

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Divisional Court)**

B E T W E E N :

**VOLKAN BASEGMEZ, CEM BLEDA BASEGMEZ
ANIL RUKAN BASEGMEZ, BA&B CAPITAL INC.,
SERDAR KOCTURK and KAAH HOLDINGS INC.**

Applicants
(Respondents)

- and -

**ALI AKMAN, SAMM CAPITAL HOLDINGS INC.
and TARN FINANCIAL CORPORATION**

Respondents
(Appellants)

NOTICE OF APPEAL

THE APPELLANTS APPEAL to the Divisional Court from the Order of the Honourable Justice Sidney N. Lederman dated September 15, 2017 (the “**Order**”), made at Toronto.

THE APPELLANTS ASK that the Order be varied as follows:

1. the remedy ordered by the Honourable Justice Lederman should be varied as follows:
 - (a) the order that Tarn Financial Corporation (“**Tarn**”) be wound up and KPMG appointed as liquidator of the effects and estate of Tarn should be set aside;
 - (b) the fair market value of Respondents’ shares in Tarn should be determined by an independent valuation supervised and approved by the Superior Court of Justice (Commercial List);

- (c) the Appellants should be ordered to purchase the Respondents' shares in Tarn for their fair market value as of the date of their independent valuation; and
 - (d) a monitor should be appointed to supervise the management of Tarn until such time as the Appellants purchase the Respondent's shares in Tarn;
2. the Appellants seek their costs of this appeal and, if applicable, a variance of the costs award on the application to reflect the remedy ordered by this Court; and
 3. the Appellants also seek such further and other relief as this Court considers just.

THE GROUNDS OF APPEAL are as follows:

1. This appeal arises from an application under the oppression provisions of the Ontario *Business Corporations Act*, R.S.O. 1990, c. B.16 (the "**OBCA**") against Tarn and one of its shareholders.
2. Tarn owns a hotel in Scarborough, Ontario, as well as certain adjacent lands on which the development of a condominium project is underway. Shares in Tarn are held by:
 - (a) the Appellant, SAMM Capital Holdings Inc. ("**SAMM**"), on behalf of the Appellant, Ali Akman ("**Akman**");
 - (b) the Respondent, BA&B Capital Inc., on behalf of the Respondents, Volkan Basegmez, Cem Bleda Basegmez, and Anil Rukan Basegmez; and
 - (c) the Respondent, KAAN Holdings Inc., on behalf of the Respondent, Serdar Kocturk.
3. Akman was at all times the driving force behind Tarn and its investments. Shortly after the Respondents invested in Tarn, Akman took steps that effectively gave him, through SAMM, voting control of Tarn. He then caused Tarn to enter into a number

of transactions, including with his own companies, that the Respondents alleged defeated their reasonable expectations.

4. The application judge found that the Appellants' conduct was unfairly prejudicial to or unfairly disregarded the Respondents' interests. He ordered that Tarn be wound up and that KPMG be appointed as its liquidator.

5. In doing so, the application judge erred in law:

(a) The application judge failed to exercise his discretion pursuant to s. 248 of the *OBCA*. Rather than consider what remedy would be fit in the circumstances, the application judge effectively gave the Respondents a veto; the application judge treated the parties' failure to agree on an alternative to winding up as dispositive of the question of remedy. The application judge ordered that Tarn be wound up not because doing so would rectify unfair prejudice or disregard, but because the Respondents did not consent to anything else.

(b) The application judge failed to craft a remedy that would achieve the purpose of the oppression remedy, which is to rectify oppressive conduct. Rather, the application judge characterized Akman's conduct as effectively having looted Tarn — a characterization that was not supported by the record — and then imposed a draconian remedy the purpose of which was to punish Akman, not to rectify the oppressive conduct.

(c) The effect of the application judge's errors of law was to thwart the proper application of s. 248 of the *OBCA* and to penalize the Appellants at the expense of Tarn and its other corporate stakeholders.

6. The Appellants will also rely on such further and other grounds as counsel may advise and this Court may permit.

THE BASIS OF THE APPELLATE COURT'S JURISDICTION IS: The Order was a final order made in a proceeding under the *OBCA*. As such, an appeal lies to the Divisional Court as of right pursuant to s. 255 of the *OBCA*.

The appellants request that this appeal be heard at Toronto.

October 6, 2017

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Respondents/Appellants

Court File No.:

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