IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Siphon Enterprises Corp. v Smartt Inc.,* 2026 BCSC 2025

Date: 20261021
Docket: S245095
Registry: Vancouver

Between:

Siphon Enterprises Corp.

Plaintiff

And

Smartt Inc.

Defendant

Before: The Honourable Justice Crerar

Reasons for Judgment

Counsel for the Plaintiff:	R. Robertson D. Wolfe
Counsel for the Defendant:	D. Dalke S. Ghaffar, a/s
Place and Date of Hearing:	Vancouver October 8, 2026
Place and Date of Judgment:	Vancouver October 21, 2026

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I. INTRODUCTION

[1] The defendant seeks an order that the plaintiff pay $40,457 as security for costs in this action (originally a petition) brought under the oppression remedy provisions of the *Canada Business Corporations Act*, RSC 1985, c C-44 ("**CBCA**"), s 241.

[2] Counsel advise that this likely a case of first impression in this province.

[3] Our court regularly grants security for costs orders against corporate plaintiffs. Such orders are made not pursuant to the costs rules under the *Supreme Court Civil Rules*, BC Reg 168/2009, but rather under the provincial business corporations statute: *Business Corporations Act*, SBC 2002, c 57 ("**BCBCA**"):

> **Court may order security for costs**
>
> **236** If a corporation is the plaintiff in a legal proceeding brought before the court, and if it appears that the corporation will be unable to pay the costs of the defendant if the defendant is successful in the defence, the court may require security to be given by the corporation for those costs, and may stay all legal proceedings until the security is given.

[4] While more typically brought in common law claims, security for costs orders have also been granted in claims brought under the oppression remedy provisions of the BCBCA (s 227): for example, *Ocean Pastures Corporation v Old Masset Economic Development Corporation*, 2016 BCCA 12; *1043325 Ontario Ltd. v CSA Building Sciences Western Ltd*., 2012 BCSC 1058; and *Zymtech Development Inc. v Sport Central Enterprises Ltd. et al*, 2004 BCSC 309. Such orders are more rare than security for cost orders in ordinary commercial actions commenced by notice of civil claim, where the trial may be one or several years hence, with significant anticipated interlocutory and trial costs. In contrast, oppression remedies, commenced by petition, will presumptively be heard summarily and swiftly, with lower costs exposure.

[5] In contrast to the BCBCA, the applicable CBCA oppression provisions expressly prohibit security for costs orders in oppression proceedings:

> **No security for costs**
>
> 242(3) A complainant is not required to give security for costs in any application made or action brought or intervened in under this Part.[1]

[6] This legislative disparity is yet another example of British Columbia exceptionalism. Most other provincial business corporation statutes have provisions akin to the CBCA, shielding oppression remedy complainants from security for costs orders. For example, the Ontario *Business Corporations Act*, RSO 1990, c B.16 ("**OBCA**") states:

> **Costs**
>
> 249(3) A complainant is not required to give security for costs in any application made or action brought or intervened in under this Part.

[7] The Part referred to in s 249(3) is Part XVII (Remedies, Offences And Penalties), which includes the oppression remedy provisions (s 248).

[8] The Nova Scotia *Companies Act*, RSNS 1989, c 81 ("**NSCA**"), Third Schedule, s 7(3) and the Alberta *Business Corporations Act*, RSA 2000, c B-9 ("**ABCA**"), s 243(3) contain similar prohibitions.

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[9] The legislative purpose of such protections is to avoid inhibiting complainants from pursuing their rightful remedies under the statute: *Knoll v Draxis Health Inc.* 2000 CarswellOnt 1292, 45 CPC (4th) 337 (OSCJ(DivCt)) at para 7; *Abdalla v Skalin*, 2004 CanLII 2555 (ON SC) at para 6.

[10] Courts interpreting those provisions have consistently given force to their plain language meaning: a claimant in an oppression action is immune from a security for costs order:

a. *Knoll* (applying CBCA);

b. *Abdalla* (applying OBCA);

c. *Konig v Hobza*, 2012 ONSC 2976 (applying NSCA);

d. *Vaasjo v Jurina*, 2016 ABQB 78 (applying ABCA);

e. *Mudrick Capital Management v Wright*, 2018 ABQB 194 (applying ABCA).

[11] That said, the statutory immunity only protects those claims where "oppression is the core of the claim, despite the existence of other causes of action": *Vaasjo* at paras 22-23; see also *Abdalla* at para 9.

[12] For the reasons that follow, the present claim, read as a whole, is at its core an oppression claim, notwithstanding its citation of a contract: the Unanimous Shareholders Agreement ("**USA**"). The USA, expressly governing nomination of directors, voting, share purchases, inspection of records, and corporate dispute resolution, is central to defining the affairs of the corporation, and the relationship between the shareholders and the parties. The USA is also central in establishing the plaintiff's reasonable expectations, the alleged breach of which lie at the core of the oppression remedy claim. Oppression is the core of the claim, even though the plaintiff could in theory recast portions of it as other causes of action. As such, s 242(3) bars an order for security for costs in this oppression proceeding.

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II. FACTS

A. The parties, affiliated parties, and amalgamation

[13] These proceedings arise from a dispute amongst shareholders in the defendant Smartt Inc., a company incorporated under the CBCA.

[14] The defendant Smartt Inc. was created as a result of a January 1, 2022 amalgamation between Rent-A-Nerd Computer Services Inc. (the principal and Chief Executive Officer of which was Michael Romaniuk, a major shareholder of the plaintiff), on one hand, and the previous iteration of Smartt Inc. (owned by 2IC Systems Inc. ("**2IC**"), of which Saleh Tousi is a principal), on the other. The voting shares in the defendant have been exclusively held by the plaintiff and 2IC.

[15] As part of the amalgamation creating Smartt, the plaintiff, 2IC, and the defendant executed the USA on January 1, 2022.

B. The Unanimous Shareholders Agreement

[16] USA art 2.4(c) governs corporate directors:

> (c) After the expiry of the two-year period referred to in Section 2.4(b) [beginning January 1, 2022], each Shareholder that continues to own beneficially an aggregate of at least 20% of the issued and outstanding Voting Shares on a fully-diluted basis shall be a "**Nominating Shareholder**", and the five nominees of the board will be appointed on a pro rata basis by each Nominating Shareholder (such that, for example, if one Nominating Shareholder had 60% and two Nominating Shareholders had 20% of such Shares, the first would nominate three and each of the next two would nominate two), and any group of Shareholders that holds in aggregate at least 20% of the issued and outstanding Voting shares on a fully-diluted basis may unanimously elect in writing to be treated as one Nominating Shareholder for the purposes of such calculations.

[17] USA art 2.9 governs extraordinary events that require at least 66% approval:

> 2.9 **Extraordinary Events**. Without limiting Section 2.6, the following matters may be carried out only with the consent of Shareholders holding at least two-thirds of the issued and outstanding Voting Shares, which must include (while 2IC is entitled to nominate directors) 2IC and (while SEC [the plaintiff] is entitled to nominate directors) SEC [the plaintiff]:
>
> […]

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> (e) the entering into or the amendment of any agreements (including, without limitation, contracting, employment, licensing or distribution agreements) with (i) any Shareholder; (ii) if a corporation or family trust, any shareholder or controlling Person of a Shareholder; or (iii) any Person that is not at arm's length to the Corporation or any of its Shareholders (including any Affiliate of a Shareholder);
>
> […]
>
> (h) the approval of, or any amendment to, the annual operating and capital expenditure budgets or the business plan of the Corporation;
>
> […]
>
> (s) any sale, transfer, assignment, mortgage, pledge, or charge of Shares, other than as contemplated in this Agreement;
>
> (t) the creation, allotment or issuance of, or agreement to create, allot or issue, any Shares or other securities of the Corporation, or the granting of any option or right capable of becoming an option to purchase any Shares or other securities of the Corporation, other than (a) as contemplated in this Agreement, or (b) pursuant to a Stock Option Plan;

[18] USA art 3.3 governs corporate records, and access thereto:

> 3.3 **Books of Account**. The Corporation will maintain proper books of account which will contain accurate and complete records of all transactions, receipts, expenses, assets and liabilities of the Corporation. The books of account and all papers, records and documents of the Corporation will at all times be open to inspection and examination by each of the Shareholders and their respective authorized representatives during regular business hours upon reasonable notice to the Corporation, with full power to make copies of any extracts from the whole or any part thereof.

[19] USA art 4.4 governs share purchases amongst shareholders:

> 4.4 **Right of First Refusal.** […] If any Voting Shareholder (each an "**Offerer**") desires to transfer, assign or sell all or any part of their Shares (the "**Offered Shares**") to a third party (a "**Proposed Transferee**"), then, subject to Section 4.10,
>
> > (a) **Notice to Others**—the Offeror will give a notice (the "**Notice of Sale**") setting out the Proposed Transferee, the proposed price and the proposed terms and conditions of the transfer, assignment or sale to the other Voting Shareholders;
> >
> > (b) **Deemed Offer**—the Offeror will be deemed to have offered to sell the Offered Shares to the other Voting Shareholders on the terms set out in the Notice of Sale (the "Right of First Refusal");
> >
> > (c) **Acceptance**—within twenty Business Days after receipt of the Notice of Sale (the "**Acceptance Period**"), any Voting Shareholder who has received a Notice of Sale may give to the Offeror a notice

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> accepting their pro rata share of such Offered Shares (an "**Acceptance**"). At the expiration of such period, the Offeror will notify each Shareholder that elects to purchase or acquire all the Shares available to it of any other Shareholders' failure to do likewise. During the ten Business Day period commencing after the Offeror has given such notice, each accepting Voting Shareholder may, by giving notice to the Offeror, elect to purchase or acquire, in addition to the number of Shares specified above, all of the Shares for which Voting Shareholders were entitled to subscribe but that were not subscribed for by such Voting Shareholders (and if more than one accepting Voting Shareholders so elect to purchase and acquire, they will agree upon the allocation amongst them, or without such agreement the Shares will be taken up pro rata to their respective shareholdings);
>
> (d) **Exercise**—within seven Business Days after the expiration of the Acceptance Period, the Offeror will sell those Offered Shares that are the subject of an Acceptance to the other Voting Shareholders at the price and on the terms and conditions set out in the Notice of Sale, and
>
> (e) **Third Party**—to the extent that any Voting Shareholders do not deliver an Acceptance for any of the Offered Shares, the Offeror may sell such Offered Shares to such Proposed Transferee at a price and on terms and conditions no less favourable to the Offeror than the price and terms and conditions set out in the Notice of Sale, provided that this right of first refusal will be re-triggered if the transfer to the Proposed Transferee does not occur within six months of the Notice of Sale.
>
> [spelling inconsistencies as in original]

[20] USA Part 7 governs dispute resolution:

> **7.1 Disputes**. All Disputes will be resolved in accordance with the procedures set out in this Part 7 (the "**Dispute Resolution Procedures**"). This Part 7 will survive the termination of this Agreement. Except as otherwise expressly provided in this Agreement, each Shareholder will be responsible at its own sole cost and expense for its own costs in connection with the Dispute, including all fees, disbursements and other charges of all accountants, lawyers and other professionals, experts, whether testifying or not, and witnesses and all costs for preparation for, travel to and attendance at mediation conferences conducted or required in accordance with these Dispute Resolution Procedures regardless of the outcome.
>
> **7.2 Notice of Dispute**. Any Shareholder may commence a dispute resolution by delivering a written notice of dispute ("Notice of Dispute") to the other Shareholders. The Notice of Dispute will include:
>
> (a) a demand that the Dispute be referred to dispute resolution pursuant to this Part 7;
>
> (b) a general description of the Dispute; and
>
> (c) the relief or remedy sought.

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> **7.3 Mediation**. The Shareholders will resolve all Disputes by referring such Disputes to mediation. The Advisory Board will select the appropriate rules of mediation and will either act as mediator or select an acceptable mediator to resolve the Dispute. The mediation process will continue until the Dispute is resolved or until the mediator makes a finding that there is no possibility of settlement through the mediation ("Mediation Termination"). The place of mediation will be Vancouver, British Columbia.
>
> **7.4 Binding Arbitration**. In the event of Mediation Termination, any Shareholder may at any time thereafter, by written notice to the other Shareholders, require that such Dispute be referred to and finally resolved by arbitration administered by the British Columbia International Commercial Arbitration Centre, pursuant to its rules. In the absence of any written agreement otherwise, the place of arbitration will be Vancouver, British Columbia.

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C. The proceedings

[21] The harmony of the amalgamation was short lived. Relations have broken down between the defendant shareholders.

[22] Under the terms of the amalgamation, Smartt would employ Mr Romaniuk as Chief Client Officer, while Mr Tousi would continue as the Smartt Inc. Chief Executive Officer. The relationship soon unravelled. In February 2022 Mr Romaniuk departed.

[23] A second major dispute relates to the dilution of the plaintiff's shareholdings. The plaintiff holds 375,000 voting shares in the defendant. That initially equated to 37.5% of the voting shares. A November 14, 2023 capital injection diluted its interest down to 19.3% of the defendant's Voting Shares. A July 2024 capital injection further diluted the plaintiff's shares down to 0.009%.

[24] These and other tensions have led to multiple court proceedings:

a. On July 10, 2023, the defendant commenced an action against the plaintiff, Mr Romaniuk, and Katherine Romaniuk (his wife), claiming breach of fiduciary duties (S234864: the "**Fiduciary Breach Claim**");

b. On December 29, 2023, Mr Romaniuk commenced an action against the defendant, claiming wrongful dismissal (S238808: the "**Employment Claim**");

c. On July 29, 2024, the plaintiff commenced these proceedings against the defendant, claiming oppression relief pursuant to the CBCA (the "**Oppression Claim**");

d. On April 23, 2025, the defendant commenced an action against Solution Effect Inc., claiming intentional interference with economic interests (S253094: the "**Solution Effect Claim**").

[25] On September 25, 2025, Justice LeBlanc ordered that:

a. the Oppression Claim would be converted from a petition to an action, by consent;

b. the Fiduciary Breach Claim and the Solution Effect Claim would be consolidated into one action (the "**Consolidated Claim**"); and

c. the Consolidated Claim, the Oppression Claim, and the Employment Claim tried together.

III. DISCUSSION AND DECISION

A. The oppression remedy

[26] The present claim is brought under s 241(1) of the CBCA (“Application to court re oppression”), the grounds of which are:

> **Grounds**
>
> (2) If, on an application under subsection (1), the court is satisfied that in respect of a corporation or any of its affiliates
>
> > (a) any act or omission of the corporation or any of its affiliates effects a result,
> >
> > (b) the business or affairs of the corporation or any of its affiliates are or have been carried on or conducted in a manner, or

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> (c) the powers of the directors of the corporation or any of its affiliates are or have been exercised in a manner
>
> that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of any security holder, creditor, director or officer, the court may make an order to rectify the matters complained of.

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[27] Oppression is an equitable remedy. It seeks to ensure fairness: what is "just and equitable". If a breach of a reasonable expectation is established, one must go on to consider whether the conduct complained of amounts to "oppression", "unfair prejudice", or "unfair disregard": *BCE Inc. v 1976 Debentureholders*, 2008 SCC 69, [2008] 3 SCR 560 at paras 56, 58.

B. Position of the defendant-applicant

[28] The defendant argues that the claim is not at its core or in its totality an oppression claim. It points to the claim's citation of the USA, arguing that the claim, in whole or in part, is more in the nature of a contract claim.

[29] The defendant emphasises two cases where courts ordered security for costs for the non-oppression portion of the claim. In those cases, the courts assessed the appropriate amount of security for costs, and reduced that amount by the percentage of the claim that would otherwise have been barred from a security for costs orders as an oppression claim brought under the relevant business corporations statute.

[30] *Knoll* at paras 7-9 endorsed the decision below that merely framing a claim in oppression does not operate as "a magic shield" against a security for costs award. Instead, the court must determine whether the claim, read as a whole, is in pith and substance an oppression claim, which is protected, or whether it is in pith and substance another form of claim, which is not. *Knoll* noted that the bulk of the claim alleged breach of a consulting agreement between the claimant and defendant, a portion of the payment of which included issuance of shares in the defendant corporation. Much of the oppression portion of the claim was moot, as the shares had been returned to the claimant. The Court confirmed the discounted security for

costs order, which had reduced the estimated costs amount by 20 percent, reflecting the remaining portion that represented a genuine oppression claim.

[31] *Mudrick* similarly parsed between portions of the claim genuinely based on the oppression remedy, which are protected from security for costs orders, and portions that represent a "non-oppression claim clothed in one of oppression", which are not: para 18. The Court found that portions of the claim fell in each category: a "hybrid claim" (para 48). The alleged breach of contract, misrepresentation, and "piercing the corporate veil" aspects of the claim – representing some 65 percent of the claim – were not oppression claims at their core: para 51. The Court thus granted and quantified security for costs, reduced by the 35 percent of the claim representing an essential oppression claim.

[32] The defendant accordingly urges the Court to parse out the claim in the manner of *Knoll* and *Mudrick*.

[33] While I agree with the nuanced approach mandated in those cases, their specific odd facts are markedly different from those in the present case. Those facts emphasise that those cases were indeed at their core common law tort or contract claims cloaked in the language of corporate oppression or oppression claims that were mere ancillary appendages to the core breach of contract claims.

[34] As noted above, *Knoll* primarily alleged breach of a consulting agreement between the claimant and defendant. Its primary remedy was damages of $50 million for breach of contract. A portion of that contract concerned the issuance of shares.

[35] *Mudrick* did not concern the internal affairs of a corporation. Indeed, all of the defendants were individuals: no corporation was listed as a defendant; nor was the plaintiff a shareholder. Rather, the plaintiffs were creditors of Lightstream Resources Ltd, a company protected under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 ("**CCAA**") after litigation commenced. The plaintiff sought to do an end run around the CCAA protection by suing Lightstream's directors personally: para

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39. The central claim was that those directors had misrepresented Lightstream's financial health to the plaintiffs. In contrast to the typical oppression claim, which seeks to reverse or restrain the oppressive conduct, the plaintiffs sought damages against the directors personally: para 43. It was essentially a misrepresentation claim cast as a corporate oppression claim.

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C. The role of contracts in oppression actions

[36] Like the defendant, the plaintiff starts its argument with the USA. The USA itself emphasises, rather than undermines, that the present claim is at its core one of oppression, however. As set out above, the USA, governing the nomination of directors, voting, shareholder disputes, and inspection of records, is central to defining the affairs of the corporation, and the relationship between the shareholders and the parties.

[37] Of course, shareholder agreements and other agreements play a central role in many oppression remedy proceedings: "shareholder agreements may be viewed as reflecting the reasonable expectations of the parties": *BCE* at para 79, endorsing *Lyall v 147250 Canada Ltd.* (1993), 1993 CanLII 481, 106 DLR (4th) 304 (BCCA).

[38] Indeed, in *Lyall*, as here, the defendants' breach of a unanimous shareholders agreement was at the core of the oppression proceeding:

> 48 At a minimum, Lyall, as a shareholder of the Company and as a director of the Company, was entitled to expect from the other shareholders and directors that in making corporate decisions, they would respect and adhere to the provisions of the Unanimous Shareholders Agreement and would refrain from making corporate decisions contrary to the fundamental business purpose of the Company in the absence of consent from Mr. Lyall.
>
> **...**
>
> 49 The acts of Duke and Klenman in repudiating the Share Purchase Agreement and then endeavouring to sustain their wrongful position in protracted litigation constituted a wrong to Lyall in that they breached the Unanimous Shareholders Agreement entered into with him and abrogated his legitimate interests and expectations as a shareholder of the Company. Lyall had an interest in seeing that the fundamental corporate business of the Company would be performed by his fellow shareholders and directors unless he consented to a change in its course of business.
>
> [emphasis added]

[39] Apart from founding reasonable expectations, "[t]he interpretation of rights under a shareholders' agreement constitutes part of the 'affairs' of a corporation and is subject to the application of the oppression remedy"; further, "[a] breach of a shareholders' agreement or breach of an obligation to perform a shareholders agreement in good faith constitutes oppression": *Linamar Corporation v Wescast Industries Inc*., 2004 CanLII 18045 (ON SC) at paras 5-6, citing *GATX Corp. v Hawker Siddeley Canada Inc.* (1996), 1996 CanLII 8286 (ON CTGD), 27 BLR (2d) 251 (OntGenDiv) at pp 291-93.

[40] Thus, the fact that an oppression claim relies on a contract does not in itself undermine its status as an oppression claim. As stated in *Vaasjo*, where the Court rejected an argument similar to that now advanced by the defendant:

> [51] Accordingly, the fact that this claim involves contractual elements or a claim for damages does not preclude a finding that its core claim is a claim for oppression. As the Court's power to order an oppression remedy is quite broad, the fact that the damages claimed resemble contractual damages is not a bar to classification as oppression….

[41] Thus, even contracts that do not directly govern the corporation's affairs have grounded a legitimate oppression claim such as to enjoy immunity from security for costs. As noted in *Abdalla*, where the core of the claim was the plaintiff's entitlement to shares under a contract:

> [48] A determination of the present claim of oppression is dependent in part upon the determination of Mr. Abdalla's contractual rights vis-à-vis the defendants Mrs. Skalin and Mr. Schulman. However, those rights relate to becoming a shareholder, which rights, if the allegations made are proven, have arguably been defeated by oppression on the part of one or more of the defendants through their management of the affairs of NPPC.

[42] Certainly, pure contractual or simple contractual claims that have nothing to do with the affairs of the company, or a shareholder's rights, such as a pure debt claim, cannot be recast as an oppression remedy: *Bruner v MGX Minerals Inc*., 2019 BCSC 11 at para 72. *Bruner* cites *Stahlke v Stanfield,* 2010 BCSC 142*:*

> [23] The oppression remedy protects only the interests of a shareholder *qua* shareholder. Oppression remedies are not intended to be a substitute for an action in contract, tort or misrepresentation…

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[43] The Court of Appeal affirmed *Stahlke* in 2010 BCCA 603:

> [38] Likewise it is ***possible misrepresentations may amount to oppressive conduct if they affect the shareholder as shareholder***, for example as to the exercise of certain rights attaching to shares.
>
> [emphasis added]

[44] *Bruner* also cites *Mudrick*, which in turn cites Kevin P. McGuiness, *The Law and Practice of Canadian Business Corporations* (Markham: Butterworths, 1999) at § 9.247:

> ... While acts of oppression may entail a breach of contract, or the commission of some tortious or similar wrong, against the complainant, ***it is doubtful that the oppression remedy was intended to be a substitute for an ordinary right of action in contract - or tort for that matter***. Where the ***sole complaint*** is that of a breach of contract, then a contract action should be pursued. Insofar as the contract deals with a specific matter, it seems only natural to conclude that it sets out exhaustively the underlying intentions, understandings and expectations of the parties. While ***many - perhaps all - breaches of contract can be characterized as oppressive to the injured party, and while many - perhaps all - forms of tortious injury may be said to be unfairly prejudicial, the legislature clearly cannot have intended for the oppression provisions to serve as a panacea for all manner of legal wrongs, or to make the remedies created under the statute for genuine cases of oppression or unfair prejudice a substitute for the normal legal and equitable remedies that are available to aggrieved parties***. Where a ***simple breach of contract***, or comparable legal wrong, has occurred, it is not appropriate for the court to invoke the oppression provisions of the Act merely because the party in breach is a corporation. It is arguable at least that insofar as a corporation remains able to satisfy the obligations owed to a creditor, no oppression proceeding is available, since in such a case the creditor cannot be said to have been unfairly prejudiced. In such a case, the appropriate remedy is an action for breach of contract.
>
> [emphasis added]

[45] Similarly, where a contract claim is truly an “add on”, unconnected to core oppression remedy issues concerning corporate affairs, business, shares, powers, and governance, it may be carved out from the security for costs protections, and ascribed a proportionate share of a security for costs order. For example, a claimant could seek damages for breach of a house sale agreement or catering agreement that has nothing to do with corporate matters.

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[46] The present claim is far from the pure, simple contractual claim – such as a debt claim brought by a supplier – contemplated in the above authorities. On the contrary, at its core it asserts the oppression of the plaintiff precisely as a shareholder, in the affairs of the company.

[47] The defendant argues that the USA is a contract, and thus could be pursued as a claim outside of the oppression rubric. But the mere fact that a cited agreement could in theory be pursued independently of an oppression claim does not convert a claim that is otherwise at its core an oppression claim. The defendant responsibly admits having no authority to support its argument. *Vaasjo* at para 55 specifically refutes that proposition: "[t]herefore, despite the existence of other causes of actions within the Statement of Claim, the core of the action is one of oppression."

[48] Of course, most aspects of oppression remedy could in theory be cast and pursued under the rubric of common law or other statutory causes of action: breach of contract, breach of fiduciary duty, misrepresentation, conspiracy, or conversion. That possibility does not deprive the plaintiff of the ability to pursue an oppression remedy asserting that those actions unfairly stymied his reasonable expectations as to the business or affairs of the company. Nor does that hypothetical deny such a claim from the CBCA protections against security for costs orders.

D. The claim

[49] *Konig* at para 19 distills the jurisprudence on whether a claim is protected from a security for costs claim[2]:

> (a) the prohibition does not apply if the oppression claim is merely appended to other claims or if the oppression claim is no longer in issue;
>
> (b) the prohibition will not apply where the core nature of the claim involves issues that are separate, discrete and distinctive from the oppression claims;
>
> (c) the question to be asked is "what is the real, true nature of the plaintiff's claim?";
>
> (d) security may be ordered for the non-oppression portions of the plaintiff's claim where the court can reasonably determine what percentage of the action involves the oppression claim;

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> (e) the section does not provide the court with any discretion, even in exceptional circumstances and even involving a wealthy offshore plaintiff with no assets in Canada.

[50] To determine whether the claim is at its core an oppression claim, the Court must examine the claim as a whole. As stated in *Konig* at para 26:

> ... A determination of whether a particular action is at its core an oppression action cannot be made on the basis of the mechanical exercise of adding up how many references to oppression can be found in the pleadings or in the evidence or whether such a claim is made as a primary claim as opposed to an alternative claim. ***It must be determined on the basis of a consideration of the claim as a whole.***
>
> [emphasis added]

[51] I am satisfied that the claim, read as a whole, is in its pith and substance, is at its core an oppression remedy claim. The oppression claim is not "merely appended" to other predominant claims. Conversely, as noted above, the USA is not separate, discrete, and distinctive from the oppression claim but, rather, lies at its heart as establishing reasonable expectations and governing the affairs of the corporation.

[52] Put positively, the oppression claim asserts that the plaintiff's USA entitles it to participate in the corporate affairs of the defendant, through its nomination of directors, and its exercise of its shareholder, voting, access, and other rights. The essence of the claim is that the defendant's actions have unfairly oppressed the plaintiff's rights as a shareholder, by stymying its reasonable expectations, as reflected in the USA and otherwise.

[53] The defendant effectively concedes that the claim is at its core one of alleged corporate oppression. The notice of application notes that the plaintiff's pleaded complaints can be divided into two main categories, both typical subjects of oppression proceedings, with respect to the plaintiff's rights *qua* shareholder:

a. "Share issuances"; and

b. "Alleged governance issues."

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[54] The following review of the claim further illustrates that it is essentially an oppression claim, in fact, remedy, and law.

[55] In its claim, the plaintiff pleads that it held reasonable expectations concerning its rights and interests as a shareholder in the affairs of the defendant, including:

a. The defendant's affairs would be conducted in a manner consistent with the terms of the USA;

b. The defendant would act in a transparent manner and in good faith;

c. The defendant would provide meaningful responses to the plaintiff's requests for information;

d. The defendant would not compel the plaintiff to act against its own interests.

[56] In its claim, the plaintiff sets out its reasonable expectations under the USA:

a. The plaintiff would be able to nominate at least one of five nominees to the board of the defendant as a nominating shareholder holding at least 20% of issued voting shares (citing USA, art 2.4(c));

b. The defendant would be required to seek the plaintiff's consent before entering into or amending agreements relating to employment, the approval of annual operating and capital budgets, and any sale, transfer, charge, issuance, or agreement to create or issue shares (citing USA, arts 2.9(e), (h), (s), and (t));

c. The defendant would be required to maintain financial records which would be, at all times, open to inspection by the shareholders (citing USA, art 3.3);

d. Any shareholder commencing a dispute through a notice of dispute would proceed to mediation, or, failing mediation, provided the right to crystalise

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binding arbitration was exercised, to arbitration, rather than court proceedings (citing USA, arts 7.1, 7.2, 7.3, and 7.4).

[57] The plaintiff pleads that the defendant's acts and omissions, in breach of various provisions of the USA and the above expectations, directly harmed its interests as a shareholder. Specifically, the plaintiff claims that the defendant's acts and omissions that breached the USA also breached its reasonable expectations as a shareholder, resulting in harm to its interests and rights as a shareholder. These include:

a. The three capital injection dilutions of the plaintiff's shareholding interests from 37.5% to 19.3% to 0.009%;

b. As a result, the defendant was able to and did remove the plaintiff as a nominating shareholder of the defendant, and was thereby able to remove Mr Romaniuk and his wife as directors, and install Mr Tousi as director;

c. The defendant approved the resolutions that deferred the defendant chief executive officer's unused vacation time to the following year, and increased his salary without the consent of the plaintiff, contrary to USA art 2.9(e);

d. The defendant refused to engage with the plaintiff's notices of dispute, breaching the plaintiff's USA, Part 7 dispute resolution rights;

e. The defendant's July 10, 2023 Fiduciary Breach Claim breached the plaintiff's USA, Part 7 dispute resolution rights;

f. The defendant approved its 2023 annual budget without the plaintiff's consent, contrary to USA art 2.9(h);

g. The defendant refused to allow the plaintiff to inspect the defendant's financial records unless it executed a non-disclosure agreement, contrary to USA, art 3.3;

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h. The defendant passed a resolution not to approve or consent to the plaintiff selling its shares in the defendant, contrary to USA, art 4.4;

i. The defendant denied the plaintiff's attempts to organise board meetings to address the defendant's financial circumstances. The defendant directors then passed a resolution to restrict the plaintiffs' access to financial information.

[58] Part II (relief sought) also overwhelming reflects oppression remedies. While the claim seeks damages for damages (which are nonetheless expressly contemplated in s 241(3)(j)) the remainder seeks quintessential oppression remedies: items 1-3 seek declarations of oppressive or unfairly prejudicial conduct with respect to the affairs and management of the company, while items 5-15 and 18 seek reversal, correction, and pre-emption of various acts oppressive to the plaintiff's rights as shareholders, citing specific powers of the court set out in s 241(3). These include orders directing the defendant to execute and deliver all relevant documents to carry out orders, including orders appointing an unaffiliated chief executive officer and five directors, as well as setting aside the share issuance and other transactions that diluted the plaintiff's interest in the defendant.

[59] Part III (legal basis) similarly exclusively focuses on the oppression remedy and its governing jurisprudence.

[60] In short, I am satisfied that the claim is at its core an oppression claim, in facts, remedies, and law: seeking to reverse and address alleged interferences with the plaintiff's rights under the USA and its reasonable expectations as a shareholder to participate in the affairs of the defendant company.

E. Should I decline to follow the Ontario and Alberta authorities?

[61] The defendant generally acknowledges that if I agree that the claim is at its core an oppression rather than a contractual claim, the Alberta and Ontario authorities cited above will apply.

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[62] At the same time, the defendant notes that, as a matter of *stare decisis*, I am not bound by those courts' interpretations of s 241 and the analogous statutory protections of courts of other provinces. I agree. That said, those courts are well versed in interpreting their domestic statutory provisions, identical to the CBCA, as well as the CBCA provision itself. Further, the cited decisions are sensible and wholly persuasive. I see no principled reason to depart from the well-established jurisprudence canvassed above. A court may more readily distinguish an extra-provincial judicial decision on a common law claim, situated, as it is, within that province's jurisprudence and legal culture. But to do so in the present circumstances, contrary to an established body of jurisprudence giving force to the plain language statutory prohibition in a specific common statute (that is, the CBCA s 242(3)), would convey both inappropriate judicial legislation, as well as a lack of judicial comity.

[63] That all said, I would echo the observations in *Abdalla* at para 50. Security for costs orders are useful means to dissuade frivolous claims, based on oppression or otherwise, and to protect those who must respond to such claims especially where the claimant possesses no assets within the jurisdiction exigible for a future costs award. The BCBCA provisions, allowing for security for costs, in oppression proceedings and otherwise, are useful and laudable. In this, it is regrettable that the CBCA prohibits such orders outright. But any correction on that matter would be for Parliament to decide.

IV. CONCLUSION

[64] The defendant's application is dismissed. Given the contentious and complicated nature of these proceedings, and given the fact that the present plaintiff has exhibited the Latin maxim of *quod approbo non reprobo* (translated as "to approbate and reprobate", or more colloquially, "to suck and blow", in *Tymkin v. Ewatski*, 2014 MBCA 4 at paras 47-48), by itself obtaining a security for costs order against the present defendant in the Fiduciary Breach Claim (a claim not brought under and thus unprotected by the CBCA: see *Smartt Inc. v Siphon Enterprises Corp*., 2023 BCSC 2591 and 2026 BCSC 116), costs will be in the cause.

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[65] The Court expresses its gratitude to counsel's able submissions, and, in particular, to Mr Dalke's responsibly balanced and candid advocacy. Based on his primary submission, but for the s 242(3) statutory prohibition on security for costs, the Court would likely have been inclined to issue the order sought by his client.

"Crerar J"

[1] This theme runs through the CBCA, presumably so as not to stymie enquiries into corporate governance through advance costs orders. Similar provisions protect from security for costs orders dissenting shareholders (s 190(18)), dissenting offerees (s 206(13)), and applicants for investigations of corporations (s 229(4)).

[2] While the Ontario case of *Konig* considered the principles relevant to the OBCA, it applied those principles to a dispute governed by the NSCA, distilling the jurisprudence on whether a claim is protected from a security for costs claim.

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