



No. S-194717
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

**IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*, S.B.C. 2002, c. 57
and THE *BUSINESS CORPORATIONS ACT*, R.S.A. 2000, c. B-9**

-AND-

IN THE MATTER OF THE LOUIS RACZ CO. LTD.

-AND-

Between

1012109 B.C. LTD. and LISA MADDESS

Petitioners

and

ETHEL MARY RACZ a/k/a ETUS MARIA RACZ
and MICHAEL SIWIK

Respondents

NOTICE OF APPLICATION

NAME OF APPLICANT: MNP Ltd., in its capacity as liquidator (in such capacity, the
“Liquidator”) of Louis Racz Co. Ltd. (the “Company”)

TO: The Respondents

c/o Liebman Légal Inc.
1 Westmount Square, Suite #350
Montreal, QC H3Z 2P9
Attention: Moe Liebman

AND TO: The Petitioners

c/o Turner & Co.
The United Kingdom Building
409 Granville Street, Suite 1600
Vancouver, BC V6C 1T2
Attention: Scott Turner

TAKE NOTICE that an application will be made by the Liquidator to the presiding judge via Microsoft Teams Videoconference at the courthouse at 800 Smithe Street, Vancouver, British Columbia on Monday, April 12, 2021, at 9:45 a.m. for the order(s) set out in Part 1 below.

Part 1: ORDER(S) SOUGHT

1. An order substantially in the form attached hereto as **Schedule "A"**, directing the Liquidator to:
 - (a) declare a dividend to the Petitioners and the Respondents (together, the "**Shareholders**") in the amount of \$2,076,502 (the "**First Dividend**");
 - (b) pay the First Dividend to the Shareholders from the funds of approximately \$2,376,300 held by the Liquidator in trust for the Company (the "**Funds**");
 - (c) declare a second dividend to the Shareholders in the amount of \$1,034,096 prior to the current fiscal year end of June 30, 2021 (the "**Second Dividend**" and, together with the First Dividend, the "**Dividends**"); and
 - (d) satisfy the Second Dividend with a promissory note in favour of the Shareholders (the "**Promissory Note**").

Part 2: FACTUAL BASIS

A. Background

1. The Company was originally established by the late Louis Racz in 1967.

1012109 BC Ltd v Racz, 2020 BCSC 1099 at para 4 [July Reasons]
2. In 1998, the share capital of the Company was reorganised as part of an "estate freeze" transaction. Prior to the freeze, the shareholders of the Company were Rozilia Racz (the late Louis Racz's surviving spouse), Ernest Racz (his son), and Ethel Racz.

July Reasons at para 5
3. After the freeze, the share capital of the Company consisted of Class B non-participating voting shares, Class C non-participating common shares and Class D preferred shares. All prior Class A shares were cancelled.

July Reasons at para 6
4. The shares issued in 1998 as part of the freeze were held (in different classes and amounts), by:
 - (a) Rozilia Racz;
 - (b) Ernest Racz;
 - (c) Ethel Racz; and
 - (d) a newly created trust (the "**Racz Family Trust**").

July Reasons at para 7
5. The Racz family Trust was settled by Rozalia Racz. It was issued 70 Class C shares in the Company.

July Reasons at para 8

6. The Racz Family Trust had the following beneficiaries:

- (a) Michael Siwik;
- (b) Rita Racz; and
- (c) Lisa Maddess.

July Reasons at para 7

7. By March 2019, most of the Class D preferred shares issued in 1998 had been redeemed by the Company. Only 415 of those shares remained. They were held by Ethel Racz, who had refused to tender the shares for redemption.

July Reasons at para 9

8. As well, Rozilia and Ernest Racz had passed away and the Racz Family Trust had been wound up. The remaining shares of the Company's Class C and D shares were held by the Shareholders as follows:

- (a) Rita Racz (through her role as principal of 101 Co): 32.5 Class C common shares;
- (b) Lisa Maddess: 17.5 Class C common shares;
- (c) Ethel Racz: 15 Class C common shares and 415 Class D preferred shares; and
- (d) Michael Siwik: 35 Class C common shares.

July Reasons at para 9

9. In early 2019, the Company sold its last remaining asset, an apartment building in West Vancouver. After payment of mortgage debt and taxes, the Company was left with more than \$11,000,000 in cash for distribution to the Shareholders.

July Reasons at para 11

10. Later in 2019, the Petitioners filed a petition commencing these proceedings (the "**Petition**"). The Petition sought orders that most of the Company's cash assets be paid out to the Shareholders and that, thereafter:

- (a) the Liquidator be appointed;
- (b) any remaining cash assets of the Company be transferred to the Liquidator for:
 - (i) payment of expenses; and
 - (ii) subsequent distribution to the shareholders; and
- (c) the Company be liquidated and dissolved.

July Reasons at para 12

B. The July 29 Order

11. On July 29, 2019, this Court pronounced an order (the “**July 29 Order**”) empowering and directing the Liquidator to, *inter alia*:

- (a) take possession of the Company’s assets;
- (b) pay the creditors of the Company;
- (c) file tax returns for the Company;
- (d) take possession of any tax refunds payable to the Company;
- (e) distribute the remaining assets of the Company, if any, to the Shareholders, *pro rata* in accordance with their shareholdings; and
- (f) after completing the above, apply for an order dissolving the Company.

12. The July 29 Order also provided at paragraph 15 that:

- 15. The parties and the Liquidator shall be at liberty to apply to the Court for further Orders or directions regarding this Order or the liquidation of the Company.

July 29 Order at para 15

13. Neither of the Respondents have taken any steps to appeal the July 29 Order or to apply to this Court for further orders or directions as provided for in paragraph 15 of the July 29 Order.

July Reasons at para 21

C. Prior Attempts to Distribute Funds of the Company

14. On August 26, 2019, Ethel Racz sent a letter dated August 23, 2019 (the “**August 23 Letter**”) to counsel for the Petitioners. The August 23 Letter stated, *inter alia*, that “[a]ny cheque sent to me will be returned”.

July Reasons at para 16

15. On August 26, 2019, and notwithstanding the August 23 Letter, counsel for the Petitioners delivered a letter enclosing three cheques to Ethel Racz (the “**Racz Cheques**”) in the following amounts:

- (a) \$415,000 on account of the redemption of her Class D shares in the Company;
- (b) \$855,000 on account of the capital dividend in respect of her Class C shares in the Company; and
- (c) \$645,000 on account of the ordinary dividend declared on the Class C shares.

July Reasons at para 17

16. On August 26, 2019, counsel for the Petitioners delivered a letter enclosing two cheques to Michael Siwik (the “**Siwik Cheques**” and, together with the Racz Cheques, the “**Cheques**”) in the following amounts:
- (a) \$1,995,000 on account of the capital dividend declared in respect of the Class C shares; and
 - (b) \$1,505,000 on account of the ordinary dividend declared in respect of the Class C shares.

July Reasons at para 17

17. On or around August 30, 2019, Ethel Racz sent counsel for the Petitioners a letter advising that she would return the Racz Cheques. On or around September 3, 2019, Ethel Racz sent an envelope to the Petitioners in which she enclosed and returned the Racz Cheques.

July Reasons at para 18

18. On or around September 4, 2019, Michael Siwik sent a fax to counsel to the Petitioners advising that he was returning the Siwik Cheques “for reasons stated in [Ethel] Racz’s letter of August 23, 2019.”

July Reasons at para 18

19. Michael Siwik subsequently returned the Siwik Cheques to counsel to the Petitioners.

Affidavit #1 of Anna Lee, sworn April 14, 2020 at para 10 (“**Lee Affidavit**”)

20. Several months later, the Petitioners sought the help of the Liquidator in delivering the Cheques to the Respondents. On February 21, 2020, the Liquidator enclosed the Cheques in letters delivered to the Respondents, which letters stated, *inter alia*, that “[a]s part of our duties as Liquidator, we will be arranging for a T5 slip to be addressed to you and filed with the Canada Revenue Agency prior to February 28, 2020 [...] Accordingly, we strongly encourage you to address the Re-issued Trust Cheques and the associated tax liabilities.”

July Reasons at para 19

Lee Affidavit at Exhibits “J” and “K”

21. On or around February 24, 2020, the Respondents jointly wrote to the Liquidator and advised the Liquidator that the Cheques would be returned for the same reasons they were previously returned to counsel to the Petitioners.

July Reasons at para 20

22. On February 27, 2020, the Liquidator delivered letters to the Respondents enclosing their respective T5 slips.

July Reasons at para 19

23. On March 6, 2020, Ethel Racz wrote to the Liquidator enclosing the Cheques and the T5 slips.

July Reasons at para 20

24. On August 5, 2020, on application by the Petitioners pursuant to paragraph 15 of the July 29 Order, this Court granted an order (the "**August 5 Order**"), ordering and declaring, *inter alia*, that:

3. The obligation and liability of the Louis Racz Co. Ltd. (the "**Company**") to make further payments to the Respondents on account of their shareholdings, as required by the Liquidation Order, is also extinguished.
4. [The Liquidator], in its capacity as liquidator of the Company, shall pay the Refused Payments to the Petitioners in proportion to their respective Class C shareholdings in the Company.

August 5 Order at paras 3 – 4

25. The August 5 Order also contained the following comeback provision:

7. The implementation of this Order is stayed for a period of thirty (30) days from its date of entry in the registry. The Petitioners shall provide the Respondents with a copy of this Order and the court's reasons for judgment, forthwith after entry of the Order, and the Respondents shall have thirty (30) days from the date of entry of the Order to apply to this court to set it aside. If the Respondents do not apply to set the Order aside within the time provided, the Order shall come into full force and effect.

August 5 Order at para 7

26. Ultimately, the Respondents accepted the payment and the Cheques.

D. Funds of the Company Currently Held by the Liquidator

27. The Liquidator prepared and filed a corporate income tax return on behalf of the Company for the fiscal year ending June 30, 2020 (the "**Return**"). The Return was assessed by the Canada Revenue Agency (the "**CRA**") and the CRA issued a refund in the amount of \$1,807,415 plus interest, which was subsequently deposited to the trust account maintained by the Liquidator.

Affidavit #3 of Patty Wood, sworn March 18, 2021 at para 4
 ("**Third Wood Affidavit**")

28. Currently, the Liquidator is holding the Funds, amounting to approximately \$2,376,500. Of the Funds, \$2,200,000 is invested in a GIC and the balance is in a current account. Accordingly, the Funds will accrue some additional interest. The Funds are the Company's only asset.

Third Wood Affidavit at para 5

29. The Liquidator has confirmed with the CRA that the Company currently has a refundable tax balance of \$1,034,096 (the "**Tax Refund**"). The Liquidator has been advised by tax professionals that the Tax Refund will be refunded by the CRA to the Company at the rate of \$1 for every \$2.60 of taxable dividends that the Company pays to the Shareholders. Consequently, the Liquidator expects that the Company will recover the entire \$1,034,096 upon the payment of \$2,688,650 of taxable dividends.

Third Wood Affidavit at para 6

30. The Liquidator has reviewed the accounts of the Company and expects that various professional costs payable by the Company will exceed the interest income earned on the Funds. Accordingly, the Liquidator expects that the Company will realise a net loss for the current fiscal year ending June 30, 2021 and does not anticipate any future income tax obligation for the Company.

Third Wood Affidavit at para 7

E. The Proposed Dividends

31. The Liquidator has brought this application seeking an order directing the Liquidator to:
- (a) declare the First Dividend to the Shareholders;
 - (b) pay the First Dividend to the Shareholders from the Funds;
 - (c) declare the Second Dividend to the Shareholders; and
 - (d) satisfy the Second Dividend with the Promissory Note.

Third Wood Affidavit at paras 8 – 10

32. Subsequent to the issuance of the Promissory Note, the Liquidator intends to proceed to prepare and file the Company's income tax return after June 30, 2021. Upon receipt of the Tax Refund, the Liquidator intends to pay \$1,034,096 to the Shareholders in full and final satisfaction of the Promissory Note.

Third Wood Affidavit at para 11

33. After the repayment of the Promissory Note, the Liquidator intends to:
- (a) apply to this Court for an order authorizing the dissolution of the Company;
 - (b) file the Company's final corporate income tax return, which the Liquidator expects to be a nil tax return (no taxes refundable or owing); and
 - (c) attend to the Liquidator's obligations for dissolution as set out in the *Business Corporations Act*, SBC 2002, c 57 (the "**BCBCA**").

Third Wood Affidavit at para 12

Part 3: LEGAL BASIS

The Liquidator may apply to this Court for further orders or directions

1. Paragraph 15 of the July 29 Order provides that the Liquidator may apply to this Court for further orders or directions regarding the liquidation of the Company:
- 15. The parties and the Liquidator shall be at liberty to apply to the Court for further Orders or directions regarding this Order or the liquidation of the company.

July 29 Order at para 15

The Liquidator may issue the Dividends

2. Paragraph 8 of the July 29 Order empowers and directs the Liquidator to distribute the remaining assets of the Company to the Shareholders:

8. Without limiting the generality of paragraph 7, upon its appointment the Liquidator is empowered and directed to:

[...]

- f. distribute any remaining assets to the Class C shareholders of the Company, pro rata in accordance with their shareholdings; and, thereafter,

[...]

July 29 Order at para 8

This Court has the power to approve the Dividends and the Promissory Note

3. Section 325(3)(t) of the *BCBCA* grants this Court the power to approve the Dividends:

Court orders respecting liquidations

325 [...]

(3) On an application made in respect of a company in liquidation, the court may, in respect of that company, make any order it considers appropriate, including any of the following orders:

[...]

(t) subject to the obligation of the liquidator under section 330 (m) to pay or provide for the company's liabilities and the costs, charges and expenses incurred in the liquidation, an order approving any proposed interim or final distribution in money or other assets to shareholders;

BCBCA, s 325(3)

4. The Liquidator has the power to issue the Second Dividend in the form of the Promissory Note as a result of the general power in section 334(1) of the *BCBCA*:

Powers of liquidators

334 (1) Subject to section 320 (1), if a liquidator is appointed under this Act,

- (a) the liquidator has the powers to manage or supervise the management of the business and affairs of the company that were, before the appointment, held by the directors and officers of the company, and the powers of the directors and officers cease, except so far as the liquidator approves the continuation of them,

- (b) the liquidator may exercise the powers of the company that are not required by this Act to be exercised by shareholders of the company, and

[...]

BCBCA, s 334(1)

5. Accordingly, this Court should grant this application and the order sought.

Part 4: MATERIAL TO BE RELIED ON

1. Affidavit #1 of Anna Lee, sworn April 14, 2020;
2. Affidavit #3 of Patty Wood sworn March 18, 2021; and
3. Such further and other materials as counsel may advise and this Honourable Court may permit.

The applicant estimates that the Application will take 15 minutes.

This matter is within the jurisdiction of a Master.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this Notice of Application, you must, within 5 business days after service of this Notice of Application or, if this Application is brought under Rule 9-7, within 8 business days after service of this Notice of Application,

- (a) file an Application Response in Form 33,
- (b) file the original of every Affidavit, and of every other document, that
 - (i) you intend to refer to at the hearing of this Application, and
 - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
 - (i) a copy of the filed Application Response;
 - (ii) a copy of each of the filed Affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
 - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Date: March 25, 2021



Signature of Lawyer for the Applicant
Cassels Brock & Blackwell LLP
(Forrest Finn)

To be completed by the Court only:

Order made

in the terms requested in paragraphs _____ of Part 1 of this Notice of Application

with the following variations and additional terms:

Date: _____

Signature of Judge Master

APPENDIX

THIS APPLICATION INVOLVES THE FOLLOWING:

- discovery: comply with demand for documents
- discovery: production of additional documents
- other matters concerning document discovery
- extend oral discovery
- other matter concerning oral discovery
- amend pleadings
- add/change parties
- summary judgment
- summary trial
- service
- mediation
- adjournments
- proceedings at trial
- case plan orders: amend
- case plan orders: other
- experts
- other

SCHEDULE "A"

NO. S-194717
VANCOUVER REGISTRY

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IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*, S.B.C. 2002, c. 57
and THE *BUSINESS CORPORATIONS ACT*, R.S.A. 2000, c. B-9

-AND-

IN THE MATTER OF THE LOUIS RACZ CO. LTD.

-AND-

Between

1012109 B.C. LTD. and LISA MADDESS

Petitioners

and

ETHEL MARY RACZ a/k/a ETUS MARIA RACZ
and MICHAEL SIWIK

Respondents

ORDER MADE AFTER APPLICATION

BEFORE THE HONOURABLE

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MONDAY, THE 12TH DAY OF

APRIL, 2021

ON THE APPLICATION of MNP Ltd., in its capacity as liquidator (in such capacity, the "**Liquidator**") of Louis Racz Co. Ltd. (the "**Company**") coming on for hearing via Microsoft Teams Videoconference at 800 Smithe Street, Vancouver, British Columbia, on April 9, 2021; AND ON HEARING Forrest Finn, counsel for the Liquidator, and those other counsel listed in **Schedule "A"** attached hereto; AND UPON READING the material filed herein;

THIS COURT ORDERS THAT:

1. The Liquidator is authorised and directed to:
 - (a) declare a dividend to the Petitioners and the Respondents (together, the "**Shareholders**") in the amount of \$2,076,502 (the "**First Dividend**");

- (b) pay the First Dividend to the Shareholders from the funds held by the Liquidator;
- (c) declare a second dividend to the Shareholders in the amount of \$1,034,096 prior to the current fiscal year end of June 30, 2021 (the "**Second Dividend**"); and
- (d) satisfy the Second Dividend with a promissory note in favour of the Shareholders issued on behalf of the Company.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Signature of Lawyer for the Liquidator, MNP Ltd.
Cassels Brock & Blackwell LLP
(Forrest Finn)

BY THE COURT

REGISTRAR

SCHEDULE "A"
LIST OF COUNSEL

NAME	PARTY REPRESENTED