been agreed to at the outset, Adshade requested a greater percentage of the shares in TDCI. Figueira agreed and, in September 2010, BVHL's shareholdings in TDCI increased to 50%. Tarback held the other 50%. At no time was Tarback ever involved in TDCI's day to day business.

[12] Premiere was incorporated on August 1, 2008. Initially, and as with TDCI, the sole director, officer and shareholder was Tarback. In March/April 2011, BVHL received 100% of the shares in Premiere although it was understood that the shares were owned 50/50 as originally agreed. The transfer was connected to Premiere obtaining a loan from BDC to purchase the storage lockers. At the same time as the transfer, Adshade, BVHL and Figueira entered into an option agreement which provided, among other things, that upon repayment of the BDC loan, Figueira could buy back 50% of the shares for \$1.

[13] On June 16, 2008, Adshade provided TDCI with \$100,000 for the deposit and paid \$15,000 directly to TDCI's lawyers for legal fees.

[14] TDCI purchased the Property in March 2009 for \$3,000,000. In addition to the \$100,000 deposit, the purchase price was financed by a private mortgage for \$1,800,000 (the "Passarello Mortgage") and a vendor take back mortgage in the amount of \$1,700,000 (the "Dura Mortgage").

[15] Between 2009 and 2011, Adshade, who was living in Collingwood, acted as the bookkeeper for TDCI and Premiere and oversaw the companies' finances. Figueira, Tarback and their children were living in Florida. TDCI was engaged in renovations of the building on the Property to put in lockers for the self-storage

units and construct furnished offices. The renovations were overseen by Figueira and paid for by Adshade through BVHL.

[16] The Passarello Mortgage came due in April 2010. Figueira negotiated a forbearance agreement which extended the deadline to October 30, 2010. In addition, the Dura Mortgage also went into default.

[17] Towards the end of 2011, Figueira was able to refinance the Passarello Mortgage with a loan from Mel Eisen ("Eisen") in Trust in the amount of \$3,500,000. The transaction closed on January 25, 2012 and the Eisen loan was secured by a first mortgage on the Property. Utilizing some of the mortgage funds, Figueira arranged to buy out the Dura Mortgage for \$350,000. It was subsequently assigned to Tarback.

[18] In October of 2011, and prior to the Eisen refinancing, Figueira went to Adshade and said that he had found someone to refinance the Property to enable them to pay out both the Passarello Mortgage and the Dura Mortgage and to have some further financing. Figueira asked Adshade to transfer BVHL's shares in TDCI to Tarback in order to facilitate the transaction. He told her that once the refinancing went through, BVHL would get the shares right back. Figueira also told Adshade that he would put the Dura Mortgage in BVHL's name as partial security for the monies it had lent to TDCI. Adshade agreed and subsequently signed the required documentation to transfer BVHL's shares in TDCI to Tarback although the documents were backdated to February 2011.

[19] At the end of 2011, Adshade ceased being the bookkeeper for TDCI and Premiere. Figueira became more involved in the day to day running of the businesses and their finances and a bookkeeper was hired.

[20] In April 2014, and without the applicants' knowledge, Figueira obtained further financing from Eisen in the amount of \$3,750,000 which was secured by a second mortgage on the Property. Together, the Eisen first and second mortgages total \$7,250,000.

[21] BDO's reports confirm, among other things:

- a) From the time that Figueira took over responsibility for TDCI's books and records on January 1, 2012, the record keeping and financial reporting is inaccurate and cannot be relied upon;
- b) BVHL has advanced at least \$2,030,000 to TDCI not including interest;

- c) The financial records of TDCI and Premiere were comingled since approximately January 2012;
- d) The sources and uses of the mortgage advances were not properly recorded and there was little insight into whether the mortgage advances were used for the original alleged purpose;
- e) Figueira and Tarback removed at least \$2,500,000 in cash from TDCI bank accounts or mortgage advances;
- f) None of the amounts taken by Figueira and Tarback are accurately reflected in the books and records of TDCI;
- g) Premiere's business has been merged into TDCI without any accounting of its income or debts which continue to be paid by BVHL. It is being operated as Muskoka Storage;
- h) Figueira was not cooperative during BDO's investigation, did not permit BDO access to many relevant records, all of TDCI's premises or its employees.

Relief Requested

[22] The applicants seek the following relief against the respondents:

- 1) Appointment of BDO as Receiver and Manager of TDCI;
- 2) An order permitting the Receiver to untangle and separate Premiere from TDCI;
- 3) An accounting and tracing of all funds taken from TDCI and Premiere by Figueira and Tarback;
- 4) Reissuance of 50% of the shares of TDCI to BVHL including all rights associated therewith;
- 5) Transfer and registration of the Dura Mortgage from Tarback to BVHL;
- 6) Partial judgment in favour of BVHL against TDCI for the minimum amount of \$2,030,565.16 plus interest at 7% per annum;
- 7) Judgment in favour of BVHL for such further and other amounts as may be confirmed by the Receiver;

- 8) Orders for repayment and restitution of all amounts taken, diverted or misappropriated by the respondents from Premiere and by Figueira and Tarback from TDCI.

Analysis

1) Appointment of a Receiver/Manager

[23] The applicants rely on s. 101 of the *Courts of Justice Act*, R.S.O. 1990, and c. C 43 (the "CJA"), and s. 248(3) of the *Business Corporations Act*, R.S.O. 1990, c. B.16, as amended (The "OBCA") in support of their request for a receiver/manager of TDCI.

[24] Section 101 of the CJA provides, among other things, for the appointment of a receiver/manager "where it appears to a judge of the court to be just or convenient to do so."

[25] Section 248 of the OBCA is the oppression remedy. Section 248(3) gives the court broad powers to intervene and redress oppressive and unjust conduct in the affairs of a corporation including an order appointing a receiver-manager (s.248 (3)(b)).

[26] In my view, for the reasons that follow, it is both just and convenient to appoint BDO as receiver -manager for TDCI at this time in order to preserve TDCI's property and protect the interests of all stakeholders, including the applicants. I am also of the view that the conduct of Figueira and Tarback as set out herein clearly disregards the interests of BVHL and Adshade both as shareholders and creditors of TDCI and Premiere. Accordingly, I rely on both s. 101 of the CJA and s. 248 (3) for the appointment.

[27] Counsel for TDCI and Tarback opposes the appointment but takes no issue with BDO or its qualifications. It is submitted that the appointment of a receiver is an extraordinary remedy and should be not exercised in this case given the various projects that Figueira has been working on for TDCI.

[28] While there is no doubt that the appointment of a receiver-manager is an intrusive and extraordinary remedy, in my view, the evidence which I accept overwhelmingly supports the appointment of a receiver and manager for TDCI.

[29] First, the evidence establishes that Figueira, both directly and through Tarback, has taken substantial sums out of TDCI for personal use and continues to do so. BDO concluded that Figueira and Tarback had removed at least \$2,500,000 from TDCI's bank accounts or mortgage advances. Clearly, Figueira and Tarback

have been using TDCI as their personal cash machine without any regard to the actual income of the businesses or the businesses' needs.

[30] Figueira admits to receiving \$15,000 a month but the records of TDCI's bank accounts for 2014 indicate cheques averaging \$36,000 a month. And that does not include other cash amounts.

[31] After the first Eisen mortgage in January 2012, the net funds payable to TDCI were retained in TDCI's lawyer's trust account. Although they were used to pay some of TDCI's expenses, through the spring and summer of 2012, Figueira and Tarback personally withdrew approximately \$120,000 of that money.

[32] While the actual quantum of funds advanced to TDCI from the second Eisen mortgage in April 2014 is uncertain, the advances appear to have been used predominantly to pay the personal expenses of Figueira and Tarback.

[33] Further, Laura Grundt, a former employee of Premiere testified to a number of Figueira's actions while operating TDCI and Premiere, including that he took cash receipts from Premiere's business on a daily basis and kept them for himself without accounting for them in the business; that he frequently took items from the building and sold them for scrap and kept the monies; that he unilaterally changed the tenants' automatic rent deductions from the first of the month to the 29th without the consent of or notifying the tenants; and he asked employees of TDCI to pay company expenses on their personal credit cards. Figueira's response to the allegations was to call Ms. Grundt a "disgruntled employee".

[34] Over the last year or two, Figueira has failed to have TDCI pay for necessary business expenses and services and has failed to address building maintenance issues raised by tenants. In particular, TDCI has failed to pay payroll taxes, property taxes, insurance, alarm services, and the BDC loan for which Adshade and BVHL are guarantors. Of particular concern, TDCI failed to pay its gas bill which resulted in the gas being cut off, the effect of which was a lack of heat causing damage to the building and tenant property. Further, there are numerous maintenance issues which are outstanding and which have not been addressed, including a leaky roof, broken toilets and sinks, broken doors, major heating issues, electrical issues and mould. The tenant lists indicate that there have been significant tenant departures from the building since 2012. Further, TDCI is involved in numerous legal actions arising from these issues.

[35] BDO had only limited access to TDCI's records. Figueira was not cooperative and did not permit BDO access to many relevant records, all of TDCI's premises or its employees. While they were able to confirm a number of

the applicants' allegations, there are still unanswered questions surrounding the amounts taken by Figueira and Tarback and the financial status of TDCI and Premiere which can only be answered by BDO having access to all of TDCI's records and employees.

[36] Further, and despite the consent order of September 11, 2014, requiring preservation of the status quo in respect of the Property and provision of information to the applicants in that regard, Figueira has been proceeding forward with various projects in relation to the Property without keeping the applicants informed. While it appears that none of the projects have come to fruition, Figueira's apparent unwillingness to provide information to the applicants is troubling to me.

[37] I am also of the view that it is just and convenient to appoint a receiver for TDCI in light of the following recent events. On January 26, 2015, Eisen issued a Notice of Sale under the first Eisen mortgage stating that default had been made in payment of the monies due under the mortgage. The notice indicated that \$3,537,438.52 was due on account of principal (\$3,500,000), interest (\$22,438.52) and costs (\$15,000) and that unless the sums were paid on or before March 7, 2015, the property would be sold.

[38] On February 10, 2015, Eisen sent out an agreement of purchase and sale of the same date between himself in trust under Power of Sale and Sancus Properties Ltd. in respect of the sale of the Property for \$7,750,000. The agreement is scheduled to close March 10, 2015. The purchase price is comprised of \$1,000,000 cash and the balance (\$6,750,000) by way of vendor take back by Eisen for one year.

[39] In the event that the sale is completed, the proceeds will only pay out Eisen's two mortgages and place him in almost the same position as he is now, while extinguishing all other encumbrances.

[40] In addition to the issues of proper service raised by the applicants, I have number of concerns regarding the Eisen Power of Sale proceedings. The evidence indicates that the first Eisen mortgage is not in default. Figueira apparently told Eisen that TDCI could not pay it when it comes due in April 2015, but it is not April yet. Although taxes are owing, that has been the case since before the first Eisen mortgage and there has been no concern expressed by Eisen before. The purchaser, Sancus Properties Ltd., was only incorporated on January 13, 2015. There is no indication of who is behind it. Eisen has been advised of this application and was sent all of the material by the applicants. He is therefore aware that part of the relief requested by the applicants is the appointment of a receiver.

Although not formally served or a party, he has elected not to have someone appear on his behalf.

[41] Finally, and apart from my concerns arising from the timing and circumstances surrounding the Eisen Power of Sale proceedings, I have concerns as to whether the proposed purchase price in the agreement of purchase and sale represents the fair market value of the Property. Eisen informed counsel for the applicants that he has evidence that it is a provident sale. However, Figueira states in his affidavit sworn September 10, 2014 that the Property is worth at least \$14,416,000 based on appraisals dated February 18, 2014 which were prepared in relation to a further mortgage advance from Eisen in April 2014 for \$3,750,000.

2) An order requiring the Receiver to untangle Premiere from TDCI

[42] The applicants request an order permitting the Receiver to untangle and separate Premiere from TDCI.

[43] The evidence establishes that at least since the application was begun, Figueira has taken steps to incorporate Premiere's business into TDCI. He has changed the name to "Muskoka Storage", attempted to change customer contracts to the new name, redirected rent payments from Premiere's bank account to a Muskoka Storage bank account, and has instructed employees to stop referring to Premiere and to just use the name Muskoka Storage.

[44] In my view, it is premature to make such an order. I consider it necessary for the Receiver to first take charge of TDCI and its property and determine what steps are required to best protect all the stakeholders. The Receiver can determine whether there are any issues involving Premiere. If there are issues, the Receiver can deal with BVHL, the sole shareholder of Premiere, to resolve them. If necessary, the Receiver can come back to Court.

3) An accounting and tracing of all funds taken by Figueira and Tarback from TDCI and Premiere.

[45] I have considered the evidence concerning the extent to which Figueira and Tarback have taken money from TDCI and Premiere for personal use. I direct that, in addition to the usual powers granted to a receiver, the Receiver investigate the accounts of TDCI and such further records as may be necessary to complete an accounting of all funds diverted or converted by Figueira and Tarback to their personal use. This would include a tracing of those funds into any assets purchased or accounts controlled by them.

[46] The order does not extend to Premiere because the Receiver is not being appointed for Premiere.

- 4) Reissuance to BVHL shares in TDCI equal to 50% ownership including all rights associated therewith.

[47] BVHL seeks an order that it be reissued 50% of the shares in TDCI from Tarback in accordance with the agreement between Adshade and Figueira in the fall of 2011. Adshade's evidence is that Figueira told her that she needed to relinquish BVHL's shares in TDCI only until the refinancing was completed. Figueira wanted to show the lender that he was the sole owner. He also told Adshade that if the lender knew that she was a shareholder, she would be required to provide a personal guarantee. At the time, given the amount of money she had already invested in TDCI, Adshade was averse to providing any guarantee.

[48] The respondents submit that the Court should not rewrite the deal between BVHL and Tarback. Adshade wanted to remove herself as a shareholder of TDCI and agreed to give up BVHL's 50% interest in TDCI in exchange for receiving 100% of Premiere's shares.

[49] The respondents' position is based on the evidence of Figueira, which I have already noted I do not accept. In addition, their position is not consistent with the evidence that I do accept. BVHL received the Premiere shares in March/April 2011 at the same time as Premiere's BDC loan was being finalized. Further, the option agreement that was entered into at that time makes it clear that BVHL effectively held 50% of the shares of Premiere in trust for Figueira which is consistent with the original agreement between Adshade and Figueira.

[50] By contrast, the agreement concerning the transfer of BVHL's shares in TDCI was reached in the fall of 2011 and had nothing to do with the previous transfer of the Premiere shares. Further, subsequent emails between Adshade and Figueira are more consistent, in my view, with Adshade's evidence of what the agreement was concerning BVHL's continued entitlement to 50% of TDCI's shares.

[51] TDCI was in financial difficulty at the time that Figueira was attempting to obtain refinancing in 2011. But it does not follow that, as a result, BVHL and Adshade would give up the shares in TDCI and settle for repayment of the loans.

[52] Further, Adshade's version of the agreement and the fact that BVHL effectively continued to own 50% of TDCI is confirmed by Tarback's evidence in another legal proceeding involving Figueira and TDCI. The evidence was given by Tarback during her cross-examination in April 2012 which was long after the

shares had been transferred from BVHL to Tarback. Tarback testified that she only owned 50% of TDCI and that she was holding the other 50% in trust for BVHL.

[53] In his affidavit, Figueira attempted to explain Tarback's evidence by saying that he had not told her of the agreement with Adshade prior to Tarback giving that evidence. Accordingly Tarback was honestly under the belief that BVHL still owned 50% of TDCI. The problem with that explanation, however, is that Tarback signed a number of the documents on behalf of TDCI affecting the transfer of BVHL's shares including the purchase for cancellation agreement, the minutes of the board of directors of TDCI authorizing TDCI to purchase BVHL's shares for cancellation and a release directed to BVHL. Clearly Tarback knew at the time the documents were signed that BVHL no longer owned shares in TDCI. Yet a number of months later, she testified, under oath that she was holding 50% of the shares in trust for BVHL. I do not accept her evidence in her affidavit filed in this application concerning share ownership. Clearly Tarback does what Figueira tells her in respect of TDCI.

[54] There is no question that Adshade should have taken steps to have the agreement between her and Figueira reduced to writing. However, her failure to do so does not mean that there was no agreement. Nor does it mean that the Court is rewriting the deal. I am satisfied on the evidence that I accept that, notwithstanding the cancellation of BVHL's shares in TDCI in the fall of 2011, Tarback continued to hold 50% of TDCI's shares in trust for BVHL. Accordingly, BVHL is entitled to an order that it is a 50% shareholder in TDCI and to issuance of a share certificate reflecting its share ownership in TDCI.

5) Transfer of the Dura Mortgage from Tarback to BVHL.

[55] The applicants seek an order transferring the Dura Mortgage from Tarback to BVHL in accordance with the agreement that was reached between Adshade and Figueira in the fall of 2011 at the same time as agreement was reached concerning the transfer of BVHL's shares in TDCI. Adshade said that Figueira told her that, as part of the refinancing, he would put the Dura Mortgage for \$1,700,000 in BVHL's name as partial security for all the money she had provided. Adshade said that prior to that she had been trying to get security for the monies that BVHL had lent to TDCI.

[56] The respondents submit that Adshade's story makes no sense. She would not be entitled to both the shares and security. I disagree. While the assignment of the Dura Mortgage and the transfer of the shares are mutually exclusive, they are linked. Just because BVHL is entitled to shares does not mean that it is not entitled to security as well. Further, the amount of the Dura Mortgage is less than the debt

owing to BVHL at the time. The financial statements of TDCI as at December 31, 2011 show the debt due to BVHL to be \$2,591,494.

[57] I consider that Figueira's offer to assign the Dura Mortgage to BVHL was part of the inducement to get Adshade to agree to transfer BVHL's shares in TDCI. I accept Adshade's evidence that there was an agreement to transfer the Dura Mortgage to BVH as partial security for the monies it had lent to TDCI.

[58] As noted, Figueira did not transfer the Dura Mortgage to BVHL as agreed. Rather, after purchasing it with monies obtained from the Eisen first mortgage, Figueira arranged to have the Dura Mortgage assigned to Tarback. Tarback paid no money to TDCI for the mortgage, although Figueira says she purchased it using a shareholder's loan. Once again, I do not accept Figueira's evidence. There was no consideration from Tarback for the assignment of the Dura Mortgage.

[59] I am satisfied from the evidence I accept that, in light of the agreement between Adshade and Figueira, BVHL is entitled to have the Dura Mortgage transferred from Tarback to BVHL and registered in its name.

6) Partial Judgment against TDCI for Monies Owning.

[60] The applicants seek a "partial" judgment in favour of BVHL against TDCI in the minimum amount of \$2,030,565.16, which is the amount currently confirmed by BDO as having been advanced by BVHL to TDCI plus interest at 7% or in the alternative at 5% in accordance with the *Interest Act*.

[61] TDCI does not dispute the amount owing to BVHL but takes issue with the interest rate claimed. It submits that no interest rate was ever discussed or agreed between Adshade and Figueira and accordingly, the rate should be 5% pursuant to the *Interest Act*.

[62] There is no evidence as to what repayment terms were agreed to in respect of the monies advanced by BVHL to TDCI. Even if I accept that BVHL's lawyer's letter of May 23, 2014 constitutes a demand letter, there is no evidence to support the position in the letter that the monies are due on demand. I am not prepared, given the nature of the undertaking and the agreement of the parties at the outset, to find that the BVHL loans are payable on demand.

[63] Further, Adshade's evidence concerning what the agreed interest rate was is inconsistent. In my view, the proper interest rate to be applied to the BVHL debt is 5% per annum as provided by the *Interest Act*. That amount is in excess of the interest Adshade was being charged for the money she was lending TDCI through BVHL.

[64] In the absence of evidence that the monies lent by BVHL to TDCI are due and owing, BVHL is not entitled to a judgment at this time either for a "partial" amount or for any further amounts found by the Receiver to be owing to BVHL. The relief requested is therefore dismissed without prejudice to a future claim.

7) and 8) Judgments against the respondents for amounts taken, diverted or misappropriated and for repayment and restitution.

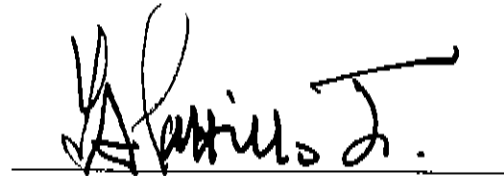
[65] Finally, the applicants seek judgments for repayment and restitution of all amounts taken, diverted or misappropriated by the respondents in respect of Premiere and by Figueira and Tarback in respect of TDCI.

[66] In my view, that relief is premature. It remains to be determined what amounts have been taken, diverted or misappropriated from Premiere and TDCI. Accordingly, that request is dismissed without prejudice to the applicants bringing it back on in the future.

Conclusion

[67] Accordingly, for the above reasons, BDO is appointed as Receiver and Manager of TDCI. I have signed the order in that regard. Further, BVHL is entitled to 50% of the issued shares of TDCI and the Dura Mortgage registered to Tarback shall be transferred to BVHL and registered against the Property accordingly. The balance of the relief requested is dismissed.

[68] The applicants were successful in respect of the main relief sought and are entitled to their costs. Neither party had cost outlines at the hearing. In the absence of agreement, I will resolve the costs. The applicants shall provide brief submissions not exceeding three pages plus a cost outline within 30 days. The respondents shall respond within a further 10 days. If the respondents take issue with the hours claimed, they shall submit their cost outline detailing the time spent by their counsel.



L. A. Pattillo J.