

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: ALEXANDER SCHENKEL, VICTORIA SCHENKEL, AND LAUREN
WATKINS-ACEBES Applicants

AND:

PURAVIDA FOODS INC, HALIBURTON INTERNATIONAL FOODS
CANADA INC., IAN WILLIAM SCHENKEL, IAN CHARLES SCHENKEL,
MICHAEL CIHRA AND CYNTHIA MORRIS, Respondents

BEFORE: Cavanagh J.

COUNSEL: *Stephanie Sugar and Kayla Burstein*, for the Moving Parties (Respondents)

Young Park and Shannon Reid, for the Responding Parties (Applicants)

HEARD: April 28, 2026

ENDORSEMENT

Introduction

[1] The Respondents to this application move for (i) an order that the application be converted to an action, and (ii) that the action be consolidated with three actions, one brought by each Applicant as a plaintiff, against the Respondents PuraVida Foods, Inc. and Haliburton International Foods Canada Inc. as defendants.

[2] For the following reasons, the Respondents' motion is dismissed.

Procedural Background

[3] The Applicants commenced the within application by a Notice of Application issued on August 29, 2025. The Applicants are minority shareholders and former officers and employees of PuraVida Foods, Inc. ("PuraVida") and Haliburton International Foods Canada Inc. ("HIF Canada"). They plead in the notice of application that each owns 16% of the common shares of PuraVida and HIF Canada.

[4] The Respondents are PuraVida, HIF Canada, Ian C. Schenkel ("Ian Sr."), Cynthia Morris, Michal Cihra and Ian William Schenkel ("Ian Jr."). In the Notice of Application, the Applicants plead that PuraVida is in the business of distributing PuraVida branded food products and that HIF Canada was formerly in the business of brokering sales for Haliburton International Foods, Inc. ("HIF USA"), a company which makes high-end fire roasted and cryogenically frozen products as

well as a variety of kettle-cooked products for industrial food service and retain customers and produces lines of products under the brand “PuraVida”.

[5] On December 19, 2025, counsel for the parties appeared before Dietrich J. for the purpose of scheduling a motion to be brought by the Respondents to convert the application into an action and to consolidate it with actions based in wrongful dismissal that each Applicant has commenced. The parties agreed to a timetable for the Respondents’ motion and Dietrich J. scheduled the hearing of this motion, on consent.

Analysis

[6] In the Notice of Application, the Applicants plead that Ian Sr. is a director of and holds a 49% equity interest in, PuraVida and HIF Canada. The applicants plead that Ms. Morris holds 3% of the common shares of PuraVida and HIF Canada over which Ian Sr. exercises *de facto* control. The Applicants plead that Ian Jr. is Ian Sr.’s son and became a director of PuraVida and HIF Canada on or about March 12, 2025. The Applicants plead that Mr. Cihra has been a director and the Chief Executive Officer of PuraVida and HIF Canada since on or about March 12, 2025.

[7] The Applicants plead that Alexander Schenkel was a director and President of HIF Canada and Vice President of Operations for PuraVida and that, at Ian Sr.’s direction, he was replaced as a director of HIF Canada on or about March 12, 2025 and wrongfully terminated as an employee of HIF Canada and PuraVida on or about March 28, 2025. The Applicants plead that Victoria Schenkel, Alexander’s sister, was wrongfully terminated from HIF Canada and PuraVida at the direction of Ian Sr. on or about March 17, 2025. The Applicants plead that Lauren Watkins-Acebes, Alexander’s wife, resigned as a director of PuraVida on or about February 24, 2025 and that she was wrongfully terminated as President of PuraVida on or about April 8, 2025, at the direction of Ian Sr. and Mr. Cihra.

[8] In the Notice of Application, the Applicants allege that the Respondents have improperly stripped over UDS \$6.9 million of revenues from HIF Canada and PuraVida through what they allege to be an improper “Transfer Pricing” scheme and allegedly improper adjustments and transactions.

[9] The Applicants seek declaratory relief pursuant to s. 241 of the *Canada Business Corporations Act* (‘CBCA’) that the business of PuraVida and HIF Canada has been conducted in a manner, and that the powers of the individual respondents have been exercised in a manner, that is oppressive or unfairly prejudicial to, or unfairly disregards the interests of, the Applicants. The Applicants also seek a declaration that the respondents Ms. Morris, Mr. Cihra, Ian Sr., and Ian Jr. are in breach of their statutory and fiduciary duties pursuant to s. 122 of the CBCA.

[10] In the application, the Applicants seek remedies including (i) an order directing the Respondents to purchase the shares of the Applicants in PuraVida and HIF Canada at fair value, (ii) an order compensating the Applicants as aggrieved persons, (iii) an order to vary or set aside alleged improper transactions and year-end accounting adjustments that were completed at the direction and approval of certain respondents, (iv) an order restraining the conduct complained of, and (v) if necessary, an order appointing a receiver or receiver-manager.

[11] Each of the Applicants commenced an action against PuraVida and HIF Canada for remedies arising from the termination of their employment.

[12] In *Collins v. Canada (Attorney General)*, 2005 CanLII 19819, the Court decided a motion by a respondent to an application to convert the application to an action. The motion judge held that an application will not be converted to an action unless there is good reason to do so, such as when the judge who will hear the matter cannot make a proper determination of the issues on the application record. The motion judge held that when issues of credibility are involved or when viva voce evidence is required, a matter should proceed as an action. The motion judge noted that when a factual determination *simpliciter* is involved, this by itself is not sufficient to convert an application to an action. The fact(s) in dispute must be material to the issues before the court. These principles were cited with approval by the Court of Appeal in *V2 Investment Holdings Inc. v. Mizrahi*, 2026 ONCA 275, at para. 34. The Court of Appeal added that even where there are material facts in dispute, a trial will not be necessary if the factual dispute can be resolved on the application record.

[13] On a motion to convert an application to an action, the motion judge must review the evidence to determine whether the proceeding was properly commenced by way of application and whether it can be properly resolved as an application. See *Obolus Ltd. v. International Seniors Community Care Inc.*, 2023 ONCA 708, at para. 10.

[14] This motion was brought after the Applicants' application record was served and before the Respondents had delivered responding application evidence. In support of this motion, the Respondents rely on the affidavit of Michael Cihra, the Chief Executive Officer of PuraVida and the CEO and a director of Haliburton Foods Canada Inc. ("HIF Canada").

[15] In his affidavit, Mr. Cihra describes the nature of the dispute. He describes the main basis of the allegations made by the Applicants as being a "narrative that it was the Applicants that built HIF Canada and PuraVida 'from scratch' into businesses generating collectively over CDN\$92 million in revenues over a period of just a few years". He describes the Applicants' claim "that the Respondents 'stripped' over USD\$7million from HIF Canada and PuraVida largely as a result of debt repayment for disputed invoices for products supplied by HIF USA, and that the Applicants were wrongfully terminated".

[16] Mr. Cihra asserts in his affidavit that the Applicants' allegations in the Application and in the employment actions are categorically denied and contested by the Respondents. He states that there is a detailed, complex, and contested factual history relating to the entire period from 2021 up to the Applicants' terminations in 2025. Mr. Cihra states that he has been working to investigate the pertinent financial transactional history involving the Applicants and the status of the financial situation and transactional histories of PuraVida and HIF Canada which investigations are ongoing.

[17] Mr. Cihra states that it is not possible for PuraVida to fully respond to the Applicants' allegations without comprehensive discovery into the Applicants' management history, their communications with each other and with third parties, and their personal financial information. Mr. Cihra states that the PuraVida intends to counterclaim against each of the Applicants and will seek damages for, among other things, inappropriate expenditures, fraudulent expense claims, and improper use of PuraVida's funds for personal benefit.

[18] Mr. Cihra describes in his affidavit the position of the Respondents with respect to the Applicants' claims as they relate to (i) commission fees, and (ii) PuraVida's costing structure and profit margins. He describes the ongoing investigations about inappropriate expenses and personal

spending by the Applicants, which, he states, is continuing. Mr. Cihra asserts that there are issues of credibility that are central to the Applicants' claims.

[19] The Respondents submit that proceeding by way of action is the only means to achieve a just and procedurally fair adjudication of this dispute. They submit that there are material facts in dispute which involve issues of credibility as between the principal players. The Respondents submit that proceeding by way of application would be unjust because applications are reserved for relatively uncontested matters with straightforward issues without the need for procedural rights of oral discovery and *viva voce* evidence. The Respondents submit that the tests for conversion and consolidation with the employment actions are met.

[20] In response to this motion, the Applicants submit that the evidence given by Mr. Cihra on matters that preceded his appointment as a director and CEO of PuraVida and HIF Canada in March 2025 is not within his personal knowledge and is hearsay. They cite statements which relate to matters outside of Mr. Cihra's personal knowledge which do not attribute the source of the information upon which he relies. The Applicants submit that Mr. Cihra's evidence consists largely of bald assertions on matters in dispute. The Applicants submit that the decision of the Respondents to proffer only Mr. Cihra as an affiant in support of this motion, when Ian Sr. is available, was taken to shield Ian Sr. from cross-examination and that the affidavit of Mr. Cihra should be given little weight. The Applicants submit that the issues in dispute can be determined based on affidavit evidence and cross-examinations, and that there are no credibility issues that require a trial.

[21] I have reviewed Mr. Cihra's affidavit. Mr. Cihra's affidavit contains many conclusory assertions that the issues on the application are complex and that there will be issues requiring findings of credibility. I accept that there may be complex issues to be determined on this application. I do not, however, accept the Respondents' submission that applications are reserved for relatively uncontested matters with straightforward issues. There are many applications, including oppression claims and share valuation disputes, that are vigorously contested and involve complex issues and are adjudicated on a paper record without a trial. The fact that an application raises complex factual issues is not sufficient to require the application to be converted to an action.

[22] Although Mr. Cihra asserts that there will be credibility issues that require a trial, he does not clearly identify these issues. I am not satisfied that the Respondents have shown through Mr. Cihra's affidavit that there will be credibility issues, or other material issues of fact, that cannot be resolved without a trial.

[23] I am also not satisfied that the fact that each of the Applicants has commenced an action for damages in relation to their status as former employees necessitates conversion of the oppression application to an action so that the converted action may be consolidated with the employment actions. The central issue on the oppression application is whether the Respondents stripped PuraVida and HIF Canada of revenues in breach of the Applicants' reasonable expectations as shareholders and former directors. Each employment action involves different claims, those for remedies by each Applicant resulting from the termination of his or her employment.

[24] In *Rare Charitable Research Reserve v. Chaplin*, 2006 CanLII 50901 (ON SC), the respondents to an application brought a motion for an order converting the application to an action. The motion was brought before the respondents had delivered responding evidence to the application. The motion judge considered the evidence on the motion and concluded that it was

not clear that conversion of the application to an action is inevitable. The motion judge held that the motion to convert the application to an action was premature and that the parties should proceed with the usual steps needed to ready the application (and a cross-application) for hearing. The motion judge noted that under rule 38.10(1)(b), the judge hearing the application may order the application or any issue to proceed to trial and give such directions as are just. The motion judge dismissed the motion to convert the application to an action, without prejudice to the respondents' right to renew the motion before the judge hearing the application on its merits.

[25] In my view, this is the appropriate order to be made on this motion. After the Respondents' evidence has been delivered, and after cross-examinations, the evidentiary record will be fully developed, and the application judge will be in a better position to determine whether there are material facts in dispute that would justify converting the Application to an action.

Disposition

[26] For these reasons, the Respondents' motion is dismissed.

[27] If the parties are unable to resolve costs, they may make written submissions in accordance with a timetable agreed upon by counsel (with reasonable page limits) and approved by me.

Cavanagh J.

Date: June 4, 2026