IN THE SUPREME COURT OF NOVA SCOTIA
Citation: Warner v. Nova Scotia Textiles Ltd., 2008 NSSC 17

Date: 20080122
Docket: SK-256630
Registry: Halifax

Between:

Beatrice A. Warner

Plaintiff

v.

Nova Scotia Textiles Limited, J. Edward MacDonald

Defendants

Judge:	The Honourable Justice John M. Davison
Heard:	November 7, 2007 in Chambers, Halifax, Nova Scotia
Written Decision:	January 22, 2008
Counsel:	Randall P.H. Balcome, for the plaintiff
	G. Grant Machum, & Mark Tector for the defendants

Davison, J.:

[1] This is an application to strike the plaintiff's claim against the defendant, J. Edward MacDonald (the defendant MacDonald) on the basis that neither the claim for breach of fiduciary duty nor the claim for an oppressive remedy disclose a reasonable cause of action. Alternatively if causes of action exist on the pleadings, the defendant MacDonald seeks a summary judgment on the two remaining claims which have been made against him.

[2] The action is in essence a wrongful dismissal action advanced against both defendants. The statement of claim raises several claims against the defendant MacDonald but on October 23, 2007 there was an order granted pursuant to an application to amend the statement of claim by withdrawing four claims against him. These claims were basically misrepresentation, intimidation, fraudulent and bad faith acts. The defendants did not oppose the amendments and were awarded throw away costs in relation to the four causes of action. The remaining claims against the defendant MacDonald are alleged breaches of fiduciary duty and the seeking of an oppression remedy.

[3] In his written memorandum counsel for the defendants state the plaintiff by taking action against the defendant MacDonald is attempting to “pierce the corporate veil”. There is no evidence of this and I cannot imply this motivation on the basis the corporate defendant has serious financial difficulties.

[4] The plaintiff was employed by Nova Scotia Textile Ltd. in its sewing department. I do not accept the allegation the plaintiff was employed by the defendant MacDonald who was the majority shareholder and President of the corporate defendant.

[5] Prior to 2005 the financial problems of Nova Scotia Textile Ltd. were increasing. The defendant MacDonald injected a significant part of his personal funds to assist the corporate defendant but the operations of Nova Scotia Textiles Ltd. had to cease. The plaintiff was laid off work about eight times due to lack of work but the final lay off occurred on October 24, 2004.

[6] On July 15, 2005 the corporate defendant gave its employees notice of a planned asset sale to Stanfields Limited and on the same date the plaintiff and a

number of employees received notice their positions were eliminated due to the asset sale. The plaintiff received from the corporate defendant eight weeks pay.

[7] In January 2006 notice was given that the corporate defendant would close permanently.

ISSUES

[8] In his written brief counsel for the plaintiff stated "the action is essentially a wrongful dismissal action against the defendant corporation, and the individual defendant ... on the basis of a number of causes of actions..." and there was listed the six causes, four of which have been withdrawn.

[9] The issues could be stated as follows:

Issue 1: Should the portions of the Statement of Claim dealing with causes of action against the individual Defendant MacDonald, based on breach of fiduciary duty or oppression remedies under the Companies Act be struck pursuant to Civil Procedure Rule 14.25(1)...

Issue 2: Should the Defendant be granted summary judgment, pursuant to Civil Procedure Rule 13.01(a), with regard to the Plaintiff's claims of breach of fiduciary duty and oppression?...

Civil Procedure Rule 14.25 (1)(a)

[10] The application by the defendants is for an order striking parts of the statement of claim pursuant to *Civil Procedure Rule 14.25(1)(a)*:

> **14.25. (1)** The court may at any stage of a proceeding order any pleading, affidavit or statement of facts, or anything therein, to be struck out or amended on the ground that,
>
> (a) it discloses no reasonable cause of action or defence;
>
> ...

[11] It should be noted by way of general comment that courts are reluctant to preclude a litigant's right to trial by a summary proceeding except in the clearest of cases. In **American Home Assurance Co. et al. v. Brett Pontiac Buick GMC Ltd. et al.** (1992), 116 N.S.R. (2d) 319, the Court of Appeal was faced with an appeal from an order which did not strike the statement of claim pursuant to *Rule* 14.25(1)(a) and Freeman, J.A. said at p. 322:

> The appellant faces an onerous double burden in appealing from the dismissal of an application to strike out the statement of claim, a srious matter that would result in the action being decided against the respondent plaintiffs without trial. A claim will be struck out only if, on its face, it is "absolutely unsustainable" (See

> **Curry v. Dargie** (1984), 62 N.S.R. (2d) 416; 136 A.P.R. 416 (A.D.), at p. 429) or "is certain to fail because it contains a radical defect". (See **Hunt v. T & N. pic et al.,** [1990] 2 S.C.R. 959;

[12] Success on such an application occurs only in clear cases, and one that is "beyond doubt". Reference is made to **Amherst Central Charge Limited et al. v. Cumberland County, Rocca Group Ltd. and Burnac Leaseholds Limited** (1980), 40 N.S.R. (2d) 587. A person in the position of the defendants in this interlocutory application can only succeed if the plaintiffs' claims are certain to fail.

[13] In recent years there have been an increase in the number of applications for summary judgments under *Civil Procedure Rule* 13 and an increase in applications to strike portions of pleadings under *Rule* 14.25. These motions arise because counsel who act for a plaintiff or a defendant and who consider their client's case has strength seek to conclude matters in a summary way to avoid further costs and render timely decisions. That is understandable, but the court, in dealing with these motions, must not lose sight of the basic rule to exercise caution before disposing of matters where a party is precluded from trial.

[14] The Supreme Court of Canada had cause to comment on applications to strike pleadings in **Operation Dismantle v. the Queen**, [1985] 1 S.C.R. 441 where Wilson, J. commented at p. 486-87:

> The law then would appear to be clear. The facts pleaded are to be taken as proved. When so taken, the question is do they disclose a reasonable cause of action, i.e. a cause of action "with some chance of success" ... or ... is it "plain and obvious that the action cannot succeed?" Is it plain and obvious that the plaintiffs' claim for declaratory or consequential relief cannot succeed?

The court does not try the issues but decides whether there are issues to be tried as stated by Justice Angus MacDonald in **Vladi Private Islands Ltd. v. Haase** (1990), 96 N.S.R. (2d) 323 at 325.

[15] A definitive decision is **Hunt v. Casey Canada Inc.,** [1990] 2 S.C.R. 959 where the Supreme Court of Canada emphasized pleadings should be struck only when it is "plain and obvious" they disclose no reasonable claim.

[16] It is my perception the parties agree on the extent of the burden that is on the defendants in the motion to strike pleadings. The defendants in their written brief state:

The test on an application to strike was recently summarized by the Nova Scotia Court of Appeal in *Nova Scotia* (*Attorney General) et al. v. MacQueen et al.* C.A. No. 268308, 281 D.L.R. (4th) 287 (NSCA) ("*MacQueen*") as follows (paragraphs 7 and 8):

> [7] The applications to strike were made after the statement of claim was filed and before any defences were filed. No party took issue with the test to be applied by the judge on an application to strike. The judge stated:
>
> > [12] The parties are not in dispute as to the burden resting on the defendants with respect to their respective applications to strike portions of the plaintiffs' statement of claim. Each of the defendants acknowledges the onus on them is to establish it is "plain and obvious" the plaintiffs' statement of claim discloses no reasonable cause of action, citing *Hunt v. Carey Canada Inc.*, [1990] 2 S.C.R. 959; 117 N.R. 321. Also acknowledged by the defendants is that a court, in considering an application to strike, is to assume the facts contained in the statement of claim are true and then to assess whether, assuming those facts to be true, a claim may be made out. The applications will only succeed if, on the facts as pleaded, the action is "obviously unsustainable". ...
>
> [8] All parties agree that a pleading should only be struck if it is "plain and obvious" that the claim does not disclose a cause of action; that the action is "obviously unsustainable." This test was recently approved by this Court in *Mabey v. Mabey* (2005), 230 N.S.R. (2d) 272:
>
> [13] It is well settled that the best pursuant to Rule 14.25(1)(a) is that the application will not be granted unless the action is "obviously unsustainable". In considering an application to strike out a pleading it is not the court's function to try the issues but rather to decide if there are issues to be tried. The power to strike out pleadings is to be used sparingly and where the action raises substantial issues it should not be struck out: *Vladi Private Islands Ltd. v. Haase et al.* (1990), 96 N.S.R. (2d) 323; 253 A.P.R. 323 (C.A.). An application for variation should not be struck out unless it is certain to fail, or it is plain and obvious that it will not succeed. Neither the length and complexity of the issues, the novelty of the cause of action, nor the potential for the respondent [page 292] to present a strong defence should prevent the applicant from

> proceeding with his or her case: *Hunt v. Carey Canada Inc.*, [1990] 2 S.C.R. 959; 117 N.R. 321.

[17] Therefore, I must assume the facts in the pleadings are true and consider the allegations of breach of fiduciary duty and oppression remedy.

[18] In **Trophy Foods Inc. V. Scott et al.** (1995), 140 N.S.R. (2d) 92 Hallett, J.A. expressed concern about the extent to which some courts classify relationships as fiduciary relationships. He stated at p. 101:

> The appeal raises what has become a troublesome and recurring problem for the courts. What relationships should be classified as fiduciary and what duties flow from such a classification in a given set of circumstances? There has been a steady drift to increase the class of relationships beyond those traditionally recognized. It is not necessary to review the history of this development. It is suffice to say that the Supreme Court of Canada in **L.A.C. Minerals Ltd. v. International Corona Resources Ltd.,** [1989] 2 S.C.R. 574; 101 N.R. 239; 36 O.A.C. 57; 61 D.L.R. (4th) 14; 69 O.R. (2d) 287; 35 E.T.R. 1; 44 B.L.R. 1, in overturning a judgment of the Ontario Court of Appeal is suggesting to the courts to put out a sea anchor and not find a fiduciary relationship exists every time a party has imposed a trust or confidence in dealing with another...

[19] Justice Hallett referred to the reasoning of Justice Wilson who gave a dissenting opinion in **Frame v. Smith**, [1997] 2 S.C.R. 99. Wilson, J. stated at p. 136:

> Relationships in which a fiduciary obligation have been imposed seem to possess three general characteristics:
>
> (1) The fiduciary has scope for the exercise of some discretion or power.
>
> (2) The fiduciary can unilaterally exercise that power or discretion so as to affect the beneficiary's legal or practical interests.
>
> (3) The beneficiary is peculiarly vulnerable to or at the mercy of the fiduciary holding the discretion or power.

[20] Hallett, J.A.'s comments on Justice Wilson's reasoning is at p. 103 of **Trophy Foods Inc. v. Scott** (*supra):*

> With respect to the power and discretion theory which appears to me to be the essence of the reasoning of Justice Wilson in the **Frame** decision, it is the author's opinion that there are no logical limits to its application and this is one of its weaknesses.

[21] In **Barrett v. Reynolds** (1998), 170 N.S.R. (2d) 201 there arose the issue of the difference between a duty to take reasonable care and a duty of utmost good faith. In **Barrett** the Nova Scotia Court of Appeal refers to fiduciary duty having the presence of loyalty, trust and confidence. At p. 211 of the **Barrett Case** Justice Pugsley underlined the words "allegation of fiduciary duty carries with it the stench of dishonesty".

[22] Justice LaForrest wrote the majority decision in **Frame v. Smith** (*supra)* and wrote a decision in **Hodgkinson v. Simms**, [1994] 3 S.C.R. 377 where he commented on the category approach of Justice Wilson in **Frame v. Smith** (*supra)*. At p. 409 he stated:

> As I noted in *Lac Minerals*, however, the three-step analysis proposed by Wilson J. encounters difficulties in identifying relationships described by a slightly different use of the term "fiduciary", viz., situations in which fiduciary obligations, though not innate to a given relationship, arise as a matter of fact out of the specific circumstances of that particular relationship; see at p. 648. In these cases, the question to ask is whether, given all the surrounding circumstances, one party could reasonably have expected that the other party would act in the former's best interests with respect to the subject matter at issue. Discretion, influence, vulnerability and trust were mentioned as non-exhaustive examples of evidential factors to be considered in making this determination.
>
> Thus, outside the established categories, what is required is evidence of a mutual understanding that one party has relinquished its own self-interest and agreed to act solely on behalf of the other party. This idea was well-stated in the American case of *Dolton v. Capitol Federal Sav. & Loan Ass'n,* 642 P.2d 21 (Colo. App. 1982), at pp. 23-24, in the banker-customer context, to be a state of affairs ...

[23] In **Nova Scotia (Attorney General) v. MacQueen; Canada (Attorney General v. MacQueen; Ispat Sidbec Inc. v. MacQueen** 2007 N.S.C.A. 33 the Nova Scotia Court of Appeal struck a claim alleging breach of fiduciary duty against a corporate defendant but refused to strike the same type of claim against the federal government and the government of Nova Scotia. It was alleged the governments and the former owner and current owner of the steel plant and coke

ovens in Sydney, Nova Scotia breached fiduciary duties by releasing "contaminants" knowing they were harmful to the residents and they did not inform the residences of this harm.

[24] The court stated:

> All parties agree that a pleading should only be struck if it is "plain and obvious" that the claim does not disclose a cause of action; that the action is "obviously unsustainable".

[25] In the course of the court's analysis there was reference to **Barrett v. Reynolds** (*supra*) where the breach of duty of care was compared to the breach of fiduciary duty and there was reference to the decision of Justice LaForest in **Hodgkinson v. Simms** (*supra)* at p. 405. The passage in the judgment of Justice Cromwell in **Barrett v. Reynolds** at p. 235 assists in the understanding of the common law claim of fiduciary duty:

> There is nothing complicated or technical about what the duty of loyalty requires. The fiduciary must act in the client's interests (or in their mutual interest) to the exclusion of his or her own interests. One party has the obligation to act for the benefit of another: Hodgkinson, supra, at pp. 407-408.

[26] Justice Hamilton made it clear the judge should analyse the pled facts to see if there is a foundation in fact to support the existence of a fiduciary duty. After considering the facts in the pleadings, Justice Hamilton at p. 14 in para. 40 of the decision stated:

> There is nothing in the pled facts that could reasonably give rise to an understanding between the respondents and Ispat that Ispat had relinquished its own self-interest and agreed to act solely on behalf of the respondents. Not only were they strangers, Ispat was obliged to act in the best interests of others, its shareholders. In the circumstances of this case I do not see this obligation as being compatible with it being obliged to act in the best interests of the respondents. To suggest on the facts alleged that Ispat owned a fiduciary duty to the respondents to act in their best interests as opposed to in the interests of its shareholders would represent a fundamental change in the law in Canada, and one I am not prepared to countenance here. [emphasis added]

[27] Examining the statement of claim the fiduciary duty claim reads as follows:

> 9. On July 15, 2005, MacDonald met with all of the employees of NS Textiles including the Plaintiff, and advised them that unless they agreed to eight weeks of severance there would be no sale to Stanfields of assets of NS Textiles, and therefore NS Textiles would go into receivership and the employees would receive nothing in severance.
>
> 10. At the above meeting on July 15, 2005, the Plaintiff was advised in a letter from MacDonald that her position and employment were terminated. The letter from MacDonald to the Plaintiff stated in part as follows:
>
> > "The purchaser requires a condition of its obligation to close the transaction and therefore to provide funding for the eight weeks severance pay, that the Company deliver releases signed by employees in which the

> employees release potential claims and rights of action in regard to the termination of their employment and agree that the sale of the assets to the purchaser is not a transfer of business under Section 12 of the Nova Scotia Labour Standards Code."

[28] These are facts but the claim for breach of fiduciary duty is set out in para. 21 which reads:

> 21. The Plaintiff also says that MacDonald had a duty to disclose complete information to the employees of NS Textiles and to act in the interests of the employees of NS Textiles, including the Plaintiff, with regard to the above-mentioned agreement and transaction with SL. Therefore, the Plaintiff says that MacDonald owed a fiduciary duty to the employees of NS Textiles, including the Plaintiff, and that MacDonald breached this fiduciary duty by:
>
> (a) not fulfilling MacDonald's promise to the Plaintiff that she would be returning to work no later than the spring of 2005;
>
> (b) not disclosing material facts to the employees, including the Plaintiff, as outlined in paragraphs 9 and 10 of the Statement of Claim;
>
> (c) actively misrepresenting facts to the employees, including the Plaintiff, with regard to the agreement and transaction between NS Textiles and SL as outlined in paragraphs 9 and 10 of the Statement of Claim;
>
> (d) stating to the employees of NS Textiles, including the Plaintiff, that the employees could contract out of their labour standards right contrary to section 6 of the **Labour Standards Code**, RSNS 1989, chapter 246;
>
> (e) the particulars outlined in clause 12 of this Statement of Claim;

(f) such other particulars as may appear in the evidence.

[29] In making reference to clause 12 of the statement of claim he is referring to facts which were to support the oppression remedy. It is my understanding by clause 21(e) those facts are now said to be relevant for the claim of fiduciary duty. Paragraph 12 states that the affairs of the corporate defendant and this sale of the Mill property and assets "would be conducted with a view of protecting, at least partly, the interests of long term employees such as the plaintiff". There is further set out in paragraph 12 of the statement of claim particulars (a) to (I) of actions of the defendants which were "unfairly prejudicial and unfairly disregarded the interest of terminated employees and specifically the plaintiff".

[30] I find the claim against the defendant MacDonald is not within the "established categories" and there is no indication in the facts pled that the defendant MacDonald relinquished his own self-interest and that he had agreed to act on behalf of the plaintiff. The circumstances in this case are similar to those in **MacQueen v. Ispat Sidbec Inc.** (*supra).* The defendant MacDonald as Chief Officer and majority shareholder of the corporate defendant was obliged to act in the best interest of the shareholders. As Justice Hamilton said it cannot be that there was a fiduciary duty to act in the best interest of the employees. I reject the

allegations of counsel for the plaintiff to the contrary including those allegations in clause 12 of the Statement of Claim.

[31] I find that there was not a fiduciary relationship between the defendant MacDonald and the plaintiff. I further find that the pleadings do not disclose a breach of fiduciary duties and find that it is plain and obvious the plaintiff could not have reasonably expected the defendant MacDonald would act in her interest.

[32] I would add the case is similar to **MacQueen v. Ispat Sidbec Inc.** (*supra)* in that the defendant MacDonald was required to act in the best interest of the shareholders which is inconsistent with owing a fiduciary duty as alleged by the plaintiff.

OPPRESSIVE REMEDY

[33] The plaintiff advanced a claim that she is entitled to relief because of alleged oppressive conduct on the part of the defendant MacDonald. She seeks this relief under Section 5 of the Third Schedule of the *Companies Act*, R.S.N.S., 1989 c. 81. This schedule provides:

5(1) A complainant may apply to the court for an order under this Section.

(2) If, upon an application under subsection (1) of this Section, the court is satisfied that in respect of a company or any of its affiliates

(a) any act or omission of the company or any of its affiliates effects a result;

(b) the business or affairs of the company or any of its afiliates are or have been carried on or conducted in a manner; or

(c) the powers of the directors of the company 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.

The application is made under S. 5(1) and S. 5(2)(b).

[34] A complainant is defined in S. 5(5) as:

5(5) For the purposes of Sections 4, 5, 6 and this Section

(a) “action” means an action under the Act;

(b) “complainant” means

(i) a registered holder or beneficial owner, and a former registered holder or beneficial owner, of a security of a company or any of its affiliates,

(ii) a director or an officer or a former director or officer of a company or of any of its affiliates,

(iii) the Registrar, or

(iv) any other person who, in the discretion of the court, is a proper person to make an application under this Section.

The plaintiff advances her application on the premise the court will exercise its discretion and determine she is a proper person under S. 5(b)(iv).

[35] In **Clitheroe v. Hydro One Inc. and Glenn Wright**, [2002] O.J. No. 4383 there was a motion to strike a claim for oppression remedy. The motion was successful. The applicant was the senior officer of Hydro One whose position with the company was terminated. Justice Nordeimer stated at para. 25 and para. 26:

> 25 ...Generally speaking, the oppression remedy is not to be used as a surrogate for a wrongful dismissal action. In Mohan v. Philmar Lumber (Markham) Ltd., (1991), 50 C.P.C. (2d) 164 (Ont. Gen. Div.), Mr. Justice Farley said, at para. 2:
>
> > "The oppressions remedy is designed to protect interests qua security holder, creditor, director or officer – it is not designed to provide a mechanism where employees who have been terminated may bring an application for wrongful dismissal. That is properly the subject of an action. It seems to me that it is proper to keep that distinction."
>
> 26 Further, the nature and purpose of the oppression remedy must be kept in mind. It is to redress oppressive conduct in relation to the claimant's position as a security holder (e.g. shareholder), creditor, director or officer of a corporation. <u>It does not operate to provide a remedy to employees.</u> It is, therefore, a limited remedy, which is made clear in Naneff v. Con-Crete Holdings Ltd. (1995), 23 O.R. (3d) 481 (C.A.) where Galligan J.A. said, at pp. 489-490:
>
> > "I conclude, therefore, that the discretionary powers in s. 248(3) O.B.C.A. must be exercised within two important limitations:

(i) they must only rectify oppressive conduct

(ii) they may protect only the person's interest as a shareholder, director or officer as such." [original emphasis]

[36] The oppression remedy under the *Business Corporations Act* R.S.O. 1990 c. B 16 is substantially similar to the Nova Scotia legislation. Any difference does not affect the court's interpretation of the meaning of the legislation.

[37] In **Joncas v. Spruce Falls Power and Paper Co.**, [2000] O.J. No. 1721 the plaintiffs applied as putative complainants under the oppression provisions of the *Business Corporations Act* R.S.O. 1990 c B 16 as amended. The plaintiffs were employees who took action against a number of defendants including their employer seeking a declaration they had their interests disregarded when excluded from those entitled to receive corporate shares. Both the plaintiffs and defendants sought summary judgment. The motion of the plaintiffs was dismissed and the motion of the defendants was granted. An appeal was dismissed, [2001] O.J. No. 1505 (C.A.).

[38] The court held the oppression remedy was not triggered and stated at para. 52:

> The oppression remedy cannot be employed to redress the disappointed expectations of employees. Even if a person has status as a "security holder", expectations which are protected by the oppression remedy are limited to interests held in that capacity. The oppression remedy does not protect expectations which do not relate to a person's interest as a shareholder in a corporation: see *Naneff v. Con-Crete Holdings Ltd.* (1995), 23 O.R. (3d) 481 (C.A.) Per Galligan J.A. at 488-490; *Dashney v. McKinlay* (1996), 30 B.L.R. (2d) 211 (Ont. Gen. Div.) per Chadwick J. at 218; *820099 Ontario Inc. v. Harold E. Ballard Ltd.*, [1991] O.J. No. 266, (1991), 3 B.L.R. (2d) 123 (Ont. Gen. Div.) per Farley J. at 185-6, appeal dismissed, [1991] O.J. No. 1082, (1991), 3 B.L.R. (2d) 113 (Ont. Div. Ct.)

[39] In **Harbert Distressed Investment Master Fund, Ltd. v. Calpine Canada Energy Finance** II ULC [2005] N.S.J. No. 317 Associated Chief Justice Smith of the Nova Scotia Supreme Court dealt extensively with the history and purpose of oppression remedies. She stated beginning at para. 105:

> Prior to the enactment of the oppression remedy provisions in the Canada Business Corporations Act and other similar provisions in provincial legislation, the rights of minority shareholders and creditors were minimal as compared to the rights of those that control a corporation. The introduction of statutory provisions which allow remedies against acts or omissions that are oppressive, unfairly prejudicial or that unfairly disregard the interests of others was a major change in corporate law and the courts involvement in corporate affairs. In relation to creditors, the oppression remedy provisions of the various statutes in Canada are said to "grant the broadest rights to creditors of any common law jurisdiction" (see: Peoples Department Stores Inc. (Trustee of) v. Wise (2004), 244 D.L.R. (4th) 564 (S.C.C.) at para. 48).
>
> While the Court has the ability, in appropriate circumstances to grant relief from conduct that is oppressive, unfairly prejudicial or that unfairly disregards the interests of others, it must be careful not to inappropriately intrude into the legitimate conduct of a company's business.

[40] Associate Chief Justice Smith made reference to authorities including:

> In SCI Systems, Inc. v. Gornitzki Thompson & Little Co. (1997), 36 B.L.R. (2d) 192 (Ont. Sup. Ct.) affirmed at 110 O.A.C. 160 the Court stated at para. 36:
>
> > "I agree that the oppression remedy is designed to protect reasonable expectations. However, one of the most reasonable of all expectations of those dealing wtih corporations must be that the directors will manage the company in accordance with their legal obligations. Some of these obligations are specifically prescribed by statute. Others are more generally derived from the common law. However, they essentially add up to the same thing: namely, to act honestly and in good faith in the best interests of the corporation and to exercise the diligence expected of a reasonably prudent person."

[41] The pleadings do not indicate the defendant MacDonald did not act "honestly and in good faith in the interests of the corporation and exercise the diligence expected of a reasonably prudent person".

[42] The oppression remedy does not provide a remedy for employees. I do find the plaintiff is not a "proper person" to make the application. As stated by Justice Hamilton in **Nova Scotia (Attorney General) v. MacQueen** (*supra)* the corporate defendant was required to act in the best interest of its shareholders and, as majority shareholder and chief executive officer the defendant MacDonald must

facilitate that obligation which is a role in conflict with the allegations of the plaintiff. The defendant MacDonald cannot be considered an agent of the employees.

[43] The claims for breach of fiduciary duties and oppression remedy against the defendant MacDonald shall be struck. There is no need to consider the summary judgment issues.

[44] I would ask counsel for the parties to send me written submissions on the matter of costs.

J.