

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE
(DIVISIONAL COURT)**

B E T W E E N :

**CAROLYN RUTH DARE WILFRED and
960777 ALBERTA LTD.**

Plaintiffs
(Appellants)

-and-

**BRYAN ROBERT DARE, ANAZ LTD.,
GRAHAM NEAL DARE, NAZCA INVESTMENTS LTD.
and SERAD HOLDINGS LIMITED**

Defendants
(Respondents)

NOTICE OF APPEAL

THE APPELLANTS APPEAL to the Divisional Court from the Judgment of the Honourable Madam Justice B. Conway made March 21, 2017 at Toronto, Ontario (the “Judgment”).

THE APPELLANTS ASK that the Judgment be set aside and a judgment be entered in favour of the appellants as follows:

1. declaring that the respondents acted in a manner that unfairly disregards the appellants’ interests pursuant to the provisions of section 248 of the *Business Corporations Act (Ontario)*;
2. declaring that the appellants’ interests have been unfairly disregarded as a result of the provisions of the Second Shareholders Agreement and the resulting absence of a market for the appellants’ shares in the respondent company, Serad Holdings Limited (“**Serad**”);

3. declaring that the Serad dividend policy and how it is administered by the respondents unfairly disregards the appellants' interests as a minority shareholder in Serad;
4. appointing a third-party Certified Business Valuator to determine the fair market value of the appellants' shares and ordering unfettered access to any and all documentation with respect to Dare, Holdings and Serad including but not limited to, all financial documentation that a Certified Business Valuator may require to value the shares of Serad;
5. requiring all of the respondents, one of them, or any combination of them to purchase the appellants' shares of Serad for fair value, without the imposition of a minority discount;
6. an order for the costs of the trial and this appeal payable to the appellants; and,
7. such further and other relief as counsel may request and as this Honourable Court may consider just.

THE GROUNDS OF APPEAL are as follows:

8. While acknowledging that the oppression remedy is an equitable remedy the Judge erred in law by enforcing the strict legal rights of the parties as opposed to a fair and equitable remedy;
9. The Judge erred in law by failing to find that there is no requirement for a determination of bad faith in order to conclude that the appellants' interests were unfairly disregarded;
10. The Judge erred in mixed fact and law by failing to fully consider the evidence adduced at trial, including the circumstances under which the appellant Carolyn Ruth Dare Wilfred ("Carolyn") came to own her shares, when determining Carolyn's reasonable expectations as a shareholder of Serad;
11. The Judge erred in law by failing to find that reasonable expectations of a shareholder are not static and can change over time;
12. The Judge erred in mixed fact and law by concluding that Carolyn could not have reasonably expected liquidity of her shares after 2001;
13. The Judge erred in mixed fact and law by failing to find that the price at which Carolyn's Serad shares would be sold at was never discussed with any prospective third party purchasers;

14. The Judge erred in mixed fact and law by finding that Carolyn could only reasonably expect an annual dividend from her Serad shares in the range of \$341,250;
15. The Judge erred in fact by disregarding the evidence of the individual respondents, Bryan Dare (“**Bryan**”) and Graham Dare (“**Graham**”), that the Serad dividend policy was structured around Bryan and Graham’s individual needs as they related to the payment of insurance premiums rather than Serad’s ability to declare a dividend and therefore unfairly disregarded Carolyn’s interests as a minority shareholder of Serad;
16. The Judge erred in fact by failing to consider that Bryan and Graham are directors of both Serad and Dare Holdings Limited, and therefore have the ability to control the dividend policy of each company;
17. The Judge erred in fact by failing to consider the totality of the consideration received by Bryan and Graham from Serad and Dare Holdings Limited in determining whether their administration of the Serad dividend policy unfairly disregarded Carolyn’s interests as a minority shareholder of Serad; and,
18. Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE BASIS OF THE APPELLATE COURT’S JURISDICTION IS:

19. Section 255 of the *Business Corporations Act*, RSO 1990 c B 16;
20. Rule 61 of the *Rules of Civil Procedure*;
21. The Order of Justice Conway dismissing the action is a final order and leave to appeal is not required; and,
22. Any other facts this Honourable Court may consider to be relevant to establishing jurisdiction.

April 19, 2017

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– Plaintiffs (Appellants) –

v.

BRYAN ROBERT DARE ET AL.
– Defendants (Respondents) –

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LAWYERS FOR THE APPELLANTS

Service of a true copy herof accepted
this 19th day of April, 2017.

do per John Chopman - Miller Thomson LLP
Solicitors for *defendants / respondents*