**SUPERIOR COURT OF JUSTICE**
**COMMERCIAL LIST**

**COUNSEL SLIP / ENDORSEMENT**

**COURT FILE NO.: CL-25-00753596-0000 DATE: July 28, 2026**

**REGISTRAR:________________________**

**NO. ON LIST: _________**

**TITLE OF PROCEEDING:**

**STEPHEN GILBERTSON *et al.* v MEHMET BORA KUZUCAN *et al.***

**BEFORE: JUSTICE FL MYERS**

**PARTICIPANT INFORMATION**

**For Plaintiff, Applicant / Moving Party:**

| Name of Person Appearing | Name of Party | Contact Info |
|---|---|---|
| Jason Wadden<br>Kasia Donovan | Stephen Gilbertson and United States Air Compressor Inc. | jwadden@tyrllp.com<br>Kdonovan@Tyrllp.Com |

**For Defendant, Respondent, Responding Party, Defence:**

| Name of Person Appearing | Name of Party | Contact Info |
|---|---|---|
| Christopher Stanek<br>Jenny Zhou | Mehmet Bora Kuzucan<br>Zorbey Dogukan Kuzucan | christopher.stanek@gowlingwlg.com<br>jenny.zhou@gowlingwlg.com |

**ENDORSEMENT OF JUSTICE FL MYERS:**

**The Parties**

1. Mr. Stephen Gilbertson and Mr. DK Kuzucan each own 50% of the US corporation, UNITED STATES AIR COMPRESSOR INCORPORATED.

2. Mr. Gilbertson and Mr. Bora Kuzucan each own 50% of the Canadian corporation US AIR COMPRESSOR (CANADA) INC.

3. Mr. Bora Kuzucan is the father of Mr. DK Kuzucan.

4. The Applicants Stephen Gilbertson and the US company initially moved for the appointment of a form of investigative receiver over the Canadian company to accelerate the valuation and accounting required by the parties to separate their businesses.

5. The Applicants also sought terms to try to re-open the flow of goods and funds between the Canadian and US entities pending the final outcome of the litigation. They proposed that the court order the Canadian company to complete sales of goods ordered from the US company with proceeds to be paid 37.5% to the US company; 37.5% to the Canadian company; and 25% to the receiver as may be needed for fees or to be held. All payments would be without prejudice to a final valuation or accounting process between the parties.

6. On July 22, 2026, the Applicants expanded the relief sought to claim a full receivership of the property, assets, and undertaking of the Canadian company and removal of Bora Kuzucan as a director of the US company.

7. The Respondents say that there is no need for a receiver or an investigation. Without a motion, they seek a court ordered share swap. They ask for an order requiring Mr. DK Kuzucan to transfer his shares of the US company to Mr. Gilbertson and order that Mr. Gilbertson transfer his shares of the Canadian company to Mr. Bora Kuzucan. After this share swap is imposed, without any payments one way or the other, each shareholder will be free to go on their own way divorced from the other. The valuation and accounting issues can then be decided in the fullness of time.

## Facts

*(i)* <u>*There is One US Air Compressor Business Operated through two Companies*</u>

8. There is only one integrated business carried on by the two companies. The business sells US Air Compressor branded air compressors with a 10-year bumper-to-bumper warranty.

9. The business was started by Mr. Gilbertson's family in the early 1950s under predecessors of the US company.

10. The warranty is not just a catchy marketing tool. It binds customers to buying services and parts from the business for a decade after they buy their compressors.

11. The business was initially carried on by the US company in the US and Canada. Somewhere north of 80% of sales are made through Mr. Gilbertson to customers in the US.

12. Years ago, Mr. Bora Kuzucan joined Mr. Gilbertson and provided engineering, development, and management expertise to dovetail with Mr. Gilbertson's principal focus on sales. Mr Gilbertson invited Mr. Kuzucan to be his 50/50 partner in the US company.

13. Mr. Kuzucan ran into immigration problems with the US. He decided to live in Montreal.

14. The parties saw a benefit in incorporating the Canadian company to carry on elements of the business. With compressors being manufactured in China, the parties decided to interpose a Canadian buyer of the compressors.

15. Mr. Bora Kuzucan transferred his 50% of the shares in the US company to his son DK. Then he took 50% of the shares in the new Canadian company.

16. When the Canadian company was created, the parties signed a unanimous shareholders' agreement. It is the authoritative source of reasonable expectations that each shareholder had at the time.

17. Articles 43 and 44 provide:

**<u>Conflict of Opportunities and Non-Competition</u>**

42. Each Shareholder agrees that any business opportunity that comes to the attention of the Shareholder while the Shareholder is a Shareholder, director, officer or employee of the Corporation ***<u>and that is similar to or that relates to the current or anticipated business opportunities of the Corporation</u>*** or that arises out the Shareholder's connection with the Corporation, belongs to the Corporation.

43. Each Shareholder agrees that while a Shareholder, director, officer or employee of the Corporation and for a period of 3 years after ceasing to be a Shareholder, director, officer or employee of the Corporation, the Shareholder will not, solely or jointly with others:

a. undertake, plan, organize or be involved in any way with any business or any business activity that competes with the current or anticipated business of the Corporation in the geographic area in which the Corporation carries on its usual business; or

b. divert or attempt to divert from the Corporation any business the Corporation enjoyed, solicited, or attempted to solicit from its customers, prior to the Shareholder ceasing to be a Shareholder.

44. Each Shareholder agrees that for so long as the Shareholder is a Shareholder, director, officer or employee of the Corporation, the Shareholder will not engage or participate in any other business activities that conflict with the best interests of the Corporation. [Emphasis added.]

### *(ii)* *The Flow of Funds from the US Company*

18. As the business is structured, the Canadian company imports the compressors into Canada from China. But the US company pays the Chinese vendors for the compressors in full in advance.

19. The price paid by the US company, ostensibly on behalf of the Canadian company, is booked as an inter-company loan owing by the Canadian company to the US company.

20. When goods land here, for the few to be delivered to customers in Canada, the Canadian company performs some limited labour on them to make them CSA compliant and to meet language labeling laws. For the bulk of the goods sold to customers in the US, the Canadian company does enough labour to satisfy US import or tariff restrictions. Then the Canadian company delivers the compressors to the US company's US customers.

21. The Canadian company also performs warranty labour on behalf of the US company. It maintains a parts inventory to do so at the cost of the US company.

22. Customers pay the US Company. It keeps the price that it already paid to the foreign manufacturer and this repays the intercompany loan owing by the Canadian company. The remaining profit component is then available to be split between Canada and the US.

23. The problem is that both sides concede that there is no agreement governing the splitting of the proceeds. The unanimous shareholders agreement for the Canadian company requires net profit to be distributed each year as dividends (after repayment of shareholder loans and subject to a reserve for necessary expenses). But the profit calculation is made after someone decides how much money is to come to Canada and how much is to stay in the US company.

24. It seems apparent that the Canadian company must be repaid for its expenses at minimum. It has employees to pay. It performs some R&D. It rents space for operations and storage of machines. It has been working on different types of compressors for example. It performs repairs. It charges the US company for these "professional services."

25. Until this matter came to a head late last year, Bora Kuzucan has been responsible for finances and paying Canada from the US Company. Mr. Gilbertson did not take much interest in the amounts Mr. Bora Kuzucan paid to the Canadian company. This is ostensibly because he and the Kuzucans are each 50/50 shareholders. In any given year, taxes and transfer pricing issues could lead to more or less profit being desirable in one company or the other. The accountants ostensibly did what was appropriate to satisfy regulatory and tax requirements to maximize profits and then they looked to ensure that each side took equal amounts out of the companies personally.

26. In fiscal 2024 and 2025, the Kuzucans took out more from the overall business than was paid to Mr. Gilbertson. At about the same time, the Kuzucans discovered what they believed were previously undisclosed accounts they say Mr. Gilbertson was using to surreptitiously divert funds away from the US company i.e. from sharing with them.

27. Once these disputes arose, Mr. Gilbertson cut off Mr. Bora Kuzucan's ability to control the bank accounts of the US company. Whether this was proactive or a defensive response to allegations coming at him from the Kuzucan's is not of much moment. But it led him to start looking into the fees being paid to Canada from the US company and the overall amounts being removed by Kuzucan family members as compared to the amounts being paid to Mr. Gilbertson.

28. Mr. Bora Kuzucan attests that on learning about potentially secret movements of funds by Mr. Gilbertson away from the US company, he became concerned about the risk of attracting significant tax liability (if Mr. Gilbertson was not declaring income properly). On that basis, he says, to protect the business, he incorporated a

new Delaware corporation in the name of the US company. He then notified US company customers that Mr. Gilbertson had left the business and that all payments due to the US company should be paid to the new Delaware company.

29. In addition, Mr. DK Kuzucan sued Mr. Gilbertson in Minnesota to obtain proper disclosure and for remedies resulting from alleged wrongdoing by Mr. Gilbertson.

### *(iii) This Litigation – the December 1, 2025 Orders*

30. Notwithstanding Mr. Bora Kuzucan's protestations of altruism, it took little analysis to enjoin the blatant misappropriation of corporate assets and opportunities represented by his Delaware company.

31. On December 1, 2025, I granted two orders.

32. First, I appointed an interim manager for both the US and Canadian companies. He was not an insolvency professional appointed as a receiver. Rather he was a former manager of the business whom I hoped would be able to work with both sides. It seemed to me that the companies were deadlocked at 50/50 so that some form of liquidation or buy out would be forthcoming fairly quickly. There had to be some stability asserted for a short period to let the parties get counsel and resolve their divorce issues.

33. The interim manager was also empowered to obtain disclosure of documents for all. It was obvious that there had to be transparency to the movement of funds by both sides to lead to an acceptable resolution.

34. By a separate order dated December 1, 2026, I enjoined the Kuzucans from:

    (a) representing to any person that Gilbertson is no longer part of the Company;

    (b) interfering in any way with Gilbertson's selling of product on behalf of the Company;

    (c) routing any sales in the US through any person other than the US Entity or any payments from US customers to any person other than the US Entity:

(d) initiating or permitting to be initiated any transfers of funds or assets into or out of the Delaware Corporation (as defined in the Gilbertson Affidavit),

(e) hiring or causing or permitting to be hired any persons as employees of the Canadian Entity (as defined in the Gilbertson Affidavit) or the Delaware Corporation, without Gilbertson's prior written consent; and

(f) altering, concealing, defacing, deleting, destroying, discarding, disposing of, erasing, interfering with or removing from the Company or the Delaware Corporation any property, assets, or documents of any kind whatsoever, including, but not limited to, any of the Company's property, assets, or documents that are in the Respondents' possession, power or control.

35. That order also made clear that Mr. Gilbertson is authorized and entitled to sell products to US customers on behalf of both companies as was the *status quo ante*.

36. Quite fairly, Mr. Stanek makes no effort to justify his clients' Delaware misstep. It was not a lawful response by the Kuzucans. But it ended almost as soon as it started. Mr. Wadden points to several hundred thousand dollars that were paid by customers of the US company to the Delaware company. That money is now accounted for and can be taken into account in results down the road.

*(iv) <u>Current Status – The Parties are all acting Unlawfully</u>*

37. Settlement efforts and mediation have failed to date.

38. Both sides purport to freeze the other out.

39. The imposition of an interim manager was intended to be a short-term holding pattern to keep the business running while the parties agreed on terms to separate. That goal failed. I discharged the interim manager in late February.

40. Since this litigation commenced, Mr. Gilbertson has not allowed money to flow from the US company to the Canadian company. He believes the Kuzucans have improperly taken funds for themselves and he insists on an accounting.

41. For their part, the Kuzucans are holding compressors in warehouses in Canada that are meant for customers and they will not ship unless their demands for very substantial payments are met. They have not provided much support for the quantum of "professional fees" they seek.

42. So, the business has effectively ground to a halt. Customer goodwill must be negatively affected by non-delivery of goods long since ordered and arrived in Canada.

43. The parties have each engaged in much tactical positioning.

44. Mr. Gilbertson purported to terminate the "implied license" granted by the US company to allow Canada to use its website and branding. That is not how the USA says disputes are to be dealt with. First there is mediation and arbitration required. On a material dispute being declared, a shotgun is available to ensure fair value is paid by one side or the other. But as the business of Canada is to service and contribute to the overall US Air Compressors business, this unilateral act does not seem consistent with the parties' agreement or reasonable expectations.

45. The Kuzucans say that they cannot pay employees and operate a business without any funding. As discussed in more detail below, they have found other ways to obtain funds. They may have also sold off some $400,000 of the inventory very cheaply to a distributor to create a competitive vendor of US Air Compressor brand equipment and to cut Mr. Gilbertson out of the profits. That inventory was paid for by the US company. Such sales could well be breaches of the unanimous shareholder agreement and the December 1, 2026 order.

46. The Canadian company now apparently offers for sale a different type of compressor that its brands under a Canadian banner "Air Compressors Canada."

47. For better or for worse, both sides have released the privilege on some of their settlement discussions. It is relevant to note here, that Mr. Gilbertson is content that the Kuzucans sell this new Canadian product on their own behalf going forward provided he keeps the existing US Air Compressor brand compressor business that will no longer flow through the Canadian company.

48. But as there is no settlement yet, sales of Canadian branded air compressors for the Kuzucans own account is likely a violation of the unanimous shareholders' agreement.

49. By withholding deliveries and usurping opportunities and profits, Bora Kuzucan is acting in his own best interest alone.

50. By refusing to pay for services rendered and to be rendered by the Canadian company and refusing to pay ongoing profit sharing, Mr. Gilbertson is acting solely in his own best interest too.

51. He may believe that he is promoting the US business by trying to force delivery of inventory by Canada while refusing to pay until an accounting of historical funds movements by Bora Kuzucan is completed. But he is not cooperating in the US with his own discovery obligations and he has done nothing here to advance a valuation and accounting exercise. He has tried three times before me to force the Canadian company to deliver goods on terms he dictates that he asserts are "fair." But the construct is one that tries to require compliance by the Kuzucans without equal compliance by him.

52. Mr. Gilbertson has raised several issues regarding the amount of money taken out of the business by members of the Kuzucan family; their personal expenses being run through the Canadian company; and questions about expense invoices disclosed by Bora Kuzucan for which there are *prima facie* authenticity issues. They appear to be *prima facie* real issues deserving of a full review.

53. But absent a settlement or a liquidation, I do not understand how Mr. Gilbertson can legitimately cut off cash to Canada to starve it while expecting it to deliver fresh goods and services, or how Mr. Bora Kuzucan can legitimately refuse to complete sales and deliver branded compressors paid for by the US company based on unsupported demands for very substantial amounts of money.

54. Both sides are undermining the very heart of the business to enhance their own positioning.

55. There is only one business. It operates through both companies. Article 42 of the unanimous shareholders' agreement makes it clear that the protected business in Canada is the one that is "***similar to or that relates to the current or anticipated business opportunities of the Corporation.***" That is the integrated business of selling US Air Compressor branded air compressors. Under article 43 (a), there can be no business undertaken that competes with the business. And under article 44, none of the parties can engage in any activities that conflict with the best interests of the company.

56. Both sides seek to separate the companies as if they had agreed to terms for Bora Kuzucan to take the Canadian company and Stephen Gilbertson to take the US company. But they have not agreed to terms to accomplish this end. In the meantime, each is trying to impose his will on the other in most inappropriate ways.

57. Each of the companies is owned 50/50. Each is deadlocked at the shareholder level. Yet the protagonists are acting as if they already each own their preferred company ignoring the interests of the other.

58. In an endorsement dated March 17, 2026, I discussed the problem this way:

> 16. While the Canada versus US construct may represent an end-game to consensual parties, neither party seems to realize the mud puddle in which the[y] are currently mired. They are both acting unilaterally as supposed management on each side of the border. But they are taking steps outside the ordinary course of business designed expressly to prefer themselves and to defeat the other *qua* shareholder. They are each acting in conflict of interest without approval of the deadlocked shareholders.

59. Neither side took any heed at all of their obvious conflicts of interest. Each continues to prefer himself, ignore the best interests of the companies, and circumvent governance and shareholder approval requirements.

60. On May 14, 2026, I declined a prior attempt by Mr. Gilbertson to impose a limited form of receiver to sell goods with his desired split of proceeds of sales. I tried again to explain to the parties that while they could agree to separate, they could not act as if they were already separate. In my May 14, 2026 endorsement, I wrote:

> 6. I am not in a position to say today what payments should flow up from the US company to Canada on the releases of product. I am concerned about the good faith on all sides. Using available leverage is one thing. Deliberately prejudicing the other side is another. I would have thought that counsel should be able to lead their clients for a *modus vivendi* to allow the business to continue pending trial or, at least, the interlocutory motion. The answer is not zero or 100. 50/50 split of price seems like a good start. Whether there is some component of additional funds that could flow short of the US company believing it is funding ongoing misappropriation, is for the parties to determine. But holding ones breath until the business passes out is not a sign of a good faith approach.
>
> 7. Both sides say the other has taken money improperly. Mr. Gilbertson has done himself no favours failing to disclose accounts proactively. There may be explanations. But if so, expose them to the sunlight rather than remaining in the shadows.
>
> 8. The Kuzucans too have to show that the funds that they moved to Canada that led to this claim were proper. Why the parties have yet to agree to a joint forensic auditor is beyond me. Its all going to come out – whatever it is.

**The Motions Currently Before the Court**

61. I heard the parties on July 6 as scheduled and then again on July 22, 2026 in circumstances that I will discuss below. After hearing counsel again on July 22, 2026, I simply told them that their clients "do not get it." Each asks me to impose their preferred manner of separation of the two companies. They have not been able to agree to a manner of separating themselves pending a valuation and accounting process. But they just ignore that in their inability to settle themselves, they are acting unlawfully and asking the court to countenance it. I will not do that.

62. I address the relief sought by each of them as follows:

**January 15, 2026 order**

63. The Applicants seek an order setting aside my order dated January 15, 2026 requiring Mr. Gilbertson to repay $100,000 that he took from the US company to retain counsel or to allow the Canadian company to advance the same amount to the Kuzucans for their lawyers.

64. I am not prepared to vary or set aside my order. First, although the corporations are proper parties before the court, there is no doubting that this is a shareholder fight between Bora Kuzucan and Stephen Gilbertson. Mr. Wadden took me to a statement in Bora Kuzucan's evidence in which he took responsibility for the lawsuit in the US purportedly brought by his son as shareholder of the US company. It is not the least bit surprising that the Kuzucans function as a unit and that the father is the principal.

65. In my view, neither shareholder side should be taking funding from the companies for their efforts to exclude the other from the business. I do not view the fact that the Kuzucans did not disclose in January that they took some $20,000 or $30,000 of funding as material in principle. There is still a substantial imbalance to be remedied as I ordered.

66. In any event, at the hearing of this motion on July 6, 2026, Mr. Wadden conceded that his client is content with the Kuzucans taking funding from the Canadian company to pay their legal fees. Accordingly, in substance, Mr. Gilbertson is content with the order as made. As best I can tell, he is offended by the making of an order against him and my repeated comments that he had not complied with its terms before this motion was brought and heard. Neither is a basis to set aside the order. Moreover, I agree with Mr. Wadden, that funds taken for fees can just be another line item to be reconciled between the parties in their ultimate valuation.

67. The motion to set aside the January 15, 2026 order is dismissed.

**December 1, 2925 order and security for costs**

68. For their parts, the Kuzucans seek to set aside the order dated December 1, 2025 that precludes them from continuing to usurp for themselves corporate opportunities of the Canadian and US companies. They submit that now, six months later, the orders are having an unbalanced effect that is not addressing the parties' current concerns.

69. Initially, the Kuzucans also sought an order for security for costs against the Applicants. It was not pressed at the oral hearing. The request was stillborn. Mr. Gilbertson's ownership of 50% of the Canadian company is exigible and available to pay any costs that may be awarded against him.

70. The Kuzucans' effort to vary the December 1 order, to force an immediate share swap with deferred accounting, and Mr. Gilbertson's request for a limited receivership with funds to flow 37.5%/37.5%/25% are all the same request. Each party is angling to move forward and separate their interests on terms that benefit themselves.

71. For reasons that I will develop, the December 1, 2025 order reflects the proper analysis of the legal situation. The December 1, 2025 order was continued on consent on December 12, 2025. The Kuzucans had counsel for that hearing although it was not Mr. Stanek or his firm. There is no basis under Rule 59.06 for varying the December 1, 2025 order(s).

**Procedural Issues**

72. The facts recited and findings made in this endorsement are for the purposes of these motions only. This is not the final return of the application.

73. The fact that this is a motion and not the hearing of the application precludes the order sought for a share swap right off the bat. I cannot order final relief on a motion. The record is not ready. There have been no cross-examinations. The parties have no evidence before the court about valuation. Absent bifurcation of the proceeding (that has not been raised or ordered) the application is not ready to be heard on a final basis.

74. Moreover, I would not bifurcate the proceeding. The share swap would give the Kuzucans whatever value they see in the Canadian company for free. If Mr. Gilbertson is ultimately awarded some value for his shares, he will be left to chase the Kuzucans after they have had any number of months or years to exploit his share of the value of the company. That is not a fair exit plan.

75. Mr. Stanek submits that the parties could have conducted their cross-examinations and retained experts to be done by now. He submits that the Kuzucans have made very full disclosure while Mr. Gilbertson has dragged his feet. The Kuzucans, he submits, want to get on with a valuation, an accounting, and separation.

76. The Kuzucans have successfully had a limited receiver appointed in the US Court over the US company to force Mr. Gilbertson to comply with discovery obligations. They cannot be heard to tell the US Court that they need discovery and, at the same time, tell this court that they are ready for final relief.

77. Mr. Stanek submits it does not matter that neither party has clean hands. His clients should not be forced to continue in business with Mr. Gilbertson. Both sides want separation and the court should not order a liquidation that would destroy the business.

78. Mr. Stanek submits that the December 1, 2025 injunction requiring that his clients not interfere with sales by Mr. Gilbertson cannot mean that they must supply services, parts, and machines without being paid at all.

79. I agree to some extent. The court did not expressly order the Canadian company to supply goods or services for free. But that is not license for the Kuzucans to destroy the business. The Kuzucans have not sought relief against Mr. Gilbertson's continued refusal to pay anything to Canada. They have not invoked the shotgun. It appears instead that they have tried to shift the Canadian company away from the US business for their own benefit.

80. Mr. Stanek submits that if the court separates the businesses, his clients will deliver up machines and parts to the US company and then be free to compete.

81. Mr. Stanek accepts that if I order a share swap, then DK Kuzucan will lose his standing to sue in the US as he will no longer be a shareholder of the US company. Mr. Stanek says that I should then make the disclosure order made by the US Court against the US company and Mr. Gilbertson accordingly.

82. I do not understand why the Kuzucans feel it important to compete through the Canadian company. Why not incorporate a newco to conduct whatever business they want to conduct? One answer may be the non-competition and corporate opportunity clauses in the unanimous shareholders' agreement prevent them from doing so. Whereas, if Mr. Gilbertson is ousted as a shareholder of the Canadian company, the agreement would be at an end.

**Analysis**

83. In my view, the December 1, 2025 order and the unanimous shareholders' agreement all reflect the parties' reasonable expectations that there is only one business. Each side is required to focus on the best interests of the companies and that means the singular combined business of US Air Compressors.

84. Competition is prohibited. Taking corporate opportunities is prohibited. Conflicts of interests are prohibited.

85. With their inability to settle, each side is asking the court to clear the way for them to act in conflict and contrary to their agreements and reasonable expectations.

86. Mr. Stanek submits that the parties' expectations have changed. The business is on fire. The parties are not willing to cooperate. The answer. he submits, is to separate them, appoint a valuator/forensic accountant to sort out the money, and let them compete as two separate entities. This avoids a wind-up that could threaten all parties' value.

87. I am not provided with any law that allows the court to impose an outcome that is contrary to the parties' reasonable expectations as expressed in their agreements and history. There is no basis for the Kuzucans to walk away with Canada doing business in competition and in conflict with the fundamental US Air Compressor business of the companies. Perhaps at a final hearing a judge could consider

ordering some form of share auction drawing on the availability of the shotgun clause in the unanimous shareholders' agreement. But why would a judge do so given the parties' decisions not to trigger the shotgun themselves? The same accounting issues that may lie behind the parties' reluctance to trigger the shotgun will apply to constrain bidding at an auction.

88. I agree with Mr. Stanek that this is not a case requiring the imposition of an investigative receiver. An investigative receiver does not manage the business. It investigates to correct an information imbalance. The valuation proceeding will provide all needed discovery and information (even if Mr. Gilbertson must be forced into making the disclosures required by the US Court).

89. The July 6, 2026 hearing ended with Mr. Wadden and Mr. Stanek making submissions on various iterations of terms under which their clients would agree to resume sales provided the companies were separated. They seemed close enough that perhaps a settlement was near.

90. That was not to be, however.

**The July 22, 2026 Hearing**

91. On July 16, 2026, I received an unsolicited email from Mr. Wadden seeking a case conference because new evidence had emerged that is relevant to the relief sought on July 6, 2026.

92. In the motion, there was disclosure that, without the knowledge or approval of Mr. Gilbertson, the Canadian company had borrowed money on a secured basis from Royal Bank of Canada. Bora Kuzucan gave his personal guarantee to support the loan.

93. On July 6, 2026, Mr. Wadden submitted that the loan was contrary to Article 12 of the unanimous shareholders' agreement. That article provides that if the Canadian company needs funding, each shareholder will provide a loan for their *pro rata* share on an interest free basis. Interest may be charged if one shareholder does not contribute to the required loan.

94. The loan from RBC was made and security granted without shareholder input or approval.

95. On June 6, 2026, Mr. Wadden referred to this loan as some evidence supporting his clients' concerns about the Kuzucans operating the Canadian company without regard for the interests of the US company and Mr. Gilbertson. But he also agreed that any receiver to be appointed should have its fees secured behind the priority of the security held by bank, at least at the outset, to avoid triggering enforcement by the bank.

96. On July 16, 2026, Mr. Wadden advised that his client had discovered that the bank had commenced enforcement of its security. In addition, on June 9, 2026, Bora Kuzucan filed notice under the *PPSA* of a general security agreement providing him with security over the assets of the Canadian company to secure a shareholders' loan and to secure his interest as assignee of RBC's security.

97. There was already evidence of Bora Kuzucan's claim to be owed $800,000 by the Canadian company as a shareholder's loan. It was originally claimed by Bora Kuzucan at a much higher amount. But he has apparently accepted the $800,000 amount suggested after an accountant's review of the books and records.

98. But how did he give himself security for a shareholder's loan without the input of Mr. Gilbertson under the unanimous shareholders' agreement or as an interested director's contract?

99. Mr. Kuzucan also paid out the RBC under his guarantee and has taken an assignment of its security.

100. There is no evidence of any reference being made to Mr. Gilbertson under the unanimous shareholders' agreement before Bora Kuzucan provided this funding and charged interest.

101. Mr. Wadden also advised on July 16, 2026 that on July 7, 2026, the day after the court hearing, the Canadian company provided a general security agreement to a company called Cancap without shareholder approval.

102. Mr. Gilbertson delivered an affidavit sworn July 20, 2026 putting these facts in evidence.

103. On the same day, Bora Kuzucan delivered a responding affidavit describing his payment of the RBC loan and taking an assignment of its security. He then advised:

> 6. Without the RBC facilities, USACC [the Canadian company] had no way of financing its operations or paying its employees. I managed to open new bank accounts and to secure a new VISA facility. However, like all businesses, USACC required an operating facility to operate. I could not provide such a facility to USACC. To permit USACC to operate, I negotiated a factoring agreement with CCP Advance Inc. ("CANACAP") on March 11, 2026 (the "Factoring Agreement"). A copy of the agreement with CANACAP is attached as Exhibit 4. USACC provided CANACAP with security to any amounts owed by USACC under the Factoring Agreement. I was required by CANACAP to provide a personal guarantee.
>
> 7. In addition to CANACAP, on February 25, 2026, I negotiated a factoring agreement with Merchant Growth. I was required by Merchant Growth to provide a personal guarantee. A copy of the agreement with Merchant Growth is attached as Exhibit 5.
>
> 8. On April 13, 2026, I negotiated a factoring agreement with Forward Funding. I was required by Forward Funding to provide a personal guarantee. A copy of the agreement with Forward Funding is attached as Exhibit 6.
>
> 9. On May 25, 2026, I negotiated a factoring agreement with BizFund. I was required by BizFund to provide a personal guarantee. A copy of the agreement with BizFund is attached as Exhibit 7.

104. Without reference to the unanimous shareholders' agreement or Mr. Gilbertson, Mr. Kuzucan has changed the financing process for the company and factored its receivables. This reflects a new form of business being operated by the Canadian company based on consumer sales without regard to the unanimous shareholder agreement or the *raison d'etre* of the company being the sale and servicing of US Air Compressor branded machines.

105. Mr. Kuzucan also provided evidence that on July 7, 2026, Mr. Gilbertson's US counsel asked that documents shared by Mr. Gilbertson in that proceeding not be shared with Mr. Kuzucan in this proceeding.

106. As a result of these disclosures, Mr. Wadden has altered the relief sought by Mr. Gilbertson to a full receivership of the Canadian company. He submits that the grants of security, especially to Mr. Kuzucan himself, are (a) a conflict of interest; (b) contrary to the unanimous shareholders' agreement; (c) and contrary to the December 1, 2025 order prohibiting alteration to the property of the Canadian company. He submits, the grants of security while the court's decision was under reserve are further acts of oppression and amount to fraudulent conveyances.

107. Mr. Stanek submits that the filing of *PPSA* notices of security interest by Bora Kuzucan are dated June 9, 2026. Hence, they were discoverable with reasonable diligence and should not be admitted after the court has already concluded the hearing.

108. As to the factoring agreements, they were signed months before the hearing. But Bora Kuzucan withheld giving notice of them under the *PPSA* until the day after the hearing. Mr. Stanek submits they simply reflect the need for the Canadian company to obtain financing while Mr. Gilbertson refuses to advance any funds to the Canadian company.

109. In my view, the situation has reached an intolerable point. The new evidence is the straw that broke the proverbial camel's back. Mr. Gilbertson's cloak of victimhood and reasonableness here is unmasked by his behaviour in the US. His efforts to avoid disclosure here when the US company is a party (at his insistence) undermines his protestations against the Kuzucans' investigation of their concerns.

110. But, equally, the Kuzucans have simply ignored, over and again, that the Canadian company is not their's to do with as they will. Granting himself security for contested shareholder indebtedness, borrowing from RBC with security without following the unanimous shareholders' agreement, and granting and then withholding notice of the factoring agreements until the day after the court attendance are all *prima facie* oppressive acts that violate the parties' reasonable expectations as expressed in the unanimous shareholders' agreement and in the one business model of the two companies.

111. While I am not sure that the test for admitting new evidence on appeal under *Palmer v. The Queen*, [1980] 1 S.C.R. 759 is the applicable test for admitting evidence after a hearing has concluded, as submitted by Mr. Stanek, I am satisfied that the evidence ought to be admitted. There was no reason for Mr. Gilbertson to be tracking the *PPSA* registry prior to the July 6, 2026 hearing. Neither could he be expected to know about factoring agreements that remained hidden until after the hearing.

112. The financing arrangements for the Canadian company ought to have been disclosed by Mr. Kuzucan had he been acting in the best interests of the Canadian company. If, as he now says, the company needed this funding to survive, he did not disclose this important fact to the other 50% shareholder or to the court while he was seeking an order for a share swap.

113. In my view, Mr. Bora Kuzucan can no longer be left in charge of the business of the Canadian company. He is operating it in conflict of interest, without regard to his duties to the company, and without regard to the reasonable expectations of the shareholders as discussed above. He says that his grant of security to himself does

not matter because his shareholder loan always comes ahead of Mr. Gilbertson's equity position. That may well be true if the shareholder loan is real and is enforceable. But Mr. Kuzucan is also holding onto compressors with value instead of shipping them to customers of the business. I now see that he is operating the company to hold assets to prefer his secured recovery that I did not know about before.

114. It is clear that Mr. Bora Kuzucan is not managing the Canadian company in the best interests of the corporation as required y law and as reasonably expected by the shareholders. He is angling to make the company his own regardless of the outcome of shareholder proceedings.

115. It is just and convenient to appoint a receiver to ensure that there is neutral and transparent stewardship of the assets of the Canadian company pending the final determination of this application. Moreover, it is an equitable interim remedy to the oppressive manner that Bora Kuzucan has been operating during these proceedings. In *Bank of Nova Scotia v. Freure Village of Clair Creek*, 1996 CanLII 8258 (ON CTGD), Blair J. (as he then was) held:

> The Bank and the debtors are deadlocked and I infer from the history and evidence that the Bank's attempts to enforce its security privately will only lead to more litigation. Indeed, the debtor's solicitors themselves refer to the prospect of "costly, protracted and unproductive" litigation in a letter dated March 21st of this year, should the Bank seek to pursue its remedies. More significantly, the parties cannot agree on the proper approach to be taken to marketing the properties which everyone agrees must be sold.

116. This too is a case where the players are mired in litigation that is tactical and likely protracted. The parties have proven time and again that they are not interested in an early commercial outcome. There are interests beyond those of the shareholders at play. There are lenders, factors, and customers here and in the US, all with

interests in the inventory being withheld by the Canadian company. It is in the interests of all that there be a neutral professional acting under the auspices of the court to provide management of the company on a transparent basis. The assets require preservation and protection from the ongoing misconduct and tactical positioning of the shareholders and management.

117. DB Restructuring Limited has consented to appointment as receiver and manager of the US company, the Canadian company, and the Delaware company. A court-appointed receiver is a licensed insolvency professional who operates independent of the parties. It may take possession of any business and/or property over which it is appointed and recommend steps to realize or deal with the business otherwise in accordance with the terms of the order.

118. Under the terms of the Commercial List template receivership order, a court-appointed receiver displaces management. If it takes possession of the assets over which it is appointed, it can secure them, insure them, and then report to the court, on notice to the parties, with business recommendations.

119. Mr. Dhanani and TDB Restructuring are well known to the court. They have proven experience and integrity to occupy the role as a court-appointed officer. They will favour commercial reasonableness rather than the interests of any party. They have the court's confidence.

120. At this stage however, I appoint them only over the Canadian company. There appears to me to be some urgency to securing that company and its assets, The US company is more of a sales office operated from Mr. Gilbertson's home I am told. There is already a receiver appointed in the US to deal with its records and payments outside the ordinary course.

121. I do not yet make any of the orders sought by Mr. Wadden instructing the Receiver on whether or how to operate the business. It may decide to deliver the air compressors to customers. It may make some arrangement for payment by the US

company. It would be simpler to operate a single business if a single receiver was appointed over both companies perhaps. Or perhaps not. The parties, no doubt, will have views to express to the Receiver and it will have its own diligence to conduct.

122. Should the Kuzucans seek an appointment of a receiver over the US company I will consider it based on the holdings already made above. As I have tried to make clear throughout, the Kuzucans hold no monopoly on conflict of interest. But, I have not yet been asked to appoint a receiver over the US company.

123. It seems to me that there is an issue of comity around whether I ought to appoint a receiver for the US company even if this court has jurisdiction. The same is true for the order sought removing Bora Kuzucan as a director of the US company. It may be that a US order is required in any event for enforcement of any order made here.

124. Accordingly, I do not rule on whether there ought to be a receivership over Delaware, the US company, or any other entity at this time. If a party seeks the appointment of a receiver over another party based on the existing record I may be contacted to convene a case conference in short order.

125. Mr. Wadden is directed to use the Commercial List template receivership order with no priming of existing security interests at this time, If the Receiver seeks a priming charge for its fees or directions as to its mandate, a motion may be brought on notice to secured creditors.

**There are Two Legal Proceedings**

126. There is overlap between this application and the US proceeding. But neither the Canadian company nor Bora Kuzucan are parties to the US proceeding. The US case solely concerns the US company.

127. The US judge has held that she has no jurisdiction over the Canadian company. This court is not similarly hampered. All parties have appeared here.

128. This court stands ready, willing, and able to give full faith and credit to the decisions of the US Courts as they routinely do for us. There is the highest level of comity between the courts of our two countries.

129. The court respectfully seeks the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

**Costs**

130. I cannot tell yet whether this motion was won, was lost, might help, or ultimately may hurt. Relief is required because the parties cannot agree among themselves. In my view, costs should be in the cause and I so order.

FL Myers J.

Justice FL Myers

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