

CITATION: ACS Productions Sound & Lighting Inc. v. Rose, 2026 ONSC 4264
COURT FILE NO.: CL-26-00000074
DATE: 20260731

SUPERIOR COURT OF JUSTICE – ONTARIO [Commercial List]

RE: ACS PRODUCTIONS SOUND & LIGHTING INC.

Applicant

AND:

MELISSA ROSE, EDWIN QUEZADA, 2561876 ONTARIO INC. c.o.b. DIGITAL X ENTERTAINMENT, X MARKS THE SPOT HOLDING CORP, 1001495681 ONTARIO INC., MISSISSAUGA CONVENTION CENTRE LIMITED and 1299148 ONTARIO INC.

Respondents

BEFORE: Justice Jana Steele

COUNSEL: *Amrita Mann & Malika Grewal*, for the Applicant

Gregory Gryguc & Weis Noorani, for the Respondents 2561876 Ontario Inc., Melissa Rose, Edwin Quezada & X Marks the Spot Holdings Corp.

HEARD: July 14, 2026

ENDORSEMENT

[1] The applicant, ASC Productions Sound & Lighting Inc. (“ASC”), seeks, among other things, the appointment of an interim monitor to oversee the finances and operation of 2561876 Ontario Inc., c.o.b. Digital X Entertainment (the “Corporation”). The applicant also seeks an order requiring Melissa Rose (“Rose”) to disclose or provide certain information, documents, and access to the applicant and the monitor.

[2] The respondents, Rose, Edwin Quezada (“Quezada”), the Corporation, X Marks the Spot Holding Corp. (“X Marks”), and 1001495681 Ontario Inc. (“10014”), (collectively, the “Rose Respondents”) bring a cross motion seeking, among other things, an order granting Rose interim control of the day-to-day operations of the Corporation and dismissing the applicant’s motion.

[3] The underlying application is for, among other things, access to documents and information and a declaration under s. 248 of the *Ontario Business Corporations Act*, R.S.O. 1990, c. B. 16 that the respondents Rose, Quezada and the Corporation have engaged in conduct that is oppressive and prejudicial to the interests of the applicant.

[4] The applicant and Rose each own 41% of the shares of the Corporation. Quezada owns 18%. Rose is the President of the Corporation, and a director. Carlos Costa (“Costa”), the principal of ACS, is the other director of the Corporation, and the Secretary.

[5] Under the terms of a shareholders’ agreement in respect of the Corporation, made as of July 25, 2022 (the “Shareholders Agreement”) subject to the requirement of the Corporation to provide shareholders with certain information and access to documentation, Rose is to run the day-to-day operations of the business of the Corporation. Under the Shareholders Agreement, certain actions, such as entering into a transaction with a person not dealing at arm’s length with the Corporation or any shareholders, require consent of all directors (i.e., Rose and Costa).

[6] Following the commencement of the application and at least two case conferences, the parties reached terms of a proposed consent order for operations of the Corporation pending the hearing of the matter. This consent order was accepted by the Court on or about March 25, 2026 (the “Consent Order”). Pursuant to that Consent Order, among other things:

- a. The two bank accounts with the Corporation would be un-frozen immediately and the parties would take any required steps;
- b. The records with the bank would be updated to reflect the correct share ownership of the Corporation;
- c. Disbursements, withdrawals or transfers of funds from the bank accounts may only be made in the ordinary business activities of the Corporation; provided that any disbursement, withdrawal, or transfer of funds from the bank accounts in excess of \$3,000 (single transaction or a series of related transactions) require the prior written consent of ACS and Rose, which consent shall not be unreasonably withheld;
- d. No funds shall be transferred to non-arm’s length parties, except that the Corporation’s rent can be paid to the respondent, X Marks;
- e. Rose and Costa agree that no new contracts, including sponsorships, will be entered into with the Corporation without ACS’s written approval or a further Court Order;
- f. Rose shall not provide discounts to any customers, clients, venues, etc., without ACS’s written approval;
- g. Rose shall provide disclosure of certain documents.

[7] The applicant says that, among other things, the Rose Respondents have disbursed or made transfers of funds from the Corporation in excess of \$3,000 on several occasions without obtaining ACS’s prior written consent contrary to the Consent Order. The Rose Respondents say that they have asked for ACS’s consent, but it has been unreasonably withheld.

[8] The parties also agreed to the appointment of an independent forensic auditor to audit the Corporation's records covering the period from 2022 to present. This agreement was reflected in the endorsement dated May 1, 2026, with Kimmel J. noting that the parties needed to turn their attention to identifying someone to take on the mandate, which should be done as soon as possible. The parties indicated that they have identified the auditor, but the applicant still needs to sign the engagement.

[9] For the reasons set out below, I am satisfied that the interim monitor with a limited mandate should be appointed. Other relief sought by the applicant in the notice of motion that was not addressed by them in their factum or in oral argument is dismissed. The respondents' cross motion is dismissed.

Should the Court Appoint an Interim Monitor?

[10] The applicant asks the court to appoint Michael N.W. Baigel of Baigel Corporation, a Licensed Insolvency Trustee, as monitor. The Rose Respondents oppose the appointment of a monitor. They are of the view that it is unnecessary and yet another cost for the Corporation to bear. As noted above, the Rose Respondents take the position that Rose should have control of the day-to-day operations of the Corporation.

[11] The Rose Respondents attempt to position the proposed monitor as akin to a receiver; however, I do not accept this argument. The proposed monitor would not have the broad powers of a receiver-manager. The monitor's role would be for a limited mandate to:

- a. Review, approve, supervise and monitor all quotes, proposals, sponsorship arrangements, discounts, complimentary services and contracts proposed to be entered into by or on behalf of the Corporation, 10014, 1001500372 Ontario Inc. ("10015") and X Marks (each of 10014, 10015, and X Marks is controlled by Rose and has been carrying on business under the Digital X Entertainment name);
- b. Review, authorize, supervise and monitor all payments, disbursements, withdrawals and transfers of funds made by or on behalf of the Corporation, 10014, 10015 and X Marks, and ensure that no payment, disbursement, withdrawal or transfer is made except in compliance with the Consent Order;
- c. Report to the parties and to this Court, at intervals to be fixed, with respect to the Corporation's contracts, payments and financial activity; and
- d. Be granted such access to the books, records, accounts, premises and personnel of the Corporation, 10014, 10015 and X Marks as is reasonably required to discharge the mandate.

[12] Although 10015 is not a respondent, the applicant served its materials on 10015 at its registered head office. The directors and officers for 10015 are Rose and Quezada.

[13] The Rose Respondents also point to the fact that a forensic auditor has been appointed. They argue that there is therefore no need for a monitor and that it would be duplicative. The Rose Respondents further submit that the additional expense of the monitor on top of the cost of the forensic auditor will cause further financial strain on the Corporation.

[14] As noted by the applicant, the forensic auditor will investigate what has already occurred; it will not, however, provide any prospective protection between now and the hearing of the oppression application.

[15] Section 101(1) of the *Courts of Justice Act* R.S.O. 1990, c. C.43, provides that the court may, by interlocutory order, appoint a receiver or receiver and manager where it is just or convenient to do so.

[16] Under section 161(1) of the *Business Corporations Act*, R.S.O. 1990, c. B.16 (“OBCA”):

A registered holder or a beneficial owner of a security or, in the case of an offering corporation, the Commission may apply, without notice or on such notice as the court may require, to the court for an order directing an investigation to be made of the corporation or any of its affiliates.

[17] Although the provisions in the statutes do not refer to “monitors”, the court has interpreted these provisions to include other creatures of the court, including monitors: *340268 Ontario Limited v. Georghiades and Georghiades v. Georghiades*, 2024 ONSC 6168, [2024] O.J. No. 5326, at paras. 102-108.

[18] As noted in *Georghiades*, at para. 125, the evidentiary threshold to appoint an inspector under section 161 of the OBCA is low.

[19] In *Georghiades*, at para. 160, Black J. explains that when considering an appointment of a receiver, monitor, inspector, or the like, the nature and stringency of the test to be applied will be dictated by the nature of the role and mandate proposed:

- a. The precise nature and stringency of the test to be applied relative to a Proposed Appointee depends upon the precise nature of the role and mandate at issue, and:
 - i. It is only where the applicant seeks the appointment of a receiver-manager, to take control of the business and secure assets for potential judgment that the elevated *RJR-MacDonald* three-part test, including a requirement for a strong *prima facie* case, is apt;
 - ii. Where the mandate and role is as a monitor, or as an inspector with a limited mandate to obtain and report on a company’s financial status and on transactions of interest, there is a relatively low threshold, in the nature of a *prima facie* case, for which a raised index of suspicion may be a sufficient basis;

- iii. If the appointment of a court officer is sought pursuant to s. 101 of the CJA, then in assessing whether the proposed appointment is “just and convenient” the court should consider the array of factors underpinning injunctive relief, but, unless a full-blown receiver/manager is sought, the first prong of the test is a *prima facie* case, which can as noted be a relatively low threshold depending on the specific circumstances and request;
- iv. As the proposed powers and mandate for the suggested court officer increase, so too does the stringency of the test to be applied, and in particular, the greater the proposed forensic scope of the mandate, the greater the scope of control proposed (over assets and management) the clearer and more compelling the evidence need be, approaching the strong *prima facie* case threshold;
- v. The extent to which the assets of the corporate entity or entities are at risk of eroding factors into the analysis of irreparable harm, particularly if those are the only assets available for satisfaction of any judgment;
- vi. The balance of convenience is a factual matter to be determined in each case, and the analysis should import such factors as cost, disruption, alternative means of obtaining the information sought, and whether or not the request for information is in fact an effort to gain a tactical advantage;
- vii. In every case, if considering a remedy, the court should strive to tailor the remedy to the situation at hand, and only order what is necessary to preserve the claimant’s ability to recover a judgment as balanced against what is necessary to protect the defendant’s interest, including allowing it to carry on business as appropriate.

[Emphasis added.]

[20] The applicant submits that the low threshold of a *prima facie* case of oppression should apply because the powers and mandate proposed for the monitor are supervisory in nature, not controlling. The monitor would be there to provide oversight. I agree.

[21] An appointment under s. 101(1) of the *Courts of Justice Act* may be made where it is “just or convenient” to do so. The applicant must first establish a *prima facie* case.

[22] In my view, there is sufficient evidence of oppressive conduct to make out a *prima facie* case. Costa’s evidence is that since the fall of 2022, Rose and Quezada have excluded ACS from the Corporation’s operations and have made material decisions without ACS’s knowledge or consent. Among other things, Costa discovered that Rose had caused the Corporation to enter into a lease of the Digital X premises with X Marks, a non-arm’s length party controlled by Rose. Further, since early 2025, Costa has repeatedly requested that Rose and Quezada provide complete financial disclosure for the Corporation, which has not been done (although very recently, about 11 boxes of documents were delivered to the accountant for ACS to access). I further note that

following the Consent Order, there were numerous payments authorized by Rose in excess of \$3,000 that appear to have been made without ACS's prior written consent. Rose says she requested consent and was refused. She provides documentary evidence supporting one subcontractor where Costa refused to provide consent, requesting additional information (the "Santamaria Refusal"). However, there is no documentary evidence that consent was even sought in respect of the other payments made in excess of \$3,000 after the Consent Order. Costa's evidence is that he did not approve the payments and that "Rose did not even attempt to seek [his] consent prior to making these payments." There is a paper record before me. No cross-examinations were completed.

[23] The Consent Order also provided that neither Rose, nor Costa, nor any other director of the Corporation could withdraw funds for, among other things, commissions, without prior written approval of the other shareholders or a Court Order. Costa's evidence is that Rose continued to invoice the Corporation for commissions, none of which were approved by Costa. Costa's evidence includes copies of invoices for commissions, two of which are dated after the Consent Order, and excerpts from QuickBooks showing the payments to X Marks. There also appear to be payments made to companies related to Rose after the Consent Order.

[24] Rose's evidence is that she was placed in a position where she had to make payments without ACS's consent, because the payments were required to conduct ordinary business activities. She states that failure to make these payments would significantly harm the Corporation. Based on the limited correspondence related to the Santamaria Refusal, it is clear that there is a complete breakdown in the relationship between these shareholders. Amending the Consent Order to, for example, increase the monetary threshold requiring Costa's approval will not alleviate the need for the shareholders to communicate and agree on key operational issues. I don't see how the imposition of an independent monitor, with a limited mandate, looking out for the best interests of the Corporation, would prevent the conduct of ordinary business activities. In the circumstances, it may be the most expedient.

[25] I also note that certain actions taken by Costa appear to have been detrimental to the Corporation. For example, Costa withdrew about \$285,000 from the Corporation's bank account contributing to the bank's decision to freeze the Corporation's accounts. Rose states that the reason for the incorporation of 10014 was to facilitate banking for the Corporation while the Corporation's account was frozen, not to compete with the Corporation. Rose argues that because ACS does not have "clean hands", the relief sought by the applicant should be denied.

[26] I note that the appointment of a monitor would also assist with ensuring that there are no future unauthorized withdrawals from the Corporation's accounts and that the Corporation's bank accounts remain unfrozen.

[27] Factors that the court has considered in determining whether it is just or convenient to appoint a court-officer include:

- a. The nature of the property;
- b. The rights and interests of all parties in relation to the property;

- c. The conduct of the parties;
- d. The length of time that a receiver may be in place and ways in which the role can be facilitated;
- e. The balance of convenience to the parties;
- f. The effect of the order on the parties; and
- g. The cost of the receivership to the parties:

Hands-On Capital Investments Inc. v. DMCC Holdings Inc., 2023 ONSC 2417, [2023] O.J. No. 1872, at para. 65.

[28] Considering the above factors, I am satisfied that it is just or convenient to appoint the interim monitor with a limited, supervisory role. I recognize that there is an additional cost; however, in the circumstances where the parties are unable to operate under the terms of a consent order, and given the distrust between the parties, the proposed interim monitor is appropriate. Both Rose and Costa, the two directors and majority shareholders, have an interest in the Corporation.

[29] Further, the balance of convenience favours appointing an interim monitor with a limited, supervisory role. There is a complete breakdown of trust between the parties. The applicant has made allegations of oppression and dissipation of the Corporation's assets. The proposed interim monitor will impose minimal prejudice on Rose. Rose will retain day-to-day management of the business, subject only to independent oversight of contracts and payments by the monitor. In my view the interim monitor with a limited supervisory role is the least intrusive interim remedy – Rose can continue to operate the Corporation, but an independent monitor will have oversight.

[30] I am further satisfied that the following three-part test for the appointment of an inspector under s. 161 of the *OBCA*, as noted in *Georghiades* at para. 154, has been met:

- a. The applicant must be a security holder;
- b. One of the situations listed in section 161(2) of the *OBCA* must be established on a *prima facie* basis; and
- c. The appointment must be appropriate, having regard to its usefulness and reasonableness in the circumstances, including its expected costs and benefits.

[31] ACS holds 41% of the shares of the Corporation.

[32] As set out above there is evidence of oppressive conduct that goes beyond the “index of suspicion” threshold. Among other things, it appears that ACS was not afforded the financial transparency that it bargained for in the Shareholder Agreement. It also appears that certain actions may have been taken without the consent of both directors, contrary to the Shareholder Agreement. Further, as discussed above, following the Consent Order, Rose caused the Corporation to make

about six payments over \$3,000 without obtaining ACS's prior written consent, and caused the Corporation to pay her commissions.

[33] Rose's evidence is that she agrees that there has been a breakdown in the parties' relationship. However, she states that the compliance issues related to the Consent Order are a result of ACS/Costa's actions, not her unwillingness to comply with the Consent Order. She asks that the status quo continue, with her controlling day-to-day operations "with continued transparency obligations to ACS." There has been a lack of transparency to ACS for some time, which is part of what necessitated the applicant commencing the application.

[34] I am satisfied that the appointment of a monitor, with a very limited mandate, is appropriate in the circumstances. There is a complete lack of trust between the parties. They cannot effectively work together pending the application – this is clear given their inability to comply with the protocol in place under the Consent Order. An independent monitor will assist in the interim. I agree with the applicant that an independent professional is necessary to safeguard the assets and viability of the Corporation pending the determination of the application. Rose will continue to operate the business, with the oversight of the monitor. The cost of the monitor will be borne by the Corporation in the first instance, subject to reallocation. The monitor requires an initial retainer of \$15,000.

Disposition and Costs

[35] The Court Orders the following:

- a. Michael N.W. Baigel of Baigel Corporation is appointed as interim monitor (the "Monitor") of the respondent Corporation for the limited purpose, and on the terms set out in paragraph b. below until trial or further Court Order.
- b. The Monitor's limited mandate shall be to:
 - i. Review, approve, supervise and monitor all quotes, proposals, sponsorship arrangements, discounts, complimentary services and contracts proposed to be entered into by or on behalf of the Corporation, 10014, 10015, and X Marks;
 - ii. Review, authorize, supervise and monitor all payments, disbursements, withdrawals and transfers of funds made by or on behalf of the Corporation, 10014, 10015 and X Marks, and to ensure that no payment, disbursement, withdrawal or transfer is made except in compliance with the Consent Order;
 - iii. Report to the parties and to this Court, at intervals to be fixed, with respect to the Corporation's contracts, payments and financial activity; and
 - iv. Be granted such access to the books, records, accounts, premises and personnel of the Corporation, 10014, 10015 and X Marks as is reasonably

required to discharge the mandate, with the costs of the Monitor to be borne as this Court may direct.

- c. Subject to paragraph f. below, the Monitor shall be paid its reasonable fees and disbursements, at its standard rates, incurred in the performance of its duties under this Order, and such fees and disbursements shall be paid by the Corporation as an expense of the Corporation, subject to reallocation as provided in paragraph e. below.
- d. The Corporation shall pay the Monitor's retainer of \$15,000 within fifteen (15) days of the Order.
- e. The payment of the Monitor's fees and disbursements by the Corporation is without prejudice to any party's right to seek an order at trial, or following the report of the jointly-appointed forensic auditor requiring another party to bear personally, and to repay to the Corporation, all or part of the Monitor's fees and disbursements.
- f. The Monitor shall pass its accounts before a judge of the Commercial List from time to time and the fees and disbursements of the Monitor shall be subject to the approval of this Court.
- g. Rose shall provide the Monitor with access to any and all information and documents in Rose's possession or control that the Monitor reasonably requires to perform its duties under this Order.

[36] The balance of the relief sought by the applicant is dismissed.

[37] Rose's cross-motion is dismissed.

[38] Rose shall pay the applicant's costs fixed in the amount of \$15,000 (inclusive of taxes and disbursements) within 30 days of the Order.

Justice Jana Steele

Date of Release: July 31, 2026