

COURT OF KING'S BENCH OF MANITOBA

B E T W E E N:

CHRISTINE REDENIUS,	) <u>Emily Zheng</u>
	) <u>Kelly Osaka</u>
plaintiff,	) for the plaintiff
	)
- and -	)
	) <u>Henri Rosenthal</u>
NORGROW CANADA INC. and	) On behalf of the defendants
HENRI ROSENTHAL,	)
	)
defendants.	) Judgment Delivered:
	) September 16, 2026

WOOLLEY J.

OVERVIEW

[1] Christine Redenius ("Ms. Redenius") is a resident of Belmond, a community located in the state of Iowa in the United States of America. On or about June 10, 2021, Ms. Redenius says that she entered into a share subscription agreement (the "Agreement") with the defendant Norgrow Canada Inc. ("Norgrow"). Norgrow is a corporation incorporated in the province of Manitoba with its registered office located in Winnipeg.

[2] The defendant Henri Rosenthal ("Mr. Rosenthal") is a director and shareholder of Norgrow. Mr. Rosenthal is a British citizen, residing in the United Kingdom.

[3] Ms. Redenius alleges that Norgrow has failed to comply with the terms of the Agreement, and she has filed a statement of claim seeking judgment against Norgrow for breach of the Agreement. She has also claimed against Mr. Rosenthal personally alleging that, as a director and officer of Norgrow, he acted in a manner that was oppressive, unfairly prejudicial and that unfairly disregarded Ms. Redenius' interests as a shareholder contrary to s. 234 of ***The Corporations Act***, C.C.S.M. c. C225 (the "**Act**").

[4] Both defendants have objected to this Court taking jurisdiction over this matter and are seeking a stay of proceedings. The defendants are also seeking an order to remove Mr. Rosenthal as a defendant or alternatively striking out the statement of claim against him on the ground that he was acting in his role as a corporate representative of Norgrow, and not in any personal capacity.

[5] Ms. Redenius is seeking to move forward on this matter and has brought a motion requesting that a date be imposed for the filing of the statement of defence.

BACKGROUND AND PROCEDURAL HISTORY

[6] Ms. Redenius filed her statement of claim on September 8, 2025 and on October 24, 2025, she brought a motion to validate service on both defendants.

[7] On November 25, 2025, one day before the motion to validate service was heard, the defendants filed a motion asking this Court to strike out the statement of claim and/or stay the action on the grounds that:

- (a) the claim is an abuse of process;
- (b) the claim had not properly been served;
- (c) lack of procedural fairness; and

(d) the Manitoba Courts lacked jurisdiction over the subject matter or the defendants.

[8] On November 26, 2025, Senior Associate Judge Clearwater granted an Order ("2025 Order") that included the following relief:

- (a) service of the statement of claim was deemed to have been received by the defendants and validated as of November 26, 2025;
- (b) service of the defendants' notice of motion and affidavit of Mr. Rosenthal, sworn November 14, 2025, were deemed to be received by the plaintiff and validated as of November 26, 2025;
- (c) service of all future pleadings, notices and documents required to be served on the defendants may be served by email to henri@norgrow.com, with such service deemed effective five days after any document is so served, and by ordinary mail to the defendants' address of choice: 14 Barn Hill, Stamford, Lincolnshire, United Kingdom, PE9 2AE;
- (d) the defendants' motion seeking to strike out the statement of claim as an abuse of process or for lack of proper service was dismissed;
- (e) alternatively, the defendants' motion to set aside the statement of claim for procedural unfairness was dismissed;
- (f) the balance of the relief, including the challenge to this Court's jurisdiction, was adjourned to be heard at a later date; and

(g) the requirement for the defendants to file and serve a statement of defence was stayed until the balance of the defendants' motion has been determined by this Court.

[9] On March 24, 2026, the defendants filed a further motion under Rule 21.01 of the ***Court of King's Bench Rules***, M.R. 553/88, for an order to remove Mr. Rosenthal as a defendant in the action, or alternatively an order striking out the claim against him personally on the basis that the statement of claim disclosed no reasonable cause of action.

[10] On April 13, 2026, Ms. Redenius filed a motion seeking to lift the stay on the requirement of the defendants to file a statement of defence in this matter and for an order that the defendants provide their defence within 20 days.

[11] The parties appeared before me at a case management conference on May 19, 2025. At that conference the parties agreed to deal with the motions sequentially at a contested hearing that was scheduled for June 8, 2026. The parties agreed that the motions should be heard in the following order:

- (a) first, the defendants' motion challenging this Court's jurisdiction;
- (b) second, the defendants' motion to strike the claim against Mr. Rosenthal; and
- (c) third, the Ms. Redenius' motion to lift the stay of the requirement to file a defence.

POSITIONS OF THE PARTIES

Defendants' Position

[12] The defendants say this Court has no jurisdiction over this matter. While they admit that Norgrow is incorporated in Manitoba and has its registered office in Winnipeg, they suggest that the actual business of Norgrow is conducted from the United Kingdom. Mr. Rosenthal objects to this Court's jurisdiction over him personally on the basis that he is a British citizen, resident in the United Kingdom with no presence or domicile in Manitoba.

[13] The defendants argue that prior to her entry into the Agreement, Ms. Redenius was fully aware that Norgrow was functionally operated from the United Kingdom. At all material times, the defendants say that Ms. Redenius communicated to Norgrow exclusively through Mr. Rosenthal, and she was aware that he was based in the United Kingdom.

[14] The defendants further say that an agreement between the parties dated September 1, 2022 superseded the Agreement, and that this new agreement contained a clause which would allow Norgrow to select the forum for the resolution of disputes. The September 1, 2022 agreement was not put into evidence by either the defendants or Ms. Redenius.

[15] While the defendants did not rely on any case law on the issue of jurisdiction, they did refer to the "real and substantial connection" test in Canadian law and argue that the connection between Manitoba and the dispute is a weak one. The defendants say that

the case has a stronger connection to the United Kingdom than to Manitoba and submit that this Court should decline jurisdiction in the circumstances.

[16] On the motion to remove Mr. Rosenthal as a defendant or strike the statement of claim against him, the defendants rely on the separate corporate personality of Norgrow. They argue that the Agreement is only between Ms. Redenius and Norgrow and that Mr. Rosenthal was not a party. The defendants argue that Ms. Redenius was required to plead facts which demonstrated an independent cause of action to have a reasonable claim against Rosenthal.

[17] The defendants argue that there was no allegation of fraud or dishonesty, nor was there any assertion that a guarantee was given by Mr. Rosenthal in his personal capacity. The defendants say at all times that Mr. Rosenthal was acting in his capacity as an officer and director and therefore the claim against him personally should be dismissed.

Plaintiff's Position

[18] Ms. Redenius says that this Court has jurisdiction to hear this matter and that Manitoba is the most appropriate forum to hear a dispute arising from the Agreement. She argues the Agreement contains a choice of law and forum selection clause which clearly identifies Manitoba as the jurisdiction where disputes should be heard. Article 7.1 of the Agreement reads:

7.1 This Subscription Agreement shall be governed by and construed in accordance with the laws of Manitoba, Canada and the federal laws applicable therein. The parties hereto attorn to the non-exclusive jurisdiction of the courts of Manitoba, Canada with respect to any actions arising out of this Subscription Agreement.

[19] Ms. Redenius relies upon this Court's decisions in ***Commercial Union Assurance Company of Canada v. National Union Fire Insurance Company of Pittsburgh, PA et al.***, 2006 MBQB 173, and ***Commonwealth Insurance Co. v. American Home Insurance Co.***, 2008 MBQB 112, which speak to the role of choice of law and forum selection clauses in identifying both the law to be applied to the dispute and the forum in which it should be heard. This Court has indicated that the parties' choice of forum should ordinarily be respected (***Commonwealth Insurance Co.***, at para. 41).

[20] Further, Ms. Redenius states that the Supreme Court of Canada in ***Z.I. Pompey Industrie v. ECU-Line N.V.***, 2003 SCC 27 (CanLII), [2003] 1 S.C.R. 450, held that forum selection clauses are "generally to be encouraged by the courts as they [enhance] certainty ... order and fairness" in private transactions. The court endorsed the "strong cause" test for setting aside a forum selection clause, holding that the burden is on the party seeking to set aside the clause to show good reason why it should not be bound by the clause (at para. 20).

[21] Ms. Redenius argues that the defendants have failed to show a strong cause, or indeed any cause outside of Mr. Rosenthal's residence that would support any deviation from the forum selected by the parties. She says that the defendants have failed to demonstrate that it would be inconvenient, unfair or against the interests of justice for the matter to be heard in Manitoba.

[22] In addition to the forum selection clause, Ms. Redenius says there are other factors connecting the claim to Manitoba, including Norgrow's choice to incorporate in the province and its ongoing maintenance of a registered office located in Winnipeg.

[23] As Norgrow is a Manitoba corporation it is subject to **Act**, including s. 234 dealing with oppressive conduct. As Mr. Rosenthal was (and continues to be) a director of Norgrow, Ms. Redenius argues that he is brought within the jurisdiction of the Manitoba Courts for the purpose of assessing his conduct as a director.

[24] Ms. Redenius says that as all matters at issue in the statement of claim arise from either the Agreement or the way Norgrow was operated, there is no other jurisdiction with a more real and substantial connection to the matters in dispute than Manitoba.

[25] In response to the motion to strike the statement of claim against Mr. Rosenthal personally, Ms. Redenius relies on **R. v. Imperial Tobacco Canada Ltd.**, 2011 SCC 42, where the court held: “[a] claim will only to be struck out if it is plain and obvious, assuming the facts pleaded to be true, that the pleading discloses no reasonable cause of action” (at para. 17).

[26] Ms. Redenius says that in considering the motion to strike, courts will not ordinarily consider affidavit evidence as the facts pleaded are taken to be true, or capable of proof. When considered in that context, Ms. Redenius argues that the claim against Mr. Rosenthal should stand. The statement of claim states that Mr. Rosenthal is the sole director and voting shareholder of Norgrow and is therefore subject to a claim under s. 234 the **Act**.

[27] As to the issue of the personal liability of corporate directors for oppression claims, Ms. Redenius relies on the Supreme Court of Canada’s decision in **Wilson v. Alharayeri**, 2017 SCC 39. In that case, the Court held that in order to establish the personal liability of a director, a claimant must show that the conduct complained of is “attributable to the

director” (at para. 47) and that personal liability is a remedy that fits the circumstances. In considering whether personal liability is a fitting remedy, the Supreme Court of Canada has indicated that “personal benefit[s]” and acting in “bad faith” are “hallmarks” (although not necessarily pre-requisites) for a finding of personal liability (at para. 50).

[28] In this case, Ms. Redenius has pleaded that Mr. Rosenthal’s repeated assurances that her returns were “guaranteed” and that she would be able to withdraw her capital at any time after the initial one-year term created an expectation that her money would be returned. She further pleads that Mr. Rosenthal’s refusal to return the money without a court order breached those reasonable expectations, and to the extent that he acted in bad faith or preferred his own interests to hers, he should be held personally liable.

[29] On the motion to impose a date for the filing of the statement of defence, Ms. Redenius agreed that the issue of jurisdiction needed to be addressed first, and that in any event, the stay imposed by Senior Associate Judge Clearwater will be resolved through the disposal of the defendants’ motions.

ISSUES

[30] Based upon the evidence provided and the submissions of the parties, the following issues arise:

1. Can this Court hear this matter, and if it can, should it?
2. Is there an action in law against Mr. Rosenthal, and if there is, does the statement of claim disclose a reasonable cause of action?
3. If the defendants are required to defend the matter in Manitoba, what date should be set for the filing of a statement of defence?

Issue 1: Can this Court hear this matter, and if it can, should it?

[31] In various points of their materials, the defendants have claimed that this Court has no jurisdiction over the defendants, that there is no real and substantial connection between the dispute and Manitoba, and that there are more substantial connections to the United Kingdom.

[32] A court's jurisdiction may be established in different ways. The three most common sources of jurisdiction are: (a) presence-based jurisdiction; (b) consent-based jurisdiction; or (c) assumed jurisdiction. Decisions with respect to jurisdiction are binary in nature – either a court has jurisdiction or it does not. There is no exercise of discretion involved. Determining whether a court has jurisdiction answers the question of whether a court can hear a proceeding brought before it.

[33] The consideration of whether or not there is a forum that has a closer or more appropriate connection with the dispute invokes the doctrine of *forum non conveniens*. This doctrine is only applicable once a court's jurisdiction over a matter has been established (or agreed to) and is therefore considered separate and apart from the question of whether a court has jurisdiction. It recognizes that in some instances, there can be more than one court with a claim to jurisdiction over a matter and it calls upon the court to consider whether another forum is the more appropriate location to have the claim heard. Determining the issue of *forum non conveniens* answers the question of whether a court should exercise its jurisdiction over a matter.

[34] The general nature of the defendants' argument requires consideration of whether this Court can and should hear this dispute.

(a) Presence-based Jurisdiction

[35] Canadian courts have long recognized that they have jurisdiction over parties served with an originating process in their own province (***Chevron Corp. v. Yaiguaje***, 2015 SCC 42, at para. 83).

[36] Where jurisdiction is based upon the presence of the party in the province, there is no need to establish a “real and substantial connection” between the province and the subject matter of the action (***Chevron Corp.***, at para. 87).

[37] The corporate search provided as Exhibit “B” to the affidavit of Ms. Redenius sworn December 11, 2025 indicates that Norgrow is an active Manitoba corporation and has been so continuously since July 24, 2019. Its registered office is in Winnipeg, Manitoba, although its mailing address is listed as an address in the United Kingdom.

[38] While Mr. Rosenthal argued that the company is administered from the United Kingdom, Norgrow has chosen in each of its annual returns to maintain Manitoba as its home jurisdiction. Had it adopted the United Kingdom or some other place as its home jurisdiction, it would have been required to register as an extra-provincial corporation. Registering as an extra-provincial would entail additional requirements, including providing an attorney for service in Manitoba for Norgrow.

[39] For Mr. Rosenthal personally, the evidence is clear that he continues to serve as a director and officer of Norgrow. On Norgrow’s annual returns, Rosenthal’s mailing address is listed as Box 46122, Westdale, Winnipeg, Manitoba, R3R 3S3 (essentially the same address as Norgrow’s registered office). Despite the information provided to the Manitoba Companies Office by the defendants, Mr. Rosenthal is adamant that he does

not maintain a physical presence in Manitoba. The evidence tendered by Ms. Redenius in relation to service is supportive of Mr. Rosenthal's claim that he maintains no physical presence in Manitoba.

[40] In this case, the question of where the parties were served is complicated by the fact that service was not effected in the usual way but rather was validated through the 2025 Order.

[41] The evidence before me indicates that Norgrow has at all times had a registered office in Manitoba and therefore was present here at the time the 2025 Order was pronounced. On that basis, I find that this Court has presence-based jurisdiction over the claim against Norgrow.

[42] The evidence is not the same for Mr. Rosenthal personally. Although still an active director and officer of Norgrow at the time of service, there is no evidence that Mr. Rosenthal was present in Manitoba when the 2025 Order was pronounced. Accordingly, this Court cannot assert presence-based jurisdiction over Mr. Rosenthal.

(b) Consent-Based Jurisdiction

[43] A court may also have jurisdiction over a matter through the consent of the parties. Consent can be found through the parties submitting to the court's jurisdiction by attornment or through a contractual agreement such as a forum selection clause.

[44] Although there appears to be some factual disagreement between the parties as to whether the Agreement is the most current agreement between them, the claim as pleaded by Ms. Redenius is based upon the Agreement and it was the only one put into evidence by either party. As the consideration of jurisdiction requires the facts pleaded

to be viewed as true or provable, the provisions of the Agreement must be considered. Article 7.1 of the Agreement, as noted above, confirms that the courts of Manitoba will have non-exclusive jurisdiction over any actions arising from the Agreement.

[45] The Supreme Court of Canada discussed the interpretation of forum selection clauses in the decision of ***Douez v. Facebook, Inc.***, 2017 SCC 33 (at paras. 23-40). Citing from its decision in ***Z.I. Pompey***, the Supreme Court elaborated on its two-step approach for determining whether a forum selection clause is enforceable. The first step requires the party seeking to enforce the clause to show that the clause is “valid, clear and enforceable, and that it applies to the action before the court” (***Douez***, at para. 28). If the party discharges that burden, the onus shifts to the party resisting the clause to show a “strong cause” why the forum selection clause should not be enforced (***Douez***, at para. 29).

[46] The first step is largely a question of contractual interpretation and can involve arguments around the certainty of the clause or whether it applies to the dispute in question. Other contractual defences, such as “unconscionability, undue influence or fraud” can also be used as arguments against the applicability of such a clause (***Douez***, at para. 28).

[47] The second step requires a review of the circumstances surrounding the use of the clause to determine if the enforcement of the clause would result in significant inconvenience, unfairness or would result in an otherwise unjust outcome. While the courts are usually content to allow the parties to abide by their agreements, there are

circumstances where considerations of public policy might negate a forum selection clause.

[48] The forum selection clause in the Agreement is straightforward and unambiguous. There is a clear intention to submit to the jurisdiction of the courts of Manitoba with respect to any actions arising out of the Agreement. The reference to the court's jurisdiction as "non-exclusive" in Article 7.1 simply recognizes that another forum could claim jurisdiction as well, but it does nothing to lessen the argument that the parties have specifically identified Manitoba as their agreed jurisdiction for the resolution of disputes. There is no suggestion that the clause was included in the Agreement through fraud, inequality of bargaining power, or that it is otherwise unconscionable.

[49] The scope of the forum selection clause is broad. As the clause applies to "any actions arising out of" the Agreement, it encapsulates not only breaches of the Agreement itself, but also tort claims or other statute-based claims which involve actions taken pursuant to the Agreement. (See ***Scalas Fashions Ltd. v. Yorkton Securities Inc.***, 2003 BCCA 366, at paras. 34-41).

[50] The broad wording of the forum selection clause brings both the contractual claim and the oppression claim within the scope of the forum selection clause. The allegations in the claim all "arise out of" the manner in which the Agreement was conducted by the parties. While Mr. Rosenthal is not personally a party to the Agreement, the factually intertwined nature of the oppression action against him and the contractual dispute against Norgrow require the matters to be heard together. In such circumstances, the choice of forum selection clause will govern the oppression

claim even though the individual director is not a party to the agreement. (See ***Novatrax International Inc. v. Hägele Landtechnik GmbH***, 2016 ONCA 771, at paras. 16-25.)

[51] The defendants' reply with respect to the forum selection clause in the Agreement was that a subsequent agreement between the parties had replaced it. The defendants failed to put this alleged agreement into evidence. I have no basis to find that the forum selection clause is not operative, and I see nothing in the surrounding circumstances that would make it unfair to hold the parties to the text of the Agreement. The defendants have failed to provide a "strong cause" why the clause should not be enforced. I therefore find that the forum selection clause contained in the Agreement provides this Court with jurisdiction over both Norgrow and Mr. Rosenthal.

(c) Assumed Jurisdiction

[52] Canadian courts have established that in certain circumstances, it is appropriate to assert jurisdiction in cases even where neither presence-based jurisdiction nor consent-based jurisdiction exists. This is commonly referred to as assumed jurisdiction. A number of appellate and Supreme Court decisions have considered the principles that govern assumed jurisdiction and have developed and refined the "real and substantial connection" test as a way to determine when a court can assume jurisdiction over an out-of-province defendant (***Club Resorts Ltd. v. Van Breda***, 2012 SCC 17, at para. 20; ***Morguard Investments Ltd. v. De Savoye***, 1990 CanLII 29 (SCC), [1990] 3 S.C.R. 1077; ***Muscutt v. Courcelles***, 2002 CanLII 44957 (ON CA), 60 O.R. (3d) 20 (Ont. C.A).

[53] The leading case on assumed jurisdiction remains the Supreme Court of Canada's decision in ***Van Breda***, which establishes a two-part test to determine whether a real and substantial connection exists between the case and the forum in which the action was commenced. The first step requires the plaintiff to establish that there is a "presumptive connecting factor" between the action and the forum. If the plaintiff succeeds in showing that a presumptive connecting factor exists, the burden shifts to the defendant who is provided an opportunity to rebut the presumption.

[54] The Supreme Court in ***Van Breda*** did not provide a closed list of presumptive connecting factors, as it recognized that the nature of differing claims may result in new factors being established, but it did identify the following as presumptive connecting factors:

[90] ... :

- (a) the defendant is domiciled or resident in the province;
- (b) the defendant carries on business in the province;
- (c) the tort was committed in the province; and
- (d) a contract connected with the dispute was made in the province.

[55] Once a presumptive connecting factor is identified, the defendant has the opportunity to rebut the presumption by bringing forward evidence that demonstrates that the presumptive connecting factor "does not point to any real relationship between the subject matter of the litigation and the forum or points to only a weak relationship between them" (***Van Breda***, at para. 95). While a wide range of factors could be considered in determining whether the presumption was rebutted, the court held that if

it “would not be reasonable to expect that the defendant would be called to answer proceedings” in the forum chosen by the plaintiff, the presumption would be rebutted and a real and substantial connection would not exist (*Van Breda*, at para. 97).

[56] The opportunity for the defendant to rebut the presumption requires the court to undertake a cautious examination to ensure that the presumptive connecting factor actually results in a real and substantial connection being established. As the Supreme Court of Canada set out in *Sinclair v. Venezia Turismo*, 2025 SCC 27, the defendant is not under a “‘heavy’ burden” to rebut the presumption. The rebuttal involves only “a shift in burden and perspective, not a shift in difficulty” (at para. 74).

[57] Norgrow’s creation as a Manitoba corporation in 2019 and its annual renewal of that registration with the Manitoba Companies Office is a very strong presumptive connecting factor to Manitoba, as it is domiciled here. For Mr. Rosenthal personally, his ongoing commitment to serve as a director and officer of a Manitoba corporation is also a presumptive connection to Manitoba.

[58] The nature of the case also gives rise to further presumptive connections. The cause of action against Mr. Rosenthal personally is based upon Manitoba law and the allegations arise from the actions he took while acting as a director and officer of a Manitoba corporation. The share purchase transaction which created the relationship between the parties (i.e., the Agreement) closed at Norgrow’s registered office in Winnipeg, and the Agreement called upon all notices (including disputes) to be sent to Norgrow’s registered office address in Winnipeg. I am satisfied that there are multiple

presumptive connecting factors between the Agreement, Norgrow, Mr. Rosenthal and the Province of Manitoba.

[59] In terms of arguments to rebut the presumptive connecting factors, the only arguments offered by Norgrow and Mr. Rosenthal were that, at all material times, the company was operated from the United Kingdom and that Mr. Rosenthal does not maintain a physical presence in Manitoba.

[60] These arguments are not sufficient to rebut the presumptive connecting factors. Although the operations of Norgrow may have been administered from the United Kingdom, at all times it chose to maintain Manitoba as its home jurisdiction. While I am satisfied that Mr. Rosenthal has shown he has few connections to Manitoba, the connections that do exist are important. At all material times he was registered with the Manitoba Companies Office as a director and officer of Norgrow, and has updated that registration annually using a Manitoba address.

[61] I find that it is entirely reasonable in the circumstances of this case for both Norgrow and Mr. Rosenthal to have expected to answer legal claims in Manitoba.

[62] I therefore find that there is a real and substantial connection which provides this Court with jurisdiction over both Norgrow and Mr. Rosenthal.

Forum Non Conveniens

[63] Having established that this Court has jurisdiction, I can now consider whether this Court ought to decline its jurisdiction to hear this matter in favour of another forum pursuant to the doctrine of *forum non conveniens*.

[64] In order to succeed in this argument, the defendants' must identify another forum with an appropriate connection to the dispute and demonstrate why this forum should be preferred.

[65] The Supreme Court in ***Van Breda*** identified the following non-exhaustive list of factors which can be considered in the *forum non conveniens* analysis:

[105] ... :

- (a) the comparative convenience and expense for the parties to the proceeding and for their witnesses, in litigating in the court or in any alternative forum;
- (b) the law to be applied to issues in the proceeding;
- (c) the desirability of avoiding multiplicity of legal proceedings;
- (d) the desirability of avoiding conflicting decisions in different courts;
- (e) the enforcement of an eventual judgment; and
- (f) the fair and efficient working of the Canadian legal system as a whole. [s. 11(2)]

[66] The defendants have argued that the most appropriate forum to hear the claim would be the courts of England and Wales, given that this is where the company operates and the place where its director and Chief Executive Officer resides.

[67] Neither Ms. Redenius nor Mr. Rosenthal reside in Manitoba. Accordingly, both parties would be required to travel to attend Court in Manitoba for the trial of this matter, which puts both parties to a similar level of inconvenience. However, if I were to decline jurisdiction in favour of the courts of England and Wales, only the plaintiff would be required to travel, which would confer a benefit to the defendants.

[68] Article 7.1 of the Agreement indicates that the laws of Manitoba will apply to any disputes arising from the Agreement. The oppression remedy portion of the claim is based on s. 234 of the **Act**, which would necessarily require an interpretation of Manitoba law.

[69] There is no evidence to suggest that the plaintiff commenced an action in any other forum, nor is there evidence that the defendants plan to commence an action against the plaintiff. Accordingly, there seems little risk of a multiplicity of proceedings or conflicting decisions being issued by different courts.

[70] As to the fair and efficient working of the Canadian legal system, it would be highly unusual for a Manitoba court to refer to the courts of England and Wales a claim filed in Manitoba against a Manitoba corporation which involves the interpretation of a Manitoba statute. While circumstances might arise which require a court to take such a course, those circumstances are not present in this case.

[71] Weighing these factors together, I am not convinced that the courts of England and Wales are a more appropriate forum for the hearing of this matter.

Decision on Issue 1

[72] For the foregoing reasons, I find that this Court has jurisdiction in this matter. I further find that Norgrow and Mr. Rosenthal have not demonstrated that this Court should decline its jurisdiction in favour of the courts of England and Wales.

Issue 2: Is there an action in law against Mr. Rosenthal, and if there is, does the statement of claim disclose a reasonable cause of action?

[73] The defendants seek an order pursuant to Rule 21.01 removing Mr. Rosenthal from the action. Rule 21.01 is available for a determination of a question of law raised by a pleading where the determination of the question may dispose all or part of the action, shorten the trial, or save costs.

[74] As an alternative ground of relief, the defendants ask this Court to strike the statement of claim against Mr. Rosenthal on the basis that it fails to disclose a reasonable cause of action, relief that is available to a defendant under Rule 25.11(d).

[75] Whether it is presented as a determination of a question of law or an assessment of whether there is a reasonable cause of action, I understood the defendants' position to be the same; that Mr. Rosenthal should not be a defendant in this matter because at all times he was acting in his capacity as a director and officer of Norgrow and not in his personal capacity.

Rule 21 – Question of Law

[76] For the purposes of Rule 21.01, the question is whether it is possible in law for Mr. Rosenthal to be personally liable for the alleged oppressive actions (or omissions) of Norgrow.

[77] The principles governing a claim under the oppression remedy, and in particular a director's personal liability were the subject of the Supreme Court of Canada's decision in *Wilson*, cited by the Manitoba Court of Appeal in **63833 Manitoba Corporation v. Cosman's Furniture (1972) Ltd. et al.**, 2018 MBCA 72. In **63833 Manitoba**, the Court held:

[45] The statutory oppression remedy contemplates that relief may be ordered against not only the corporation, but other parties (see *Wilson* at para 29). The imposition of personal liability on directors or officers of a corporation under the oppression remedy was considered in *Budd v Gentra Inc*, 1998 CanLII 5811 (ON CA), 1998 CarswellOnt 3069 (CA). The principles established in *Budd* were adopted by the Supreme Court of Canada in *Wilson*.

[46] The *Budd* test for when personal liability may be imposed on a director or officer has two parts. First, the oppressive conduct must be properly attributable to the director or officer because he or she is implicated in the oppression by his or her actions or failure to act (see *Wilson* at para 47). Second, the imposition of personal liability must be “fit in all the circumstances” (citation omitted). As for the second part of the *Budd* test, there are several factors that can properly be taken into account by a court in determining whether the imposition of personal liability is fit in a particular case. For the purposes of this appeal, the relevant factors include whether the director derived a personal benefit (citation omitted); ... and whether the director acted in bad faith (citation omitted).

[78] It is clear that the oppression remedy can result in an order not only against a corporation but against the directors and officers of the corporation as well. While the allegations contained in the statement of claim remain unproven, there is a possibility in law that as a director and officer of Norgrow, Mr. Rosenthal may be held to be personally liable pursuant to s. 234 of the **Act**, and therefore the defendants’ motion for relief under Rule 21.01 must fail.

Rule 25.11(d) – Motion to Strike for Failure to Disclose a Reasonable Cause of Action

[79] While a claim may be possible at law, the statement of claim must include allegations that disclose a reasonable cause of action. If it does not, the Court may strike the claim with or without leave to amend pursuant to Rule 25.11(d).

[80] As set out in ***Imperial Tobacco***, a court should only strike a statement of claim if “it is plain and obvious, assuming the facts pleaded to be true, that the statement of

claim discloses no reasonable cause of action” (at para. 17). While ***Imperial Tobacco*** is a case interpreting British Columbia’s ***Supreme Court Rules***, the court’s finding corresponds with the findings in the leading Manitoba decisions on motions to strike under Rule 25.11(d). (See ***Grant v. Winnipeg Regional Health Authority***, 2015 MBCA 44; ***Dennis v. The Attorney General of Canada et al.***, 2020 MBCA 118.)

[81] For the purposes of making a determination under Rule 25.11(d), the Court is required to consider the pleading only. (See ***Nygard v. Canadian Broadcasting Corporation***, 2026 MBCA 36, at para. 27.)

[82] When reviewing the impugned pleading, the Court in ***Nygard*** held that:

[27] ... The pleading or other document should be read generously despite imprecise language and it should be assumed that the facts contained therein can be proven, save for facts that are patently ridiculous, incapable of proof or are bald assertions of misconduct without reasonable particulars (citations omitted).

[83] The oppression claim against Mr. Rosenthal is contained in paragraphs 18 to 22 of the statement of claim. When those paragraphs are read together with the balance of the claim, it is sufficiently clear that Ms. Redenius is alleging that Mr. Rosenthal, acting as a director of Norgrow, made false or misleading representations about the Agreement and failed to release funds to her in breach of the Agreement. In doing so, Ms. Redenius has alleged that Mr. Rosenthal acted in bad faith and in a manner that was intended to place his interests before hers. While these allegations are yet to be proven, they do form the basis for a reasonable cause of action against Mr. Rosenthal personally pursuant to the oppression remedy provisions of the ***Act***.

Decision on Issue 2

[84] In accordance with the foregoing, the defendants' motion for an order to remove Mr. Rosenthal as a defendant pursuant to Rule 21.01 and/or to strike the statement of claim for failure to disclose a reasonable cause of action against him under Rule 25.11(d) is dismissed.

Issue 3: If the defendants are required to defend the matter in Manitoba, what date should be set for the filing of a statement of defence?

[85] The stay put in place by the 2025 Order was only to be in place until the jurisdictional questions left outstanding were resolved. There is therefore no reason why the defendants' statement of defence should not be filed.

Decision on Issue 3

[86] The stay contained in the 2025 Order is lifted and the defendants shall file their statement of defence within 30 days from the date of these reasons.

COSTS

[87] If the parties cannot agree on costs, they may be spoken to, provided they file briefs in advance.

Woolley J.