

**SUPREME COURT OF NOVA SCOTIA**

Citation: Richards v. Richards , 2013 NSSC 163

Date: 2013-06-10

Docket: Hfx. No. 390959

Registry: Halifax

**Between:**

SANDRA LYNN RICHARDS

Applicant

v.

ROBERT JAMES RICHARDS, JAYLYNN ENTERPRISES LIMITED, HOLM REALTY LIMITED, DUANE ROBERT RICHARDS, JAY ROBERT RICHARDS and RICHARDS FAMILY TRUST (2002)

Respondents

**Judge:** The Honourable Justice Pierre L. Muisse

**Heard:** December 3, 4, and 5, 2012 and January 31 and February 1, 2013,

**Final Written Submissions:** March 7, 2013]

**Written Decision:** June 10, 2013

**Subject:**

**Summary:** Robert and Sandra Richards incorporated Jaylynn Enterprises Ltd. in 1976, shortly before their marriage. They were initially the only shareholders, directors and officers. In 1983 they passed Jaylynn Resolutions requiring both their signatures for transactions over \$50,000 and conveyance of land in Jaylynn's mobile home park, and necessitating a further Special resolution signed by both of them to alter those requirements. In 1989, they incorporated Holm Realty Ltd. and were the only shareholders, directors and officers. In 1994, they issued Jaylynn shares to a family trust and entered

into a shareholders' agreement amongst themselves and the Trust. The Agreement purported to require, among other things: two directors, a president and a secretary, with Mr. Richards being the President, Ms. Richards the Secretary, and both being Directors; unanimous consent, and the signature of both the President and Secretary, for transactions over \$50,000; unanimous consent of all shareholders for expenditures and incurring of liability or debt over \$50,000, and selling, leasing or mortgaging assets. In 2002, Jaylynn issued shares to their three children. The share certificates did not specify that they were subject to the restrictions in the Agreement.

In early 2010, a dispute over the renovation of a building known as the Bowater Unit precipitated a breakdown of Mr. and Ms. Richards' working and marital relationship. Mr. Richards proceeded with the renovations against Ms. Richards' wishes. They separated in March. In April, Ms. Richards attempted to reduce Jaylynn's operating line of credit from \$900,000 to \$150,000, and sent other employees of these companies a letter indicating she would no longer be working there. In May, Mr. Richards stopped payments from Jaylynn to himself and Ms. Richards. In June, she attempted to convert \$29,000 from Holm's account to herself. It represented about one half of the funds in the account and she was a 50% shareholder.

In August, it became clear that there was no possibility of reconciliation.

In September, Mr. Richards dismissed Ms. Richards as an employee and blocked her re-election as director and officer of Holm. By way of corporate meetings held in August and October of 2011, Ms. Richards was removed as Secretary of Jaylynn and appointed "Education Officer". Jay Richards, their son, was added as Director and Secretary. Duane Richards, Mr. Richards' son from a prior relationship, was added as Director and Vice-President. Until these changes, Mr. and Ms. Richards had been the only directors and officers of both corporations, with Mr. Richard being the President and Ms. Richards being the Secretary.

In December of 2011 and January of 2012, Jaylynn opened accounts at the Credit Union. It had previously conducted all

of its banking at BMO. Ms. Richards had full online access to all BMO transaction information; but, no access to the Credit Union account information. The Respondents conducted Jaylynn business through Value Added Investments Ltd., a company owned by the individual respondents. Ms. Richards, starting for the first time in 2012, paid himself consulting fees from Jaylynn, through Value Added, so that he could pay Ms. Richards spousal support. They did not advise Ms. Richards of these related party transactions. The use of Credit Union accounts hid portions of the transactions from her view. Ms. Richards commenced an application in court seeking oppression remedies under the Third Schedule to the *Companies Act*, R.S.N.S. 1989, c. 81. She filed this motion for an interlocutory and interim injunction requiring the Respondents to refrain from contravening the Resolutions and Agreement and for ongoing disclosure of corporate and financial information.

Ms. Richards alleged that, though they never held formal meetings, they always followed the spirit of the Resolutions and Agreement and operated the business as a partnership, with equal input. Therefore, she expected that to continue. Mr. Richards alleged that he made the decisions and Ms. Richards merely took care of the administrative tasks required to give effect to them. He was of the view that the Resolutions and Agreement did not require him and Ms. Richards to be the only directors and officers.

**Issues:**

- (1) Whether Ms. Richards is entitled to interim injunctive relief pursuant to Third Schedule of the *Companies Act*.
- (2) The extent to which Sandra and/or her accountant, on an interim basis, ought to have access to the corporate and financial records for Jaylynn and Holm.

**Result:**

Ms. Richards established a serious question to be tried regarding whether the conduct complained of amounted to oppression, unfair prejudice to her interests and rights, or unfair disregard of them. In the circumstances of this case, a more stringent standard was not required for the first branch

of the RJR-MacDonald Test.

She failed to establish she would suffer irreparable harm if the interlocutory injunction was not granted. Jaylynn's retained earnings had continued to grow. It was capable of redeeming Ms. Richards' shares. She did not demonstrate any real risk that the equity and profitability in Jaylynn would collapse or dwindle, if she was unable to exercise a veto power, so as to jeopardize its ability to redeem her shares. She was indirectly receiving income from the business, through spousal support, and freed to advance her education. Her prior involvement in the business was not shown to be such that her absence would result in loss of goodwill. Any loss was compensable by payment of money.

The risk of harm to the Respondents, if the injunction was granted, was greater than the risk of harm Ms. Richards if it was not granted.

The circumstances of this case were not of the special type, where the "dictates of fairness" are "so overwhelming" as to warrant interim injunctive relief without the RJR-MacDonald Test being met. Ms. Richards' failure to come to Court with clean hands provided additional reason to refuse the equitable injunctive remedy requested.

Ms. Richards established a strong *prima facie* case that the individual respondents' failure to disclose related party transactions and blocking of her access to banking information amounted to oppression, unfair prejudice or unfair disregard. An order for interim production of corporate and financial information was granted to maintain the *status quo* and some balance between the parties, pending trial. More information was required to be produced in relation to Jaylynn than Holm, as Ms. Richards' required it due to her continued position as Director and Officer.

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