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COUNSEL SLIP

COURT FILE

NO.: CV-19-632973-00CL

DATE: 18 December 2019

NO. ON LIST 2

TITLE OF PROCEEDING

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JUDICIAL NOTES:

Dec 18/19

The App/moving party seeks an interlocutory injunction restoring the status quo for Star Navigation to what it was prior to Dec 11, 2019. On that day, the Resps purported to hold a shareholder meeting for Star. At the meeting, over 52% of the shares were represented and of those shares, 99% voted to replace ~~the board~~ in favour of ~~installing a new board~~ with a new 7 person board consisting of the Resps. The new board subsequently terminated Mr K as the CEO of Star. (the "dissidents")

The 3 part injunction test follows.

1. Serious Issue to be Tried. Mr K submits that the Dec 11 meeting was invalid. He asserts that the Dept 16 requisition was not an effective 5% sh requisition as it was not signed by both ~~shareholders~~ in the case of joint shareholders. He asserts that the address of the meeting ^{on the proxy} did not set out the correct address. He asserts that at the meeting, a resolution was not properly constituted to remove the existing directors & replace them with the new slate. Finally, he asserts that the shareholders who conspired in a WhatsApp group amounted to proxy solicitation

before the respondents' circular was filed, all of this, he argues, ~~frankly~~ invalidated the purported meeting. The Resp counter and say that there was no requirement that both of shareholders sign a requisition (in light of the BCLA & the co bylaws that permit one shareholder to vote jth held shares); there was no legal requirement to put the address on the proxy & in any event there was no confusion about where the meeting was to be held; the lack of removal of the existing board was strictly technical and it was clear from the circular that the purpose of the meeting was to do just that - replace the existing board with the new slate - which was overwhelmingly approved. Finally, the respondents that the WhatsApp conversations amounted to improper proxy solicitation.

It appears to me from the record that the Resps were trying to call a valid meeting but they may not have gotten all of the legal and procedural requirements right. While a number of these complaints seem technical, the rules and statutory requirements are there to be followed. That said, the process does not seem as ~~flag~~ flagrant & underhanded as Mr K says. Nonetheless the serious issue to be tried - the threshold is a low one and I conclude it met in this case.

2. Irreparable Harm. I do not find that there is irreparable harm here. As discussed below, there will be another shareholders meeting in March '20 at which this issue ^{of which Bd should prevail} can be put before the shareholders to decide. That is a short time away. I cannot see how Mr K will suffer irrep. harm if the injN is not granted. If he is not re-elected, he will stop running the company. He has not persuaded me that he will suffer irreparable harm. ~~Therefore~~

3. Balance of Convenience. On this part of the test, I weigh who would suffer more if the injN is ~~and~~ or is not granted. On the one hand, Mr K has been CEO of this company for 10 years. On the other hand, the company has been in a state of turmoil - it is insolvent, has filed an NOI to make a

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proposal to its creditors. The Co is under a ~~court order~~ order suspending trading of its shares for failure to file financial statements. The CFO was terminated in June 2019. Mr K has not presented any plan as to how he would guide the company during these tumultuous times ahead, in terms of the insolvency, funding issues and dealing with a proposal trustee. The Respondents are extremely concerned about the state of the company and wish to salvage their investments. They have raised funds already & are targeting another \$1 million if the CTO can be evoked. They appear to have the confidence of many of their fellow shareholders who, whether or not the meeting was valid, voted overwhelmingly in ~~their~~ favour of their slot. They have ~~requested~~ ^{arranged to have the} CFO to ^{required} navigate them through the financial & regulatory filings required for the company - Mr Korol states that he will not stay if Mr K is reinstated. Considering and balancing all of these factors, the balance of convenience lies with the Respondents pending the March meeting or

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the hearing of the App, which comes first. I find that their interests would be affected more if the injunction is granted & Mr K is not DRed as CEO pending the meeting than Mr K's interests would be if the status quo is ~~kept~~^{kept} for the next 2 months. As mentioned, if he is re-elected at that time, he can reassume his position then.

I dismiss Mr K's motion for an interlocutory injunction. As agreed by counsel, costs of \$10,000, all in, payable by Mr K to the Resps. Counsel are to attend before me at 9:30 in January, on a date to be scheduled through the CL office, to schedule next steps for the Application.

Conroy J