

IN THE GRAND COURT OF THE CAYMAN ISLANDS



Cause No. 59 of 2007

IN THE MATTER OF WATLER HOLDINGS LTD

AND IN THE MATTER OF THE COMPANIES LAW (2005 REVISION)

B E T W E E N:

SHANNON PANTON

Petitioner

- and -

**(1) LYNETTE WATLER
(2) ROBERT SELKIRK WATLER III**

Respondents

AMENDED PETITION

TO THE GRAND COURT OF THE CAYMAN ISLANDS

The Petition of Shannon Panton, of 5333 Chute Lake Road, Kelowna, British Columbia, Canada, shows that:-

1 Watler Holdings Ltd was incorporated pursuant to the Companies Law and registered as an ordinary resident company (Registration No. 45924) on 16 February 1993 (the "Company") with its registered office at the offices of Charles Adams Ritchie &

Duckworth, PO Box 709 GT, Grand Cayman. The Company's registered office is currently located at the offices of Turner & Roulstone Management Ltd, Strathvale House, PO Box 2636 GT, Grand Cayman.

- 2 The Petitioner and Respondents are the children of the late Robert Selkirk Watler who died on 22 August 1989 (the "Deceased") and are beneficiaries of his Estate pursuant to the terms of a Deed of Family Arrangement (the "Deed") made on 19 February 1993 between and amongst, *inter alia*, Mr Jeffrey Parker ("Mr Parker"), the Company, the Petitioner and the Respondents. The Petitioner and Respondents are referred to in this Petition individually as "Shannon", "Lynette" and "Selkirk" and collectively as the "Beneficiaries".
- 3 The Company was incorporated by Mr Parker in his capacity as the independent Court-appointed executor of the Estate for the special purposes of (a) holding the assets comprised in the residuary estate and (b) serving as the corporate vehicle through which the residuary estate would be administered and distributed. The Company is itself party to the Deed and was incorporated in anticipation of the execution of the Deed.
- 4 The residuary estate comprised: –
 - (a) the issued share capital of Red Bay Estates Ltd ("RBE Ltd") and Frank Sound Estates Ltd ("FSE Ltd"), both of which are land holding companies which had been wholly owned by the Deceased;
 - (b) the land listed in the Second Schedule to the Deed;
 - (c) receivables due from Lynette and Selkirk; and
 - (d) any other asset of the Estate not otherwise dealt with specifically in the Deed.
- 5 The issued share capital of RBE Ltd and FSE Ltd was transferred to the Company by Mr Parker prior to the execution of the Deed which recited the fact that they were wholly owned subsidiaries of the Company.

- 6 By Clauses 9 and 10, it was an express term of the Deed that Mr Parker would (in his capacity as the independent Court-appointed executor of the Estate) transfer to the Company legal title to all the land listed in the Second Schedule to the Deed and assign to the Company any other asset of the Estate not otherwise dealt with specifically in the Deed. By Clause 14 of the Deed the receivables due to the Estate from Lynette and Selkirk were assigned to the Company.
- 7 By Clause 12, it was an express term of the Deed that Mr Parker would transfer to each of Shannon, Lynette and Selkirk 100 of the issued shares of the Company (a total of 300 shares having been issued) to the intent that all the lands and assets of the Estate not otherwise specifically distributed in accordance with the Deed should be held by the Company or one of its subsidiaries and would be beneficially owned by the Beneficiaries in equal shares subject to the terms of the Deed and the Shareholders' Agreement which was executed simultaneously with the Deed by and amongst, *inter alia*, the Beneficiaries. The Petitioner will refer to the Deed and the Shareholders' Agreement at the trial of this Petition for their full terms and effect.
- 8 By Clause 1 of the Shareholders' Agreement, the Beneficiaries (in their capacity as the shareholders of the Company) confirmed Mr Parker's appointment as the sole director of the Company and its subsidiaries.
- 9 By Clause 2 of the Shareholders' Agreement, the Beneficiaries agreed not to remove Mr Parker from office as the sole director of the Company and its subsidiaries at least until after payment of all the debts of the Estate and the expenses of the administration.
- 10 Upon their true construction, it is an express or implied term of the Deed and Shareholders' Agreement that Mr Parker, or such other person who may from time to time be appointed by the Court as independent executor of the Estate, shall be appointed as the sole director of the Company and its subsidiaries and shall not be removed from office unless and until the Estate is fully administered.

11 By clause 2.01 of the Company's articles of association a "special resolution" means a resolution passed by the members unanimously, whether at a general meeting or by circular resolution.

112 By Order of the Court made on 17 January 2007 (in Cause No.75 of 2006) Mr Martyn Bould ("Mr Bould") was appointed as independent executor of the Estate, with immediate effect, in place of Mr A. Dwight Panton who was permitted to resign from office upon the passing of his accounts.

123 In breach of the Deed and Shareholders' Agreement Lynette and Selkirk have wrongfully refused to appoint Mr Bould as the sole director of the Company and its subsidiaries. The effect of refusing to appoint the executor of the Estate as the sole director of the Company and its subsidiaries, which are intended to own all the assets comprised in the residuary estate, is to frustrate the administration of the Estate because it necessarily circumscribes the Court's ability to give directions and the Beneficiaries' ability to apply to the Court for directions.

14 Notwithstanding that Lynette has changed her position and is now willing to join with Shannon in voting for a special resolution to remove the existing board of directors and appoint Mr Bould (or some other independent person) as sole director, it cannot be passed without Selkirk's consent.

1315 Shannon agreed to become a shareholder of the Company on the basis that it was a "special purpose vehicle" incorporated solely for the purpose of holding, administering and distributing the assets comprising the residuary estate amongst the three Beneficiaries in equal shares. Shannon has a legitimate expectation that the Company will be operated only for the purposes for which it was incorporated.

1416 In breach of the Deed and Shareholders' Agreement and/or contrary to Shannon's legitimate expectations, ~~Lynette and~~ Selkirk was able to have taken take control of the Company and its subsidiaries (with Lynette's concurrence) and ~~are now seeking sought~~ to operate the Company (either directly or through RBE Ltd) as if it was his own a-property development business.

~~15~~ So long as Lynette and Selkirk remain as directors and purport to be entitled to control the Company and its subsidiaries, (by acting in concert as a majority of the boards of directors) they owe a fiduciary duty to the companies. They have acted and threaten to continue to act in breach of their fiduciary duty.

PARTICULARS OF BREACH OF FIDUCIARY DUTY

~~(a)~~ Lynette and Selkirk have put their own personal interests ahead of the Company's interest (and Shannon's interest) by choosing not to pay the debts which they owe to the Company pursuant to Clause 6 of the Shareholders' Agreement. As at 30 November 2006 Lynette owed C\$74,395.37 and Selkirk owed C\$88,695.85 upon which interest is accruing at 5% per annum. If Lynette and Selkirk were to pay the amount owing, the Company would be able to repay the balance of the judgment debt owed to Arno Helner upon which interest is accruing at 14% per annum.

~~(b)(a)~~ Lynette and Selkirk have put their own personal interests ahead of the Company's interest (and Shannon's interest) by purportedly authorizing Selkirk to pay money to himself out of the assets of the Company as "commissions" calculated at 7% of the gross price of all land sold by the Company and its subsidiaries. Lynette concurs with this arrangement because she is dependent upon money which she receives from Selkirk. The effect of this arrangement is to increase Selkirk's share of the residuary estate at the expense of Shannon.

1617 Upon their true construction, it is an express or implied term of the Deed and Shareholders' Agreement that the independent Court-appointed executor of the Estate would discharge the debts of the Estate, for which purpose it was necessary to realize some of the assets held through the Company and/or its subsidiaries, and then distribute the residuary estate, which equates to the net assets of the Company and its subsidiaries, to the Beneficiaries in equal shares. Alternatively, Shannon had a legitimate expectation that this would be done and agreed to accept shares in the Company on this basis.

1718 Instead, with Lynette's concurrence, Selkirk ~~has been was~~ put in the position of *de facto* managing director of the Company and its subsidiaries and is operating them as if they were part of his own property development business at least until mid 2007. Shannon did not agree to become a minority shareholder in Selkirk's property development business. The Shareholders' Agreement protects the minority shareholders by providing that the independent Court-appointed executor of the Estate shall be the sole director of the Company and its subsidiaries. The minority shareholders are protected by having the right, in their capacity as beneficiaries of the Estate, to apply to the Court for directions. This protection has been circumscribed, if not entirely removed, by the refusal of ~~Lynette and~~ Selkirk to appoint Mr Bould as sole director of the Company and its subsidiaries.

1819 The overall effect of ~~Lynette and~~ Selkirk's actions is that Shannon and Lynette are is being deprived of a major part of their her inheritance. When executing the Deed and Shareholders' Agreement, Shannon and Lynette had a legitimate expectation that one third of the residuary estate would be distributed to each of them her as soon as sufficient assets had been realized to discharge the debts of the Estate and pay the expenses of administration which included all the fees and expenses of the litigation amongst the Beneficiaries and their mother (Cause No. 174 of 1992). Shannon and Lynette had a legitimate expectation that the net assets of the Company and its subsidiaries would be distributed as soon as it was practical to do so. Shannon and Lynette had a legitimate expectation that she they would not be forced to participate in the risks and rewards of Selkirk's property development business against her their will.

1920 ~~The debts of the Estate have not been discharged.~~ The Estate has not been fully administered and no part of the assets comprised in the residuary estate held through the Company and its subsidiaries have been distributed to the Beneficiaries. The Company has never paid any dividend or distributed any capital to the Beneficiaries.

2021 There is no realistic prospect that Shannon, Lynette and Selkirk will ever work together harmoniously or otherwise.

2122 The terms of the Shareholders' Agreement are consistent only with an agreement whereby the Company would be used solely as a vehicle through which to hold the assets

comprised in the residuary estate and as a vehicle through which to administer and distribute the residuary estate amongst the Beneficiaries as soon as the creditors and the expenses of administration have been paid. Its terms are not consistent with the proposition that the Company should continue to be operated indefinitely as a property development business.

~~2223~~ There is no realistic prospect that Shannon, Lynette and Selkirk will agree upon the terms of a new shareholders' agreement by which they will jointly own and operate a property development business for an indefinite period or any other arrangement.

~~24~~ The Company's management is deadlocked because –

- ~~(a) A special resolution means a resolution passed by the members unanimously;~~
- ~~(b) Shannon, Lynette and Selkirk cannot work together;~~
- ~~(c) Shannon and Lynette cannot pass a special resolution without Selkirk's consent;~~
- ~~(d) Selkirk will not vote for a special resolution to appoint Mr Bould or some other independent person as sole director of the Company.~~

~~2325~~ The Company is solvent in that the value of its assets exceeds the amount of its liabilities (including the liabilities of the Estate) by a very substantial margin.

~~2426~~ In the circumstances it is just and equitable that the Company be wound up.

AND THE PETITIONER THEREFORE PRAYS that:-

- (1) The Company be wound up by the Court subject to the provisions of the Companies Law (2005 Revision).
- (2) Mr ~~G. James Cleaver Martyn Bould~~ be appointed official liquidator of the Company.
- (3) The official liquidator shall not be required to give security.
- ~~(4) The official liquidator's remuneration be fixed at C\$250 per hour for all work reasonably and properly done in the performance of his duties.~~

~~(5)~~(4) The official liquidator be directed to instruct Mr Martyn Bould to prepare a scheme of liquidation whereby the assets of the Company and its subsidiaries be distributed amongst its shareholders *in specie*. Such scheme of liquidation shall be submitted to the Beneficiaries within 90 days and, in the event that such scheme of liquidation is not unanimously agreed upon within 30 days thereafter, ~~he the official liquidator~~ shall apply to the Court for further directions.

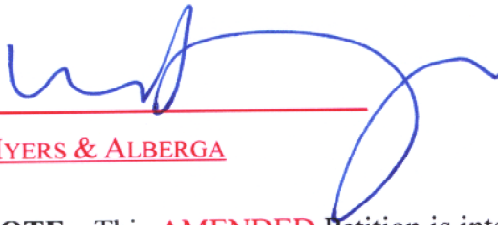
~~(6)~~(5) Such further or other directions as the Court thinks fit.

~~(7)~~(6) An order that the Petitioner's costs of the Petition be paid by the 1st Respondents.

Dated: 7 February 2007

Re-Dated 19th September 2008

~~DIAMOND LAW ASSOCIATES~~



MYERS & ALBERGA

NOTE: This AMENDED Petition is intended to be served on (1) Lynnette Watler c/o Myers & Alberga, 2nd Floor, Harbour Place, George Town, Grand Cayman and (2) Robert Selkirk Watler II, ~~both~~ c/o Turner & Roulstone, Strathvale House, George Town, Grand Cayman.

INDORSEMENT

This Petition, having been presented to the Grand Court of the Cayman Islands on 7 February 2007, as amended on 19th September 2008 will be heard at the Grand Court of the Cayman Islands on:

DATE: 26th November 2008

TIME: 10.00am (or as soon thereafter as the Petition can be heard).

THIS PETITION is presented by ~~DIAMOND LAW ASSOCIATES MYERS & ALBERGA~~, Attorneys for the Petitioner whose address for service is ~~4th Floor, Cardinal Plaza, 30 Cardinal Avenue, PO Box 2887~~ Harbour Place, 2nd Floor, PO Box 472, George Town, Cayman Islands KY1-11+204 [Ref: SND/1068]