

Court of King's Bench of Alberta

Citation: Geller v Wong, 2026 ABKB 410

Date: 20260528
Docket: 1803 22862
Registry: Edmonton

Between:

Sheldon Geller

Plaintiff

- and -

Virginia Wong, Doug Penner and GWP Wealth Management Inc.

Defendants

**Memorandum of Decision
of the
Honourable Justice K.A. McLeod**

I. Introduction

[1] Sheldon Geller, Virginia Wong, and Doug Penner were in business together for approximately 20 years, but unfortunately their relationship did not end well. Sheldon Geller applies for summary judgment of his dispute with his former business associates, after the three sold their book of business in GWP Wealth Management Inc. (GWP) to 1832 Asset Management G.P. Inc. (1832), a subsidiary of the Bank of Nova Scotia (Scotia) in 2016.

[2] The sale was for up to \$5.9 million, payable in three installments of \$3.54 million initially (Initial Payment) and then two payments of up to \$1.18 million each (Installment Payments) in the following two years. Mr. Geller, Ms. Wong, and Mr. Penner were equal shareholders and directors of GWP under a unanimous shareholder agreement (USA) and shared the Initial Payment equally.

[3] Mr. Geller did not receive any portion of the Installment Payments and brought an action seeking relief from conduct he says was oppressive, unfairly prejudicial, and unfairly disregarded

his rights as shareholder and director. Mr. Geller claims this is an appropriate matter for summary judgment because he can demonstrate a reasonable expectation to have shared in the Installment Payments, and there is no genuine issue for trial.

[4] Ms. Wong and Mr. Penner say the distribution of the Installment Payments was connected to them all remaining Scotia employees as the Acquisition Agreement required, and working to maximize the performance of the sold assets. They say Mr. Geller left Scotia prematurely while Ms. Wong and Mr. Penner stayed, worked under the terms of the Acquisition Agreement, and helped transition clients and maximize the performance of the former GWP assets that were the basis of the Installment Payments. In any event, Ms. Wong and Mr. Penner claim the dispute requires findings on material facts, credibility findings, and resolution of significant legal issues that are fact dependent.

[5] Mr. Geller seeks findings that he was oppressed or at least treated prejudicially or with disregard. He seeks one-third of the Installment Payments, compensation for investment gains he could have made with his Installment Payments, punitive damages, and costs.

[6] The Respondents say the action is inappropriate for summary disposition and seek the dismissal of the application with costs due to disputed material facts, the Applicant's reliance on facts contrary to documentary evidence, legal issues in dispute, speculative and unproven damages claims, and credibility issues.

[7] I dismiss the application for summary judgment for the following reasons.

II. Issues

[8] The central issue is whether Mr. Geller has shown that Ms. Wong and Mr. Penner oppressed him under s 242 of the *Business Corporations Act*, RSA 2000, c B-9 (BCA), and there is no genuine issue for trial.

[9] Related questions are whether it is possible to conclude on summary disposition that Mr. Geller's departure from his employment had no justifiable effect on his share of Installment Payments, and conversely whether Ms. Wong and Mr. Penner acted within their duties when they reduced Mr. Geller's share of the Installment Payments to nil.

III. Facts

[10] These are the undisputed facts in this matter.

[11] GWP was a registered portfolio manager and provided portfolio management and financial services to its clients.

[12] Mr. Geller, Ms. Wong, and Mr. Penner were one-third shareholders and directors of GWP (I refer to the three individuals together as the Principals). Mr. Geller and Mr. Penner were portfolio managers registered with the Alberta Securities Commission, and Ms. Wong was the accountant and administered the organization.

[13] The Principals sold GWP's assets (including accounts, client and prospect lists, contracts, etc.) to 1832, another business that provided portfolio management and financial services to its clients. The two companies and the three Principals signed an Acquisition Agreement dated August 29, 2016, which identified the three Principals as "Key Employees."

[14] The Acquisition Agreement contains nearly 40 pages of terms, but the four terms essential in this application provided the following:

- a) Immediate payment of \$3.54 million to the Principals;
- b) A second payment of up to \$1.18 million, payable after a calculation of the former GWP assets' value in 2017 and a variable amount depending on their performance;
- c) A third payment of up to \$1.18 million, payable after a calculation of the former GWP assets' value in 2018 and a variable amount depending on their performance; and,
- d) The Principals' agreement, "as a condition of the sale," to execute an employment contract with Scotia to ensure the transfer, transition, and operation of the sold GWP assets.

[15] The Principals' employment agreements with Scotia were for two years post-sale. Scotia required Mr. Geller and Mr. Penner to give up their registrations with the Alberta Securities Commission after becoming Key Employees with Scotia. Mr. Geller had fewer clients than Mr. Penner to transition and the two were responsible for distinct kinds of investments. The Key Employees' salaries were \$100,000.00 per year from Scotia under the employment agreements.

[16] Mr. Geller ceased working at Scotia in early 2017 and he formally ended his employment with Scotia by December 31, 2017.

[17] In October 2017, 1832 calculated the first of the two Installment Payments which dropped from a potential \$1,180,000 payment to \$851,350.77 based on the former GWP assets' performance.

[18] Sometime between the two Installment Payment calculations and after Mr. Geller ceased being an 1832 employee, two former GWP clients invested substantial sums with 1832 after significant liquidity events. Mr. Geller had previously been those clients' investment advisor. Mr. Penner and Ms. Wong worked with 1832 employees on the investment plan for those two clients. The Scotia advisors who held valid registrations with the Alberta Securities Commission advised the clients on which stocks to purchase.

[19] In December 2017, Ms. Wong and Mr. Penner decided it was inequitable for Mr. Geller to get an equal share of the Installment Payments.

[20] In July 2018 at a GWP directors' meeting Mr. Geller did not attend, Ms. Wong and Mr. Penner decided to hire Deloitte LLP to provide a valuation opinion on the distribution of the Installment Payments. Deloitte requested information from the three Principals. Mr. Geller objected to and did not participate in the Deloitte process. Deloitte provided a report on November 30, 2018, opining that 0% of the Installment Payments go to Mr. Geller.

[21] In December 2018, 1832 calculated the second of the two Installment Payments at the maximum of \$1,180,000 based on the former GWP assets' performance.

[22] The Installment Payments have been held in trust due to the litigation between the parties.

IV. Summary Judgment Legal Principles

[23] Summary judgment applications can be a valid means to a less expensive and more expeditious way to determine actions (*Hryniak v Maudlin*, 2014 SCC 7 (*Hryniak*) at paras 4, 36, and 67).

[24] The Alberta Court of Appeal has directed that Courts may summarily determine a case where there is no genuine issue requiring a trial (*Windsor v Canadian Pacific Railway Ltd.*, 2014 ABCA 108 at para 13). No trial is required where a judge can reach a fair and just determination on the merits of a motion for summary judgment where the process:

- a. allows the judge to make the necessary findings of fact;
- b. allows the judge to apply the law to the facts; and
- c. is a proportionate, more expeditious and less expensive means to achieve a just result.

(see *Hryniak* at para 49)

[25] In *Weir-Jones Technical Services Incorporated v Purolator Courier Ltd.*, 2019 ABCA 49 at para 47, the Alberta Court of Appeal outlined the proper approach for summary dispositions following *Hryniak* as follows:

- a) Having regard to the state of the record and the issues, is it possible to fairly resolve the dispute on a summary basis, or do uncertainties in the facts, the record or the law reveal a genuine issue requiring a trial?
- b) Has the moving party met the burden on it to show that there is either “no merit” or “no defence” and that there is no genuine issue requiring a trial? At a threshold level the facts of the case must be proven on a balance of probabilities or the application will fail, but mere establishment of the facts to that standard is not a proxy for summary adjudication.
- c) If the moving party has met its burden, the resisting party must put its best foot forward and demonstrate from the record that there is a genuine issue requiring a trial. This can occur by challenging the moving party’s case, by identifying a positive defence, by showing that a fair and just summary disposition is not realistic, or by otherwise demonstrating that there is a genuine issue requiring a trial. If there is a genuine issue requiring a trial, summary disposition is not available.
- d) In any event, the presiding judge must be left with sufficient confidence in the state of the record such that he or she is prepared to exercise the judicial discretion to summarily resolve the dispute.

[26] The Court of Appeal does not require any particular sequence for this approach; the judge hearing the application may determine “during any state of the analysis, that summary adjudication is inappropriate or potentially unfair” (*Weir-Jones* at para 47).

V. Oppression Legal Principles

[27] Oppression is equitable in nature, though it is in s 242 of the *BCA*. A complainant must prove that a corporation, its affiliates, or its directors have acted in a manner that is oppressive,

unfairly prejudicial, or unfairly disregards the interests of a security holder, creditor, director, or officer. Complainants can include a security holder or a director of a corporation (s 239(b)(i) and (ii) of the *BCA*).

[28] In 2008 the Supreme Court of Canada clarified duties of corporate directors and set out a two-part test for complainants to establish oppression (*BCE Inc. v 1976 Debentureholders*, 2008 SCC 69 (*BCE*) at para 68, *Gill v 1176520 Alberta Ltd*, 2020 ABQB 274 (*Gill*) at para 166, *Venture Leasing Corporation v Hanger 11 Corporation*, 2025 ABKB 294 at para 80). First, the complainant must establish that they had reasonable expectations with respect to their treatment by the corporation, its affiliates, or its directors. Second, they must show that the corporation violated these expectations by engaging in conduct that was oppressive, unfairly prejudicial, or unfairly disregarded their interests.

[29] In *BCE*, the Supreme Court identified seven factors that could affect whether a complainant has a reasonable expectation under the first part of the test: general commercial practice, the nature of the corporation, the relationship between the parties, past practice, steps the claimant could have taken to protect itself, representations and agreements, and the fair resolution of conflicting interests between corporate stakeholders (at para 72).

[30] The second part of the test requires complainants to show one of the three kinds of conduct (*Seidel v Kerr*, 2003 ABCA 267 at para 33). Oppressive conduct is burdensome or abusive and suggests bad faith (*BCE* at para 67). Unfair prejudice is less offensive than oppression and may suggest “a less culpable state of mind” (*BCE* at para 67; *Gill* at para 170). Unfair disregard is the least serious of the three (*BCE* at para 94; *Gill* at para 170) and extends the availability of the remedy to instances where the corporation ignored “an interest as being of no importance” (*BCE* at para 67).

[31] The oppression remedy is fact-specific, judged according to the “reasonable expectations of the stakeholders in the context and in regard to the relationships at play” (*BCE* at para 59). Courts exercise discretion in awarding oppression remedies, which are not based on “strict adherence to legal rights” (*Gill* at para 165; *Seidel* at para 35; *BCE* at para 58).

VI. Analysis

[32] The main divergence between the parties lies in the question of whether the allocation of the Installment Payments between the Principals was tied to their two-year-long term or performance as Scotia employees or whether the allocation was purely a function of shareholding.

A. Sheldon Geller’s Position

[33] Mr. Geller says he had a reasonable expectation that he would share equally in the Installment Payments and emphasizes the seventh factor in the first step of the *BCE* analysis, that of the fair resolution of conflicting interests between corporate stakeholders.

[34] He notes that the three Principals worked as equal directors through-out their 20 years at GWP and each owned one-third of GWP. Mr. Geller claims he was integral to GWP’s success over those years, helping to build GWP’s client base. The Principals entered the sale to 1832 with a common understanding the sale proceeds would all be split evenly, as the Initial Payment was, and GWP prepaid taxes for the Installment Payments on that expectation.

[35] Mr. Geller asserts that the parties were each remunerated with salary from Scotia for their work as Key Employees, which compensated them for their work in transitioning GWP's clients to 1832. He says the Installment Payments were not contingent on the Key Employees' performance but rather the performance of the assets, and the conclusions of Deloitte, Ms. Wong, and Mr. Penner reversed that.

[36] Mr. Geller claims he transitioned his clients by April 2017, with 1832 overtaking his investment role, and that he ceased having a role with Scotia by that time. He says his absence did not cause additional work or burden to Ms. Wong or Mr. Penner, and they worked limited hours short of full-time. He further asserts that his transition work did not affect whether the GWP assets hit the targets to maximize the Installment Payments.

[37] Mr. Geller says the Deloitte report was part of a bad faith orchestration by Ms. Wong and Mr. Penner to exclude Mr. Geller from the proceeds of the Installment Payments. For this assertion, he claims the Deloitte report relied on flawed assumptions like attributing full-time hours to Ms. Wong's and Mr. Geller's Scotia work.

[38] Mr. Geller says the agreement between the parties was based on shareholding and not on employment metrics, and there is nothing in any agreement that allows for an altered payment on. Mr. Geller says Ms. Wong, Mr. Penner, and Deloitte ignored Mr. Geller's 20 years of contributions that built up the GWP assets and ignored the principle of shareholder equality. He says the Deloitte report was a pretext for deliberately excluding him from any share of the Installment Payments.

[39] Mr. Geller claims that if these actions do not amount to oppression, they at least amount to unfair prejudice or unfair disregard. He claims that Ms. Wong and Mr. Penner retained and instructed Deloitte without his input or agreement, disregarding his rights as an equal partner, and that they voted him out of his share of the Installment Payments by disregarding his objections to the process and conclusions.

B. Virginia Wong and Doug Penner's Positions

[40] Ms. Wong and Mr. Penner differ from Mr. Geller on several assertions factually and legally, and say these differences demonstrate the need for a trial and why this matter is not appropriate for summary judgment.

[41] They say the Principals agreed they would all honour the two-year employment contracts with Scotia to maximize the performance of the GWP assets and therefore the Installment Payments.

[42] Ms. Wong and Mr. Penner say that Mr. Geller's departure from the Key Employee role was in January of 2017, and they both asked him multiple times to return to continue performing the transition of GWP assets. In particular, they say Mr. Geller would have been important, not to advise clients on stock picks, but to review the 1832 stock picks for previous GWP clients and provide reassurance to the clients. They say that their own performance of their duties as Key Employees at Scotia maximized Installment Payments and minimize risks of client attrition, and there was a link between the Key Employees' responsibilities and the successful transition and performance of GWP assets.

[43] Ms. Wong and Mr. Penner say Mr. Geller threatened to leave Scotia and 1832 with his former GWP clients if Scotia did not release him from his employment contract, and his actions during this time taint his equitable claim for an oppression remedy.

[44] Ms. Wong and Mr. Penner say they and Deloitte tried to involve Mr. Geller in the report's retention and instruction process, but that Mr. Geller did not attend directors' meetings despite having notices, declined to provide Deloitte with information when they asked him, and declined to provide any response to Deloitte's draft report.

[45] They say they relied on the Deloitte report in good faith, acted properly as directors, and Mr. Geller's failure to engage in the process was in bad faith.

C. Main Issues in Dispute Cannot be Resolved through Summary Judgment

[46] In my view, Mr. Geller falls short of irrefutably demonstrating that he maintained an objectively reasonable expectation to share equally in the Installment Payments after he left Scotia. Ms. Wong and Mr. Penner have highlighted sufficient legal and factual issues to present what could be valid defences at trial, making this matter inappropriate for summary judgment.

[47] The Acquisition Agreement does not contain a term that stipulates how the Installment Payments would be allocated between the Principals but does contain the requirement that the three Principals contract as Scotia employees to ensure the transition and operation of GWP assets to 1832. No written agreement between the Principals exists with respect to their expectations of each other for the Scotia employment period, or how the Installment Payments would be allocated either by percentage share or with dependencies. There is no apparent agreement on whether the Installment Payments' allocation would be as dividends or income.

[48] Whether Mr. Geller's departure from Scotia is a breach of representations between the Principals is not subject to an appropriate factual determination on the record before me because the question depends on credibility issues between the Principals to determine their intentions. The resolution of those factual issues will help determine the issue of whether the Respondents reasonably or oppressively withheld any Installment Payment allocation from Mr. Geller.

[49] Mr. Geller emphasizes the seventh factor (fair resolution of conflicting interests) of the first step of the **BCE** test for oppression, but the above conundrum relates to the fifth factor, the representations and agreements between the parties. The main divergence between the parties lies in what Ms. Wong and Mr. Penner say were the representations the Principals made to each other about their commitment to work for two years following the sale to 1832. They say they agreed in the Acquisition Agreement to be two-year Scotia employees, and they represented to each other that they would perform their employment duties as a means of maximizing the Installment Payments. Mr. Geller says he completed his client transition, that he reached a separate agreement with Scotia ending his employment early, and his absence created no extra work for the others nor any losses to the Installment Payment calculation. Ms. Wong and Mr. Penner say that they continued to work at Scotia to, among other things, assure former GWP clients that their interests were safeguarded, and their continuing responsiveness in Mr. Geller's absence was both the purpose of them being Scotia Key Employees for two years and a significant factor in the maximizing of the Installment Payments.

[50] Ms. Wong and Mr. Penner have a different view of what they did to make up for Mr. Geller's absence and ensure the operation of the GWP assets. A trial judge is required to make factual and legal determinations about the Principals' agreements if they existed and about the work done and reassurance provided by Ms. Wong and Mr. Penner with respect to the GWP assets, especially regarding the two former clients who invested substantial sums with 1832 following Mr. Geller's departure. Those determinations, in turn, will assist a trial judge to decide

if Mr. Geller's expectation to share equally in the Installment Payments was a reasonable one, after his 20 years of contributions to GWP and after he departed from Scotia far earlier than the original commitment.

[51] Similarly, the parties are in opposition with respect to the Deloitte report in a manner that is not adequately resolved summarily. Mr. Geller asserts the Deloitte report was in bad faith, essentially arguing it was little more than a ruse to provide plausible cover for a decision Ms. Wong and Mr. Penner had already made to exclude him from the Installment Payments. Mr. Geller says the Deloitte report is based on false assumptions and faulty analysis. Ms. Wong and Mr. Penner say that while they held the opinion that an equal distribution of the Installment Payments was unfair, they retained Deloitte in good faith to get an objective third party to provide a valuation. They say Mr. Geller acted inappropriately by not providing Deloitte with information and then complaining after the fact about Deloitte's conclusions. These disparate positions require credibility findings and analysis of the impact of the Deloitte report, if any, on the directors' duties and reasonable expectations.

[52] Other issues include: a small payment only to Ms. Wong and Mr. Penner and Mr. Geller's theft accusation; what Mr. Geller says was Ms. Wong's withholding of GWP financial information; and what Ms. Wong and Mr. Penner claim were Mr. Geller's threats to breach the Acquisition Agreement with 1832; damages owing to any party; and calculation of lost opportunity to invest proceeds. I have not gone into detail about the parties' positions on these matters. Suffice to say that all these issues may require factual determinations, credibility assessments, and legal analysis to determine whether these confirm any party's assertions about another's conduct and the Principals' obligations to each other either in contract or by statute.

VII. Conclusion

[53] I dismiss the summary judgment application with costs to the Respondents. The parties may write to me with submissions of no more than three pages excluding authorities within 30 days if they cannot agree on costs of this application.

VIII. Note

[54] I make no findings beyond the dismissal of the summary judgment application, but it is my impression after reviewing these materials and hearing from the parties that neither position seems equitable. Nearly ten years have passed since the GWP assets sale and eight years since 1832 calculated the Installment Payments. The Court strongly urges the parties to consider mediating this matter if they have not already done so.

Heard on the 3rd day of December, 2025.

Dated at the City of Edmonton, Alberta this 28th day of May, 2026.

K.A. McLeod
J.C.K.B.A.

Appearances:

Liam Kelly and Spencer Marks
Witten LLP
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Stephen English, K.C.
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