

In the Court of Appeal of Alberta

Citation: Giles v Bezooyen, 2026 ABCA 205

Date: 20260623
Docket: 2501-0272AC
Registry: Calgary

Between:

Justin Giles

Appellant

- and -

William Bezooyen and Bezooyen Group of Companies Ltd.

Respondents

The Court:

**The Honourable Justice Frans Slatter
The Honourable Justice Jolaine Antonio
The Honourable Justice Tamara Friesen**

Memorandum of Judgment

Appeal from the Order by
The Honourable Justice S.A. Moore
Dated the 12th day of September, 2025
Filed on the 24th day of September, 2025
(Docket: 2506 00089)

Memorandum of Judgment

The Court:

[1] This appeal arises from a dispute between two equal shareholders in a successful company. The appellant applied for an order permitting him to buy out the respondent, or in the alternative, dissolving the company pursuant to ss 215 and 242 of Alberta's *Business Corporations Act*, RSA 2000, c B-9 [the *Act*]. The chambers judge dismissed the application, finding the appellant had failed to establish oppression and the application to dissolve was premature. On appeal, the appellant submits the chambers judge erred in several ways in dismissing his application, and applies to admit new evidence he says shows the respondent's continued bad faith and oppressive conduct.

[2] For the following reasons, both the application to admit new evidence and the appeal are dismissed.

I. Background

[3] The appellant Justin Giles and the respondent William Bezooyen started JB Concrete Pumping Inc (the Corporation) in 2012. They are equal shareholders. Giles is president and Bezooyen is secretary and treasurer. Bezooyen holds his shares through his holding company, the respondent Bezooyen Group of Companies Ltd. In addition to his role as shareholder and president, Giles is also a full-time employee of the Corporation. For the last few years, he has received a salary plus a payment of 10 percent of gross sales, typically paid biannually in July and January of each year. Both Bezooyen and Giles receive dividends which are split 50/50 between them. Bezooyen is not an employee of the Corporation and receives no compensation other than dividends.

[4] Giles and Bezooyen started the Corporation informally, and the only corporate records are the articles of incorporation and bylaws. There is no unanimous shareholder agreement nor any formal mechanism for dispute resolution between the shareholders. There are no written contracts for any employees or contract workers.

[5] Giles and Bezooyen's business relationship was healthy for more than a decade, contributing to the success and growth of the Corporation. Bezooyen used his business contacts to arrange banking and accounting services, and Giles ran the day-to-day operations. The Corporation had a close relationship with Bezooyen's other company, JB Construction Inc., and initially operated out of its shop. JB Construction was the Corporation's first client and became a regular client. For many years, JB Construction received a discount from the Corporation.

[6] Bezooyen's spouse, Brenda Bezooyen, is the Corporation's bookkeeper. She works part-time on a contract basis. From 2012 until 2023, she was paid \$1,000 per month for her services. She works out of the JB Construction shop and manages the Corporation's books using a desktop accounting program. As the Corporation grew, so did her workload. After eight years, the Corporation moved to a different location, but Brenda Bezooyen and the Corporation's books remained at the JB Construction shop.

[7] The first significant problem between the parties arose in May 2023. Giles went to his personal accountant's office to pick up personal tax documents and found the accountant, who also serves the Corporation, meeting with Bezooyen and Brenda Bezooyen. Giles believed and continues to believe he had happened upon a secret meeting about the Corporation's books from which he had been deliberately excluded; however, he presented no evidence on this point. Of note, the Bezooyens also used the Corporation's accountant for their personal accounting needs.

[8] Around the same time, Giles became dissatisfied with his ability to access the Corporation's books using the existing desktop accounting software as it required his physical attendance at the JB Construction office. He investigated moving the books to a digital service; however, Bezooyen felt the service had some deficiencies and refused to adopt it, insisting they continue to rely on Brenda Bezooyen for the Corporation's bookkeeping needs.

[9] In June 2023, without notifying Giles or receiving his approval, Brenda Bezooyen increased her monthly pay from \$1,000 to \$1,500. Giles confirmed with Bezooyen that Bezooyen knew of the increase. In response, Giles ended the discount the Corporation had previously provided to JB Construction. Brenda Bezooyen later reinstated the discount, again without notice to Giles and without his approval.

[10] In May 2024, Brenda Bezooyen requested a pay increase to \$3,500 per month and a percentage of the Corporation's revenue. Giles refused. Brenda Bezooyen then began paying herself the higher flat rate of \$4,500 per month.

[11] In July 2024, Giles advised Bezooyen that Brenda Bezooyen could no longer do the books; Giles would do the books himself. Bezooyen told Giles he was no longer welcome on JB Construction property. Consequently, Giles could not access the Corporation's books via the desktop software at the shop. However, Giles continued to have access to the corporate email system, which included all invoices as they were distributed, and he was able to meet with the Corporation's accountant to see the year-end financial statements.

[12] The issue of Giles's compensation was the next significant disagreement between the parties. In 2024, Bezooyen advised he wanted to renegotiate Giles's compensation, however that renegotiation did not occur. By the end of 2024, Brenda Bezooyen had not paid Giles the gross sales payment that he should have been paid in July of 2024. On December 17, 2024, Giles emailed Bezooyen to say he was going to pay himself the gross sales payment, as well as outstanding

bonuses to two employees. On December 18, 2024, Giles transferred \$149,102 from the corporate account to himself and paid the employees their bonuses.

[13] On December 30, 2024, either Bezooyen or Brenda Bezooyen transferred \$149,102 from the Corporation to Bezooyen's holding company. Bezooyen or Brenda Bezooyen then transferred two additional sums of \$100,000, one to Bezooyen's holding company and one to Giles's personal bank account (the December transfers). Giles did not receive notice of these transactions. Following the December transfers, only \$30,000 remained in the Corporation's operating account.

[14] On February 7, 2025, Giles filed an originating application alleging Bezooyen had acted oppressively and seeking an order requiring Bezooyen to sell his shares to Giles under s 242 of the *Act*. In the alternative, Giles sought an order for dissolution under s 215(1)(b)(ii). Shortly after the legal action began in February 2025, Bezooyen's counsel wrote to Giles's counsel advising that Bezooyen was willing to take steps to improve corporate governance, provide financial information to Giles, and return his portion of the funds from the December transfers so that the funds could be distributed properly through mutual agreement.

[15] Notwithstanding the ongoing dispute between its shareholders, the Corporation continues to operate successfully. It is estimated to be worth over \$1,000,000 and employs three individuals.

II. Decision of the Chambers Judge

[16] The application was heard on September 3, 2025. On September 12, 2025, the chambers judge dismissed the application via lengthy oral reasons. She set out ss 215 and 242 of the *Act*, which allow a court to order dissolution or various other remedies where the court finds oppression. She noted that one available remedy, under s 242(3)(g), is to require a corporation or any other person, to purchase the securities of a security holder. Additionally, she noted that s 215(1)(b)(ii) permits the court to order dissolution if it is satisfied that it is "just and equitable" to do so.

[17] The chambers judge reviewed the leading jurisprudence governing the oppression remedy, including *BCE Inc v 1976 Debentureholders*, 2008 SCC 69 and *Saunders v 360373 Alberta Ltd (Arlington Apartments)*, 2021 ABCA 222. She then analyzed five instances of alleged oppressive conduct raised by Giles: Brenda Bezooyen's unilateral pay raise, Brenda Bezooyen's reinstatement of JB Construction's discount without Giles's consent, the alleged secret meeting between the Bezooyens and the Corporation's accountant, Giles's alleged lack of access to the books, and the December transfers. The chambers judge did not find any of these actions, alone or in combination, constituted oppressive conduct by Bezooyen.

[18] Bezooyen argued that Giles should be barred from equitable relief because he came before the court with unclean hands. The chambers judge did not make an express finding on this point; however, she did note that Giles admitted using corporate funds for personal expenses and by doing so, "[Giles] could be the one creating an impact on the value of the corporation".

[19] The chambers judge found that Giles had not established Bezooyen had acted oppressively. She found the application to be premature and dismissed it in its entirety, indicating that the parties should instead improve corporate governance and resolve their differences in that way.

III. Decision on Application to Admit New Evidence

[20] Giles applies to admit new evidence touching on two issues: the consequences of the December transfers for the Corporation's bank loan agreement and his gross sales payment.

[21] The test in *Palmer v The Queen*, 1979 CanLII 8 (SCC), [1980] 1 SCR 759, applies whenever a party seeks to adduce additional evidence on appeal for the purpose of reviewing the decision below, regardless of whether the evidence relates to facts that occurred before or after trial: see *Banovich v Banovic*, 2026 ABCA 59 at paras 8-9; *Barendregt v Grebliunas*, 2022 SCC 22 at paras 1-3, 29-34; *Saunder* at para 8. It consists of four criteria:

1. the evidence should generally not be admitted if, by due diligence, it could have been adduced at the hearing below;
2. the evidence must bear upon a decisive or potentially decisive issue;
3. the evidence must be credible in the sense that it is reasonably capable of belief; and
4. the evidence must be such that, if believed, it could reasonably be expected to have affected the result.

[22] First, in respect of the December 2024 transfers and their consequences, Giles seeks to adduce:

- a) Correspondence between Giles and the Corporation's accountant in June 2025, indicating that despite Giles's proposal to treat the December 18, 2024 transfer to himself as income, the accountant determined that both it and the December 30, 2024 transfer of the same amount to Bezooyen would be recorded as shareholder loans;
- b) An ATB Financial commitment letter to Bezooyen and Giles, dated July 22, 2024, which sets out details of the Corporation's loan agreement;
- c) Correspondence between Giles and ATB Financial between September 5 and October 8, 2025, which indicate that following the December 2024 transfers, the Corporation was in breach of the debt-to-service ratio requirements of its loan agreement, in part because of the December 2024 transfers which were treated as shareholder loans.

[23] In cross-examination on his affidavit in support of the application Giles acknowledged that Bezooyen's counsel sent Giles's counsel a letter on December 12, 2025, in which Bezooyen

promised to repay the Corporation for the December 30 transfer to Bezooyen that had been booked as a shareholder loan. Giles also acknowledged that on December 19, 2025, Bezooyen returned the money to the Corporation and on January 6, 2026, ATB Financial confirmed the renewal of the loan agreement.

[24] None of the evidence in respect of the loan agreement meets the first **Palmer** criterion. Although Giles says he did not know about the consequences of the December transfers for the Corporation's loan until ATB's correspondence of October 8, 2025, his own evidence establishes the parties knew about the December transfers and how they would be treated by the Corporation's accountant months before the hearing below. Further, Giles was a signatory to the loan agreement. Giles could have adduced evidence as to the effect of the December transfers on the Corporation's loan obligations at first instance had he exercised due diligence.

[25] In any event, when viewed in the context of the chambers proceedings, this evidence could not reasonably be expected to have affected the result. Giles argued that the December transfers jeopardized the Corporation by leaving only \$30,000 in its operating account and that Bezooyen's involvement in the transfers was a flagrant breach of his obligations to act in the Corporation's best interests. Although arguably the effect of the transfers on the Corporation's loan obligations temporarily increased the Corporation's financial jeopardy, in fact the Corporation continued to operate successfully. More fundamentally, the chambers judge accepted Bezooyen's argument that both parties were responsible for making unilateral fund transfers in December 2024 and did not find Bezooyen's participation in this conduct to be oppressive.

[26] Second, in respect of his compensation, Giles seeks to file an affidavit he swore on November 5, 2025, in which he states he is still owed \$7,434.03 for his gross annual sales payment that was payable in January 2025 as well as the entirety of his gross annual sales payment for July 2025. He also seeks to adduce correspondence he sent to Bezooyen and Brenda Bezooyen about these outstanding payments in October 2025. In cross-examination on his affidavit, he acknowledged receipt of the December 12, 2025 letter from Bezooyen's counsel to Giles's counsel, which reiterates that Bezooyen disputes Giles's entitlement to a 10 percent gross sales payment and offers to negotiate compensation.

[27] Giles admits that evidence of the compensation dispute and Bezooyen's refusal to make gross sales payments to him was before the chambers judge. However, Giles asserts that Bezooyen's continued refusal to make 10 percent gross sales payments to him, even after the chambers judge dismissed the application "to allow the parties the opportunity to resolve this matter themselves", amounts to new evidence. He says it shows Bezooyen's continued bad faith conduct and in the context of Giles's request for dissolution, demonstrates the parties have reached an impasse justifying dissolution of the company. However, nothing in the decision below required the Corporation to make 10 percent gross sales payments to Giles or mandated the parties resolve the compensation dispute in any specific manner. Indeed, Giles did not even seek that remedy in his prayer for relief. The proposed evidence simply shows that after the decision below issued, the

parties remained entrenched in their positions with respect to Giles's annual gross sales payments. This is not new evidence, nor could it reasonably affect or have affected the outcome of this matter.

[28] The application to admit new evidence is dismissed.

IV. Appeal Decision

a) *Ground 1: Oppression*

[29] A two-step inquiry applies to the oppression remedy within ss 242 and 215 of the *Act*: 1) does the evidence support the reasonable expectation asserted by the claimant; and 2) does the evidence establish the reasonable expectation was violated by conduct falling within the terms “oppression”, “unfair prejudice”, or “unfair disregard” of a relevant interest: **BCE** at para 68; **Wilson v Alharayeri**, 2017 SCC 39 at para 24; see also **Shefsky v California Gold Mining Inc**, 2016 ABCA 103 at paras 22-30.

[30] At the first step, the claimant must establish reasonable expectations, viewed objectively and contextually, with an eye to the facts, relationships, and conflicting claims and expectations; a claimant's subjective expectations are not necessarily reasonable expectations: **BCE** at para 62. At the second step, the “concepts of oppression, unfair prejudice and unfairly disregarding relevant interests” represent a range of conduct that may warrant a remedy. Oppression, the most serious of the three types of conduct, has been described as conduct that is burdensome, harsh, or wrongful; however, courts may also order remedies for somewhat less serious conduct that is unfairly prejudicial or unfairly disregards the interests of a stakeholder: **BCE** at paras 91–94. In any case, the claimant must also demonstrate that the wrongful conduct caused compensable injury: **BCE** at para 90; **Shefsky** at para 25; **Saunder** at para 12. The overall inquiry is highly fact-dependent: “what may be oppressive in one factual context may not be oppressive in a slightly different factual context”: **Shefsky** at para 2; see also **BCE** at para 59.

[31] Giles acknowledges the chambers judge properly recited these key legal principles governing the oppression remedy but submits she committed two errors in her application of them, first by failing to assess Bezooyen's personal liability as a director, and second by improperly applying the business judgment rule. Bezooyen counters that the legal errors Giles asserts are contrived to circumvent the standard of review. He says the chambers judge properly exercised her broad discretion with respect to the oppression remedy and there is no basis to intervene. He maintains Giles's true purpose is not to rectify oppression but rather to gain full control of their successful and growing business.

[32] Generally, “[a]ppellate courts should ... adopt a deferential stance when reviewing judgments rendered on oppression applications”: **Wilson** at para 59. Whether conduct amounts to oppression is a question of mixed fact and law, reviewable for palpable and overriding error: **Saunder** at para 14; **Shefsky** at para 19; **1216808 Alberta Ltd. (Prairie Bailiff Services) v Devtex Ltd**, 2014 ABCA 386 at paras 23-24. However, Giles argues the chambers judge's analysis of

oppression was based on errors of law and that if established, such errors are reviewable on a correctness standard: **Wilson** at para 59.

[33] First, Giles complains that the chambers judge erred in law when she did not consider that Bezooyen was personally liable for the alleged oppressive conduct. Before the chambers judge, Giles sought an order permitting him to buy out Bezooyen. He argued the test for personal liability for oppression in **Wilson** at paras 47-51 was met, and therefore, it was fair to order Bezooyen to sell his shares to Giles. It is not surprising that the chambers judge said nothing on this point given her finding that oppression had not been made out. No error in law has been identified.

[34] Second, Giles complains that the chambers judge erred in law by improperly relying on the business judgment rule. The business judgment rule was discussed briefly during the chambers judge's statement of the law, when she quoted a number of principles from this Court's decision in **Saunder**, including that "courts must not second-guess the business judgment of directors of corporations; rather, the court must decide whether the directors made decisions which were reasonable in the circumstances and not whether, with the benefit of hindsight, the directors made perfect decisions": **Saunder** at para 12; see also **BCE** at para 40. Giles complains that somehow this was improper because no party cited **Saunder** before the chambers judge; however, this aspect of **Saunder** simply summarizes principles settled in **BCE**, a case relied on by both parties in the court below. There is nothing improper about its use in that context.

[35] We reject Giles's argument that the chambers judge misapplied the business judgment rule by treating the December transfers as a reasonable "business decision" by Bezooyen. Nothing in the reasons for decision suggests the chambers judge evaluated the transfers through the lens of the business judgment rule. As expressed in her reasons, the chambers judge accepted Bezooyen's argument that the December transfers to his holding company and to Giles did not constitute oppression because both parties had made unauthorized transfers and at the end of the day each party received the same amount of money.

[36] The chambers judge did not err in her treatment of Bezooyen's personal liability as a director nor of the business judgment rule, as neither of these things was relevant to her oppression analysis. Rather, the chambers judge considered the facts and circumstances before her and concluded the impugned conduct did not amount to oppression. Her reasoning reflects the highly fact-specific nature of the oppression remedy, ultimately a question of mixed fact and law. The appellant has not identified any palpable and overriding error that would justify appellate intervention.

b) Ground 2: Adverse Inference

[37] Giles further argues the chambers judge erred by not addressing Bezooyen's failure to file a responding affidavit on which he could be cross-examined. Before the chambers judge Giles asked the court to draw from this failure the negative inference that Bezooyen or Brenda Bezooyen made the December 30, 2024 transfers "purely for their own personal benefit".

[38] Whether to draw an adverse inference against a party for failing to lead evidence on a specific point is a discretionary decision entitled to significant deference on appeal: see e.g. **United Food and Commercial Workers, Local 1400 v Saskatoon Co-operative Association Limited**, 2023 SKCA 122 at para 12. This Court may assess the record and intervene if the failure to draw an adverse inference was unreasonable or amounted to a palpable and overriding error: **Stikeman Elliott LLP v 2083878 Alberta Ltd**, 2019 ABCA 274 at paras 87-88, 92, Slatter JA, dissenting but not on this point.

[39] Giles bore the onus of establishing oppression, and the key facts regarding the December 2024 transfers were not in dispute. The real issue was whether Bezooyen's involvement in the December transfers amounted to oppression. Giles has not identified any palpable or overriding error with respect to the chambers judge's handling of the evidence before her (or lack thereof) warranting appellate intervention.

[40] Giles has failed to establish any reviewable error in the chambers judge's conclusion that Bezooyen's conduct did not amount to oppression. This aspect of the appeal is dismissed.

c) Ground 3: Dissolution

[41] In the alternative, Giles submits the chambers judge failed to analyze whether it was "just and equitable" to order dissolution of the company pursuant to s 215, even absent a finding of oppression. He asks this Court to decide this issue or, in the alternative, remit this issue to the court below for determination.

[42] Giles argues dissolution is warranted due to a deadlock in management or because the Corporation is akin to a partnership in which the relationship between partners has broken down. Currently, the parties communicate only through counsel. Giles says he no longer trusts Bezooyen as a business partner. Bezooyen maintains that Giles's request for dissolution remains premature – he says that with Giles's participation and their lawyers' help, the parties can resolve their differences and the Corporation can continue to be profitable and provide employment.

[43] Failure to consider an issue would normally leave this Court with two options: "(1) direct a new trial on the issue; or (2) review the record and attempt to arrive at a conclusion with respect to the missed issue": **Shefsky** at para 20. Where a court at first instance renders a decision on whether it is "just and equitable" to grant a remedy under s 215(1)(b)(ii), that order is discretionary and entitled to deference: **Antonov v Gill**, 2022 BCCA 256 at para 23; see also **Derks (Trustee of) v Derks**, 2013 ABCA 195 at paras 3, 8-9.

[44] We do not accept Giles's assertion that the chambers judge failed to consider the issue of whether to dissolve the Corporation under s 215(1)(b)(ii). The chambers judge specifically outlined this issue at the outset of her oral reasons:

Alternatively, should the Court order the winding up of JB Concrete under section 215 of the [Act] due to the ongoing and unsurmountable deadlock in management, the final issue to decide is whether the Application is premature and should be dismissed in its entirety. Is this Court satisfied that JB Concrete is a successful business that simply requires improved corporate governance to resolve the alleged issues.

This framing of the issue was appropriate and responsive to the parties' arguments. Before the chambers judge, both parties were focused on the oppression issue. In respect of his alternative request for relief under s 215, Giles's primary argument was that dissolution should be ordered due to an "obvious" deadlock in management. He argued, "[w]hen you have two equal shareholders at odds where you do not have a shareholder agreement that has any sort of dispute resolution clause, or a shotgun clause to address the deadlock, you have a situation where you need a Court ordered divorce". Conversely, Bezooyen's position was that the Corporation was "a successful business with three employees that would be harmed if dissolution is ordered", and it was still open to the parties to take the steps outlined in the February 2025 letter to improve corporate governance.

[45] On this issue, the chambers judge accepted Bezooyen's argument and refused to order dissolution, saying: "The Court agrees with the Respondent that the application is premature." She reasoned that the dismissal of the application would give the parties a chance to "resolve this matter themselves" through improved corporate governance. The chambers judge's reasons on this issue were brief, but adequate. They explain her decision and are sufficient when read in the context of the parties' submissions and the entirety of the record; in other words, they disclose what the chambers judge decided and why, and permit effective appellate review: *R v GF*, 2021 SCC 20 at paras 71-75; *ConocoPhillips Canada Resources Corp v Shell Canada Limited*, 2024 ABCA 307 at para 19.

[46] Further, there is no reviewable error in the chambers judge's exercise of discretion not to order dissolution under s 215(1)(b)(ii). Giles argues that dissolution is appropriate due to the deadlock in management or because the Corporation is akin to a partnership in which a fundamental and persistent disagreement makes it impossible for the parties to continue to work together. Either of these situations may be sufficient to justify dissolution under s 215 of the Act: *Keho Holdings Ltd v Noble*, 1987 ABCA 84 at paras 38-42, 49; see also *Latin American Senior Citizens Cultural Association of Edmonton v Govea*, 2014 ABQB 72; *Osman v Elsiddeig*, 2019 ABQB 324. Here, the chambers judge's finding that the application for dissolution was premature reflects her conclusion that, on the facts as she found them, there was not yet a deadlock or fundamental and persistent disagreement between the parties warranting dissolution because they had not yet attempted to navigate the situation using good corporate governance strategies.

[47] A temporary impasse may not amount to a deadlock, and it is open to the court to find it reasonable to believe the parties may yet resolve their differences: see generally Kevin

McGuinness & Maurice Coombs, *Canadian Business Corporations Law*, Volume 3, §27-137. Dissolution of a solvent corporation is a drastic remedy that will not be granted lightly: **Keho** at para 51; **Re R.J. Jowsey Mining Co. Ltd.**, [1969] 2 OR 549 at 552, 1969 CanLII 520 (ON CA). Given the applicable standard of review, there is no basis to disturb the chambers judge's refusal to exercise her discretion to order dissolution.

[48] While we reiterate the chambers judge's encouragement to the parties to implement improved corporate governance and to attempt resolution of their disputes privately, we recognize that an ongoing, escalating conflict between two 50/50 shareholder-directors may require court intervention. The chambers judge's finding that the application for dissolution was premature was clearly a point-in-time conclusion. Nothing in this decision precludes the parties from applying to the court for relief in the future based on new facts.

V. Conclusion

[49] The application to admit new evidence and the appeal are both dismissed.

Appeal heard on March 6, 2026

Memorandum filed at Calgary, Alberta
this 23rd day of June, 2026

Slatter J.A.

Authorized to sign for: Antonio J.A.

Friesen J.A.

Appearances:

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for the Respondent