CITATION: MacMillan v. Royal Stainless Steel Tank & Truck Ltd., 2026 ONSC 6385
COURT FILE NO.: CV-23-1225
DATE: 2026/11/13

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: BLAIR MACMILLAN, Plaintiff/Defendant by Counterclaim

AND:

ROYAL STAINLESS STEEL TANK & TRUCK LTD. and STEVEN CRAWFORD, Defendants/Plaintiffs by Counterclaim

BEFORE: Justice K. Tranquilli

COUNSEL: Cole Vegso, for the Plaintiff/Defendant by Counterclaim

Susan Guzzo, for the Defendants/Plaintiffs by Counterclaim

HEARD: October 2, 2026

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ENDORSEMENT

[1] This action concerns shareholder and contractual disputes arising from a failed business relationship. The plaintiff's motion seeks orders for undertakings, a refusal, requests for additional financial documents and the corporate defendant's audited financial statements from 2020 to date.

[2] This procedural dispute turns largely on whether the defendants are required to produce the further financial particulars sought by the plaintiff at this stage of the action, or as argued by the defendants, the motion must be dismissed as an improper request for partial summary judgment in disguise. The defendants argue that the plaintiff's claims in oppression raise triable threshold issues because of an unexecuted shareholder agreement and the plaintiff's history of waiving his entitlement to audited corporate financial statements. The defendants contend the plaintiff must therefore first establish substantive entitlement to relief from the alleged oppressive conduct before the defendants should be required to undertake efforts towards the valuation of the corporate defendant.

[3] The court does not accept the defendant's position. These reasons explain why the plaintiff's motion is granted. In summary, the court is satisfied the requests are relevant and proportionate. As a shareholder, the plaintiff has a statutory right to require audited financial statements in any event of the issues in this proceeding.

Background

[4] The plaintiff MacMillan is a 10% minority shareholder and former vice president of operations of the defendant corporation Royal Stainless Steel Tank & Truck ("Royal"). The defendant Crawford is president and majority shareholder of the defendant company. The plaintiff resigned from Royal in August 2022. The plaintiff MacMillan claims their shareholder agreement obliged Crawford to redeem MacMillan's shares at fair market value upon MacMillan's resignation. The defendants contend Crawford is not obliged to redeem MacMillan's 10% shares as demanded because MacMillan failed to sign the draft shareholder agreement on those favourable terms. The defendants deny MacMillan's contention that the parties conducted themselves as though the draft shareholder agreement was in effect. Moreover, the defendants claim the plaintiff harmed the company's business interests before his resignation. The defendants allege the plaintiff's neglect and misconduct caused a failed Transport Canada audit and loss of licensing crucial to the defendant business. The defendants assert that if the plaintiff establishes substantive entitlement to relief from oppression, any purchase of MacMillan's shares by Crawford must be based on a valuation that considers the impact of MacMillan's misconduct on the company's value.

[5] The plaintiff brings this action for an oppression remedy. Relief sought includes an order requiring the defendant Crawford to purchase the plaintiff's shares at fair market value without discount. The defendants Crawford and Royal deny oppressive conduct and counterclaim for the plaintiff's alleged misconduct and negligence in respect of the failed audit. The defendants seek damages of $500,000 for breach of fiduciary duty, breach of confidence, gross negligence, intentional infliction of economic harm and contractual relations. They also seek damages for breach of contract in amount to be determined, and punitive damages.

[6] The plaintiff set the matter down for trial before this motion; he says to comply with a court-ordered timetable. Trial and pre-trial dates are yet to be set, pending the disposition of this motion.

[7] The plaintiff seeks orders to answer undertakings, an order requiring the defendants to advise of the amounts spent by Royal on legal fees in respect of this dispute for the years 2022 to 2024 inclusive, production of corporate financial information identified by the plaintiff's expert retained for valuation purposes, and the defendant Royal's audited financial statements for the years 2021 to 2026 and ongoing while the plaintiff remains a shareholder. The defendants' main objection is that the plaintiff has "put the cart before the horse" and must first establish entitlement to the substantive relief sought in this proceeding—a fair market value buyout of his shares per the terms of the unexecuted shareholder agreement. The defendants also note the plaintiff seeks audited financial statements in the pleading as part of his relief from the alleged oppression, which they again argue is therefore only available if the plaintiff establishes his entitlement to the relief.

[8] I will address each of these issues in turn.

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Undertakings

[9] Examinations for discovery were held in June 2025. The plaintiff followed up on undertakings and refusals beginning September 2025 and on further occasions in November 2025 and January and February 2026, before bringing this motion first returnable in July 2026. On the eventual return of the motion in October 2026, the plaintiff advised the court the defendants had provided a response to undertakings on or about September 24, 2026; however, that several answers were improper or incomplete.

[10] Except for a disagreement regarding Question 4, that I shall address next, there can be no dispute from review of the record that these were undertakings to be satisfied. The defendants suggested that the plaintiff's act in setting the action down for trial meant that the plaintiff did not intend to pursue further answers. Setting an action down for trial does not truncate disclosure obligations: rr. 31.07, 31.09, 48.04(2)(a), (b).

[11] The plaintiff seeks further and better answers to Questions 5, 6 and 14 as particularized in Schedule A to the motion and updated draft order. These follow up requests or questions as to the circumstances of why the information is unknown to the defendants, or to provide missing cover letters to Royal's unaudited financial statements, are not burdensome.

[12] An order will issue as sought requiring satisfaction of the outstanding undertakings within 14 days of the Order.

Question 4 - Failed 2022 Transport Canada Audit – pages 34-37, questions 124 - 127

[13] The parties seem to disagree on the nature of the undertaking to provide the June 2022 Transport Canada audit record. Review of the transcript indicates that on discovery, the plaintiff asked about the company's 2022 manual that failed the Transport Canada audit (and for which the defendants hold the plaintiff responsible). Although the defendants did not have the 2022 manual that failed the audit, Crawford confirmed the defendants had a copy of failed audit paperwork. No audit documentation was listed in the defendants' affidavit of documents. The plaintiff asked for and received an undertaking for any of Royal's documents, including communications, relevant to the June 2022 audit by Transport Canada.

[14] The defendants now submit this information is not relevant because the plaintiff admits culpability for the failed audit. The defendants also argue this information is irrelevant to the plaintiff's oppression claim.

[15] The court cannot accept the defendants' conclusory assertion. The defendants expressly provided an undertaking to produce that information. Satisfaction of that binding promise should not be controversial. Moreover, this court is unable to weigh evidence and make findings of fact on this motion as it relates to the substantive disputes between the parties. As the defendants have pointed out, this is not a motion for summary judgment. An admission of responsibility for the audit would not necessarily determine the scope of liability or damages for the failed audit, which are live issues in the pleadings. The June

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2022 Transport Canada audit documents in the defendants' possession are relevant to this action, particularly to the defendants' counterclaim in gross negligence, and shall be produced.

Refusal – Legal Fees paid by the Corporation

[16] The defendant Crawford confirmed the defendant Royal had paid Crawford's legal fees relating to the dispute with the plaintiff on his examination for discovery (page 94, questions 268, 269). Plaintiff counsel asked if an approximate $14,000 increase in professional fee expenses between 2021 and 2022 on the unaudited financial statements was because of this legal dispute. The question was initially refused because the defendant Crawford was unlikely to be able to answer the question at examination from an accounting perspective. The plaintiff asked the defendants to undertake to advise of the amount Royal spent on legal fees regarding this dispute and why Royal was paying for Crawford's expenses. These questions were refused (pages 97-98, question 271-272), for reasons including that it was unlikely Crawford would be able to explain how the professional fees were allocated when an accountant prepared the statements.

[17] The defendant confirmed on discovery that Royal is paying his legal expenses in respect of this action. The plaintiff's amended statement of claim pleads continued oppressive conduct through the defendant Crawford's continued use of Royal to pay Crawford's legal fees, while also refusing to pay the plaintiff's expenses (para. 20c). This question is relevant and shall be answered as sought.

Further Financial Documents & Audited Financial Statements

[18] The plaintiff seeks production of existing financial and corporate documents to complete a valuation opinion on the share value. The plaintiff explains he retained an expert undertake a valuation opinion of the defendant company. The expert identified several sources of information to obtain from the company that are listed in Schedule "B" to the proposed order. The requests include particulars such as general ledgers, corporate tax returns and notices of assessment/reassessment, payroll summaries and loan agreements.

[19] The plaintiff also seeks production of the defendant corporation's audited financial statements for the years 2021 to 2026 and ongoing while he remains a shareholder of Royal. He submits he is entitled to these statements as of right and will assist in appreciating the status of the corporation's business activities, since he has not been directly involved in the business activities after his resignation in August 2022.

[20] The defendants' preliminary objection to both issues is that the plaintiff first made these requests after setting the action down for trial. The defendants submit the plaintiff's act of setting the matter down signified the plaintiff's readiness to proceed to trial without further documents or evidence. The defendants also note these requests are not the subject of an undertaking.

[21] I am satisfied it is appropriate for this court to exercise its discretion under r. 48.04 to provide leave to the plaintiff to move for this relief: *Fulop v. Corrigan*, 2020 ONSC 1648

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at para. 77. I find it will promote the just, most expeditious and least expensive determination of this matter on its merits. Although this court encourages parties to amend a litigation timetable as best practice, I accept the plaintiff's explanation that at the time it was thought advisable to set the matter down for trial in accordance with the court-approved timetable rather than seek an amendment. This matter has been spoken to in assignment court, but no pre-trial or trial dates assigned pending the disposition of this motion. The plaintiff has been taking steps to advance the proceeding and is not in default of his discovery obligations. As I shall next explain, I am also satisfied the request for further financial documents is relevant and proportionate. As a shareholder, the plaintiff is also entitled to audited financial statements in any event of the issues in this lawsuit.

[22] The defendants' main reason for opposing this relief is their position that the plaintiff has put the "cart before the horse" and must first establish an enforceable shareholder agreement. The defendants argue that whether Royal must be valuated at all is a material issue, because there is no signed shareholder agreement. The defendants submit the plaintiff must first establish entitlement to the buyback before the defendants are put to the disproportionate and potentially wasteful exercise of a share valuation. Similarly, the defendants note the plaintiff seeks relief by way of audited financial statements in his statement of claim. However, the record shows he had a practice of waiving the requirement for audited financial statements before this dispute arose. The defendants contend there is a triable issue as to whether he is, in fact, entitled to require the company to undergo the expense of audited financial statements.

[23] I cannot accept these submissions.

[24] While the Rules contemplate the possibility of a separate hearing on one or more issues in a proceeding, this action has not been bifurcated; nor is there a bifurcation motion or case conference convened for that purpose before the court: r. 6.1. The defendant has not moved under r. 30.04(8) for divided discovery.

[25] The court was not taken to any authority that stipulates that an oppression proceeding must categorically first establish liability before moving to evidence on valuation and damages. It is a basic right of a litigant to have all issues in dispute resolved in one trial. It is recognized that while cost considerations may militate in favour of bifurcating liability from damages in commercial litigation, there can also be no doubt that bifurcation can delay the final resolution of the entire proceeding: *Duggan v. Durham Region Non-Profit Housing Corporation*, 2020 ONCA 788, at paras. 29-38. To that end, it is also not clear whether these issues are, in fact, entirely severable, particularly given the counterclaim for damages under various heads including negligence, breach of fiduciary duty and breach of contract, which the defendants did not address in this submission.

[26] This financial information is relevant and will assist to the court in its fact-finding on the merits. The specific requests for financial information to assist in valuation are not disproportionate—they request only documents or information in existence. It does not

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require the defendants to create documents or information. These requests do not impose onerous or undue burdens on the defendants.

[27] The audited financial statements do not exist and will involve time and expense for the corporate defendant. However, the plaintiff has an independent right to require the corporate defendant to produce audited financial statements. A corporation must provide audited financial statements to shareholders unless the obligation to do so has been waived in writing by all shareholders: *Business Corporations Act*, R.S.O. 1990, c. B.16, s. 148. It is the corporation's core obligation to provide its shareholders with an annual report card of the corporation's financial position in the form of audited financial statements. The shareholder may assert this mandatory right without explanation: *Packall Packaging Inc. v. Ciszewski*, 2016 ONCA 6 at para. 28; *Fakih v. AHM Investments Corporation*, 2022 ONSC 2384 at paras. 34-38.

[28] The defendants submit the plaintiff's request is unnecessary and would put the corporation to a burdensome and expensive exercise that would itself become oppressive. Notwithstanding its statutory obligation, the defendants suggest the court has discretion to refuse to require the corporation to produced audited financial statements where they are a "nuisance" and would not provide any additional useful information to the financial information already produced. However, while the decisions relied upon by the defendants for that proposition reflected upon that possibility, both ultimately held that audited statements in those circumstances must nevertheless be produced because of the shareholder's statutory right: *Darvish-Kazem v. Pazkaz Enterprises Inc*., 2022 ONSC 1667at 31-32; *Packall Packaging*, at paras. 28-30.

[29] If there is discretion to relieve against the requirement for providing audited financial statements, this record does not persuade the court that the request would amount to oppressive conduct towards the corporation that would justify an exemption from this statutory shareholder obligation: *Packall*, at para. 30. There are no particulars in this record that would demonstrate prohibitive cost or questionable utility to the exercise, or that the plaintiff has made this request in bad faith. As noted in *Fakih*, if the company has more important or urgent demands on its cashflow, it would be facing far graver problems than the issues raised under the oppression remedy: *Fakih*, at para. 37. Whether the plaintiff's demand for audited financial statements is a fiscally prudent or reasonable measure is not part of this court's calculus. It will be for the parties to reckon with the consequences of this exercise at the conclusion of this proceeding.

[30] The defendants also urged the court to find the plaintiff has waived his entitled to audited financial statements. The record demonstrates the plaintiff signed shareholder resolutions that expressly waived the requirement for Royal to appoint an auditor for the years 2010-2014, 2016 and 2018. The court cannot give effect to this argument. As was noted by the defendants themselves, this is not a summary judgment motion. There is no motion or record before this court that would permit a weighing of evidence and finding of waiver. There is no evidence of an express waiver for the years 2015 or 2017. Further, s. 148 of the OBCA requires an express waiver in writing "*in respect of that year*". In other words,

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a waiver of the requirement for an audited financial statement in one year does not amount to a waiver for all future years.

[31] An order will therefore go requiring the defendant Royal to produced audited financial statements for the years 2021- 2026. I will not order audited financial statements going forward prospectively, given that the Act contemplates that the waiver of an auditor is addressed on an annual basis. The plaintiff can make an informed decision as to whether to waive the requirement in future years that he remains a shareholder .

Disposition

[32] The plaintiff's motion is therefore granted for the foregoing reasons.

[33] I am prepared to sign the draft order in the form currently found at A402-A409 in the Master Bundle, with the phrase "and future years while Blair MacMillan remains a shareholder," removed from paragraph 2 of the draft order.

[34] However, the draft order also makes provision for costs. The parties each uploaded cost outlines or bills of costs, but there was no opportunity for submissions in the available court time, because this motion was argued in a busy motion court (a special appointment would have been better for the parties and the court, and would have led to a timelier decision). I note the plaintiff's partial indemnity fees are $12,086.57, while the defendants' partial indemnity fees are $12,486. This suggests reasonableness of the quantum of costs is not in issue.

[35] If the parties resolve costs by November 24, 2026, the court will sign an amended and updated version of the order upon receipt of an updated draft order and consent of the parties, uploaded to Case Center, with express notification to my judicial assistant by the previously mentioned date.

[36] If the parties cannot resolve costs, the plaintiff shall provide his written submission by November 19, 2026, and the defendants their written submission by November 24, 2026. As I already have the outline/bill of costs, submissions are limited to one page each, excluding any offers to settle.

Justice K. Tranquilli

Date: November 13, 2026

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