

**SUPREME COURT OF NOVA SCOTIA**  
**(FAMILY DIVISION)**

**Citation:** *Lamb v. Trombley*, 2023 NSSC 222

**Date:** 20230707

**Docket:** No. 522508

**Registry:** Kentville

**Between:**

Margaret Lila Lamb

*Applicant*

v.

Michael Lee Trombley and Christa Leanne Trombley

*Respondent*

**Judge:** The Honourable Justice Gail L. Gatchalian

**Heard:** June 21, 2023, in Windsor, Nova Scotia; and June 22, 2023, in  
Kentville, Nova Scotia

**Counsel:** Jonathan G. Cuming, for the Applicant  
Allison Godwin and Leanne Flett, for the Respondents

**By the Court:**

**Introduction**

[1] This is an application for permission to bring a derivative action in the name of and on behalf of two companies. In order to determine whether to grant permission to the Applicant, I must decide whether she is acting in good faith, and whether the proposed action is in the interests of the companies.

[2] The Applicant, Margaret Lila Lamb, is the President and majority shareholder of 2126995 Nova Scotia Limited, known as Meadowbrook Meat Market (“Meadowbrook”). Meadowbrook operates a hog farm and retail meat store from the farm’s location at 318 Pleasant Valley Road in Somerset, Nova Scotia. Ms. Lamb is also a director of Pleasant Valley Enterprises Limited, which owns vehicles and equipment used to operate the farm.

[3] The other shareholders and directors of Meadowbrook are the Respondents, Michael Trombley and Christa Trombley. They are also the sole shareholders and the other directors of Pleasant Valley. The Trombleys bought their shares in the companies from Ms. Lamb in 2019. Pursuant to the Share and Farm Property Purchase Agreement executed by the parties on July 15, 2019, the remaining shares of Meadowbrook will be transferred to the Trombleys over a ten-year period, as long as they are making the payments as required by a Promissory Note that they signed in favour of Ms. Lamb. The Trombleys live in a residence on the farm property, where they are involved in the day-to-day operations of the

business. They also receive employment income from Meadowbrook.

[4] Ms. Lamb alleges that the Trombleys have failed to act in the best interests of Meadowbrook and Pleasant Valley, thereby breaching their fiduciary duty to the companies. Ms. Lamb seeks the permission of the court to bring an action against the Trombleys in the name of and on behalf of the companies, under s.4(1) of the Third Schedule of the *Companies Act*, R.S.N.S. 1989, c.18. Under s.4(1) of the *Act*, a “complainant” may apply to the court for leave to bring an action in the name of and on behalf of a company. Under s.4(2) of the *Act*, no such action may be brought unless the Court is satisfied that:

- (a) the complainant has given reasonable notice to the directors of the company of her intention to apply to the court,
- (b) the complainant is acting in good faith, and
- (c) it appears to be in the interests of the company that the action be brought.

[5] There is no dispute that Ms. Lamb is a “complainant” within the meaning of s.7(5)(b) of the Third Schedule of the *Act*, as she is a shareholder of Meadowbrook and a director of both companies. The Trombleys agree that Ms. Lamb has given reasonable notice of her intention to seek leave to file the action.

[6] The second and third criteria are in dispute. Ms. Lamb must establish on a balance of probabilities that she is acting in good faith and that it appears to be in the interests of the companies that the action be brought.

[7] In assessing the second criterion, the good faith requirement, I must look at

the entirety of the record, including the pleadings, submissions and evidence adduced by all parties. I must analyze the evidence for the existence of bad faith on the part of Ms. Lamb. If I find bad faith, then the requirement of good faith has not been met. See *Link v. Link*, 2022 NSCA 14 at para.61, leave to appeal to the Supreme Court of Canada dismissed, 2022 CanLII 118497 (SCC).

[8] The threshold for meeting the third criterion, whether the proposed action “appears to be in the interests” of the companies, is low. Ms. Lamb does not have to show that the proposed action *is* in the interests of the companies, only that it appears to be. In considering whether this criterion is met, I should not delve into the merits of the proposed action. Rather, I must decide whether the issues raised are arguable. In doing so, I should not make credibility assessments relating to the ultimate merits of those matters. See *Link, supra* at para.62. I should also be satisfied that the potential relief in the proposed action is sufficient to justify the potential costs to the companies of the proposed action. See *Budd v. Bertram*, 2018 NSAC 95 at paras.38-46.

[9] Ms. Lamb says that the fact that the Trombleys have not challenged many of the allegations demonstrates that she is acting in good faith. The Trombleys disagree, saying that Ms. Lamb is not acting in good faith because she: (a) has exaggerated the changes in the companies since the Trombleys assumed management, (b) has not backed up her allegations with evidence, (c) has harmed the companies financially by her conduct, (d) has not proposed real solutions to the

alleged mismanagement of the companies, and (e) is seeking remedies in the proposed action that appear to be vindictive and/or self-serving.

[10] Ms. Lamb states that her claims against the Trombleys are not frivolous or vexatious, and therefore the proposed action appears to be in the interests of the companies. The Trombleys disagree, saying that the proposed action does not appear to be in the interests of the companies because: (a) the allegations made by Ms. Lamb are either exaggerated or false, (b) Ms. Lamb has harmed the companies financially by her conduct, (c) Ms. Lamb has not proposed real solutions to the alleged mismanagement of the companies, (d) the litigation would have significant costs for the struggling business, and (e) the litigation would harm the companies' reputation and relationship with suppliers.

[11] Affidavits were filed by Ms. Lamb, Mr. Trombley and Ms. Trombley. They were all cross-examined on their affidavits.

[12] In order to determine whether Ms. Lamb is acting in good faith and whether the proposed action appears to be in the interests of the companies, I will consider the following, in light of the Notice of Application, the Amended Notice of Contest, the briefs, the affidavits, the *viva voce* testimony of the parties and their submissions:

1. the uncontested allegations;
2. the allegations that the Trombleys say are exaggerated;

3. the contested allegations;
4. alleged conduct on the part of Ms. Lamb that has harmed the companies financially;
5. whether Ms. Lamb has proposed real solutions to the alleged mismanagement of the companies;
6. whether the remedies sought by Ms. Lamb are vindictive and/or self-serving;
7. whether the potential relief in the proposed action is sufficient to justify the costs to the companies;

### **Uncontested Allegations**

[13] The Trombleys did not challenge the following allegations made against them by Ms. Lamb:

1. that, because of their failure to provide Meadowbrook's year-end documents and other required information to the auditor in a timely manner, Meadowbrook's corporate income tax filings for the year ending September 30, 2022 are late, have still not been filed, and as a result, Meadowbrook will be subject to interest charges and penalties;
2. that they failed to make payroll remittances on behalf of Meadowbrook to the Canada Revenue Agency that were due on or before February 15, 2023, exposing the company to interest charges;
3. that they failed to remit HST payments owing to the Canada Revenue Agency on behalf of Pleasant Valley for the period between October 1, 2022 and December 31, 2022, and that those amounts are now past due and collecting interest;
4. that they failed to purchase sawdust for the smokehouse for a period of two to three days in February of 2023, thereby producing and selling products that were not "smoked" even though they were labelled "smoked;" and

5. that they do not know how they are going to repay a \$172,000 loan that comes due in September of 2022.

[14] The final point requires some elaboration. Mr. Trombley acknowledged in cross-examination that Meadowbrook received a \$172,000 loan from the Advanced Payment Program, a federal government program, in September of 2022. He acknowledged that the loan was based on an inventory of just under 2,000 marketable pigs. The inventory of marketable pigs act as security for the loan. Mr. Trombley acknowledged that, presently, Meadowbrook only has 250 marketable pigs. He acknowledged that the loan is due on September 30, 2023. He acknowledged that, traditionally, the marketable pigs are born on the farm. He acknowledged that the farm cannot produce more pigs by September, because it takes nine months to “grow” a marketable pig: there is a three-month gestation period followed by six months before the pig is marketable. When asked in cross-examination how Meadowbrook is going to pay back the loan, Mr. Tremblay answered, “That’s a good question.” When asked how he plans to increase the inventory of pigs, Mr. Trombley said that he possibly has a plan, that there are a variety of ways it can be done, and that he has been thinking about it.

[15] These uncontested allegations tend to support a finding of good faith on the part of Ms. Lamb. They do not disclose bad faith on her part. These uncontested allegations tend to support a finding that Ms. Lamb’s claim that the Trombleys have breached their fiduciary duties is arguable, and that the proposed action appears to be in the interests of the companies.

### **Allegations Disputed as Being Exaggerated**

[16] The Trombleys dispute the following allegations, taking the position that they are exaggerated:

1. that they permitted Meadowbrook's past due payables to increase to dangerous and unprecedented levels;
2. that they ignored calls from creditors;
3. that they failed to properly care for the farm animals; and
4. that employee paycheques written on Meadowbrook's bank account on January 16, 2023 were returned due to insufficient funds.

***Permitted Meadowbrook's past due payables to increase to dangerous and unprecedented levels***

[17] The Trombleys assert that Meadowbrook was already in dire financial straits when they purchased the business. They say that, at the time of purchase, Meadowbrook owed \$298,213 in accounts payable, and that many invoices were past due.

[18] Ms. Lamb says that, when creditors began contacting her, she took a closer look at the company's finances in September of 2022. Ms. Lamb is concerned about the amount of debts past due by over 91 days.

[19] The uncontradicted evidence of Ms. Lamb is that, before the Trombleys purchased the properties, Meadowbrook's total vendor payables was in the range of \$300,000 and debts past due by over 91 days was never over \$200,000. For example:



- As of April 1, 2015, Meadowbrook had:
  - total vendor payables of \$303,197.18 and
  - debts past due by over 91 days of **\$66,665.31**;
- As of January 1, 2016, Meadowbrook had:
  - total vendor payables of \$312,586.03 and
  - debts past due by over 91 days of **\$40,340.60**;
- As of January 1, 2018, Meadowbrook had:
  - total vendor payables of \$293,327.55 and
  - debts past due by over 91 days of **\$78,154.54**.

[20] By contrast, after the Trombleys purchased the business:

- as of October 31, 2022, Meadowbrook had:
  - total vendor payables of \$421,186.27 and
  - debts past due by over 91 days of **\$219,251.64**;
- as of January 5, 2023, Meadowbrook had:
  - total vendor payables of \$411,124.42 and
  - debts past due by 91 plus days of **\$229,124.56**; and
- as of February 7, 2023, one month later, total vendor payables increased to \$468,177.97.

[21] Ms. Lamb states that the largest 91 plus days past due payables are owed to businesses that Meadowbrook depends on to operate. The uncontradicted evidence is that, as of January 5, 2023, Scotian Gold Co-operative Ltd, which finances all of the farm's feed, is owed a total of \$102,174.57, **\$27,408.91** of which had been outstanding for more than 91 days. By contrast:

- As of January 1, 2016, Scotian Gold was owed a total of \$87,531.92, **\$7,379.65** of which had been outstanding for more than 91 days;
- As of January 1, 2018, Scotian Gold was owed a total of \$55,583.55, **\$4,014.62** of which had been outstanding for more than 91 days.

[22] The uncontradicted evidence is that, as of January 5, 2023, Meadowbrook's

processing butcher is owed a total of \$75,330.69, **\$71,391.94** of which had been outstanding for more than 91 days. By contrast:

- As of January 1, 2016, he was owed a total of \$24,098.50, **\$1,259.50** of which had been outstanding for more than 91 days;
- As of January 1, 2018, he was owed a total of \$13,880.50, with nothing outstanding for more than 91 days.

[23] When the purchase agreement was entered into by the parties, Ms. Trombley was working full-time elsewhere. She began working part-time for Meadowbrook in June of 2021, increasing her hours to full-time in February of 2022. She receives \$880 per week, or \$45,760 per year. Ms. Trombley agreed in cross-examination that she has not cashed her salary checks from February of 2023 to date because she realizes that Meadowbrook cannot afford to pay her.

### ***Ignored calls from creditors***

[24] In cross-examination, Mr. Trombley acknowledged that he has been receiving more calls from creditors in the last year, and that he has been returning calls in recent months.

### ***Failed to properly care for the farm animals***

[25] In his affidavit, Mr. Trombley admitted that there have been issues with employees, before and after the Trombleys took over responsibility for Meadowbrook's operations in 2019, that negatively impacted care of the animals. However, he stated in his affidavit that they have had a veterinarian visit the animals and that the veterinarian advised that "everything is on the right track." He

stated that they are working with the veterinarian and new employees to improve any remaining animal care issues.

[26] However, in cross-examination, he acknowledged the following:

- In February of 2023, he noticed that there were issues with the pigs, which they tried to address without the assistance of a veterinarian.
- A veterinarian made her annual visit in April of 2023.
- The veterinarian gave Meadowbrook a letter, directing what needed to be done for the pigs.
- An inspector from the provincial department responsible for farm animal health and welfare visited the farm in May of 2023. During that visit, there were:
  - one or two dead pigs,
  - some pigs that were significantly underweight,
  - some pigs that were coughing or wheezing, and
  - a rodent issue in the barn.
- As a result of the inspector's visit or visits, directives were issued to Meadowbrook related to the conditions of the barn and the animals because the animals were found to be in distress, and Meadowbrook was issued a summary offence ticket for violating the Animal Protection Act.

[27] In cross-examination, when he was asked how many pigs were sick, Mr.

Trombley said that only 5% of the pigs had issues, but that this was “just a number,” and that certainly not all of the pigs were sick.

[28] Mr. Trombley agreed that, in 2016, pork products generated revenue of \$1.7 million for Meadowbrook, out of a total of \$2.6 million in revenue, and that in 2017, pork products generated \$1.5 million out of a total of \$2.48 million in revenue. That is, pigs are responsible for approximately 60% of the company's revenues, and that number has been fairly consistent. He agreed that the health of

the pigs is important to the success of Meadowbrook, because “the pigs are the product.”

***Insufficient Funds for Employee Paycheques***

[29] In his Affidavit, Mr. Trombley acknowledged that “we did, in January, 2023, have an issue with the bank,” resulting in eleven bounced paycheques written on Meadowbrook’s account on January 16, 2023. He said that when he noticed the problem, he messaged the bank, contacted everyone affected, and had new ones ready for them. He acknowledged that all but two of the bounced checks were to be paid to employees, and the other two were for him and Ms. Trombley. He stated that “everything was rectified and everyone was paid within approximately 1 day.” He stated that this situation could have been avoided if they had been able to secure “much needed financing” for the companies.

***Conclusion re: Allegations Disputed as Being Exaggerated***

[30] In the end, the Trombleys do not appear to dispute that:

- (a) Meadowbrook’s financial situation has worsened since the Trombleys bought the business, and Meadowbrook is having difficulty paying its suppliers and service providers;
- (b) Mr. Trombley did not promptly return calls from creditors; there have been issues concerning the care and health of the pigs on the farm, and as a result, Meadowbrook is the subject of directives and a summary offence ticket under the Animal Protection Act;
- (c) the health of the pigs is important to the success of Meadowbrook, as the pigs are responsible for approximately 60% of the company’s total revenues; and
- (d) Meadowbrook did not have sufficient funds in its account to honour employees paycheques issued on January 16, 2023.

[31] These allegations, which the Trombleys do not appear to contest, tend to support a finding that Ms. Lamb is acting in good faith. They do not disclose bad faith on her part. These allegations also tend to support a finding that Ms. Lamb's claim of a breach of fiduciary duty on the part of the Trombleys is arguable, and therefore that the proposed action appears to be in the interests of the companies.

### **Allegations Denied by the Trombleys**

[32] The Trombleys denied the following allegations:

1. That they lost animals to coyotes because they failed to properly deter predators.
2. They paid themselves remuneration that was not agreed upon unanimously, in violation of the Unanimous Shareholders Agreement.

[33] In his cross-examination, Mr. Trombley acknowledged that Meadowbrook bought dozens of turkeys in June of 2023, and that many of them were killed by coyotes. He denied that this was because of the Trombleys' failure to properly deter predators. In re-examination, he was asked to explain his response. He testified that they had erected a fence, and hired a hunter to kill coyotes. He did not, however, say when those measure were undertaken: before or after turkeys were lost to coyotes.

### ***Paying themselves remuneration that was not agreed upon unanimously***

[34] During oral argument, counsel for Ms. Lamb did not press the argument that the Trombleys' salary raises were a violation of the Unanimous Shareholder Agreement entered into by the parties. Rather, he argued that paying Ms. Trombley

a full-time salary when the companies are at financial risk is an example of a breach of fiduciary duty. The Trombleys assert that Ms. Trombleys' salary is reasonable, given the work she performs for Meadowbrook. However, Ms. Trombley has not been cashing her paycheques in recent months because she acknowledges that the company cannot afford to pay her.

***Conclusion re: Denied Allegations***

[35] Mr. Trombley admitted that many of the turkeys were killed by coyotes. Ms. Trombley admitted that she has stopped cashing her paycheque because Meadowbrook cannot afford to pay her.

[36] These admissions tend to support a finding that Ms. Lamb is acting in good faith. They do not disclose bad faith on her part. These admissions tend to support a finding that Ms. Lamb's claim of a breach of fiduciary duty on the part of the Trombleys is arguable, and therefore that the proposed action appears to be in the interests of the companies.

**Allegations that Ms. Lamb's Actions Harmed the Companies Financially**

[37] The Trombleys dispute the good faith of Ms. Lamb because they say that:

1. Ms. Lamb refused to assist the Trombleys in acquiring a necessary loan from the Business Development Bank of Canada.
2. Ms. Lamb refused to allow the Trombleys access to the funds in one of the companies' bank accounts.
3. Ms. Lamb donated an income-earning tractor.

[38] In his Affidavit, Mr. Trombley said that, in 2022, the Business Development

Bank of Canada offered a loan of \$100,000 that was available to all small businesses in Canada. He stated that, although he did not want to take on further debt, he felt it was necessary. However, Ms. Lamb refused to apply for the loan, stating that she would not put her name on any more debt.

[39] Mr. Trombley stated that, when they were having difficulty paying the bills of Meadowbrook, they asked Ms. Lamb for access to a bank account belonging to Meadowbrook, which contained approximately \$6000. He stated that Ms. Lamb refused to allow access to the funds, which he says forced them to delay making payments to creditors.

[40] In his affidavit, Mr. Trombley stated that, when they purchased shares in the companies, they were told that the companies owned two Kubota lawn tractors, one of which was rented out for profit. He states, on May 11, 2021, Ms. Lamb advised him that she had donated the income-earning tractor. He states that this was done without the consent of the Trombleys.

[41] The onus is on Ms. Lamb to demonstrate good faith. She did not respond to these allegations. In my view, Ms. Lamb's refusal to apply for the loan or to allow access to the \$6,000, when considered in the context of the uncontested allegations against the Trombleys, which suggest that the very existence of Meadowbrook may be at risk and that there are serious problems with the Trombleys' management, does not disclose bad faith but rather a concern about the financial viability of the companies and a disagreement about how the companies should be

run. The fact that Ms. Lamb donated an income-earning tractor, without more, does not disclose bad faith on her part.

***Failure to Propose Solutions***

[42] Ms. Lamb has not proposed an alternative plan to manage the companies. The Trombleys argue that this demonstrates that Ms. Lamb is acting in bad faith, because she cannot show that she would be able to address the problems that she has identified.

[43] The onus is on Ms. Lamb to demonstrate good faith. Having considered the pleadings, submissions, and evidence as a whole, I do not find bad faith on the part of Ms. Lamb, despite her failure to propose an alternative plan to manage the companies. Ms. Lamb has established that Meadowbrook is in significant financial trouble. She has demonstrated several serious problems with the way in which the Trombleys have managed the business, problems that the Trombleys do not deny. She therefore appears to have a good faith basis for believing that the Trombleys are unable to manage the business competently. As a result, she wants them removed from the operation of the business, with her left as sole shareholder. I infer that she has some experience running the business with her husband. She was the sole shareholder of the companies after her husband's death, from 2016 to 2019. There is no indication that she failed to file corporate income tax returns or make payroll or HST remittances on time while sole shareholder. She appears to have an appropriate concern for the state of Meadowbrook's outstanding debts, its



relationship with its important suppliers and service providers, and the health of Meadowbrook's pigs, which are, as Mr. Trombley agreed, "the product."

***Remedies Sought in Proposed Action***

[44] In the proposed action, Ms. Lamb seeks, amongst other remedies, termination of the Trombleys' employment, an injunction requiring them to sell their shares to Meadowbrook for one dollar, an injunction restraining them from further participation in the business, and eviction of them from the property. The Trombleys assert that some of the proposed remedies are vindictive and self-serving. They point out that they have already paid \$200,000 of the \$500,000 that they owe to Ms. Lamb for the shares, the farm property and the residence.

[45] Pursuant to the Share and Farm Purchase Agreement, the Trombleys agreed to pay \$101 for the shares (\$1 per share) and \$394,599 for the farm property, for a total of \$394,700. The Trombleys signed a Promissory Note in favour of Ms. Lamb, whereby they agreed to make regular payments over 10 years. Pursuant to a second Promissory Note, the Trombleys agreed to pay \$105,300 for the residence on the property, by making regular payments over ten years. The title to the property remains in Ms. Lamb's name only. The property is security for a loan made to Meadowbrook by Scotiabank. Scotiabank did not agree to allow the Trombleys to be added to the title.

[46] Again, the onus is on Ms. Lamb to demonstrate that she is acting in good faith. Perhaps, considered on their own, the proposed remedies in the draft

Statement of Claim might suggest bad faith on her part, as they do not account for the \$200,000 already paid by the Trombleys. However, having considered the pleadings, submissions, and evidence as a whole, I find that Ms. Lamb is acting in good faith. In particular, I rely on the evidence that shows that Meadowbrook is in significant financial trouble and that there are serious problems with the way in which the Trombleys have managed the business. The relief requested in the proposed action could have been drafted more carefully. In my view, the relief requested in the proposed action, when considered in the entire context, does not reveal bad faith on the part of Ms. Lamb.

### **Whether the Potential Relief is Sufficient to Justify the Costs**

[47] The Trombleys argue that, in the absence of a proposed solution from Ms. Lamb, the costs of the proposed action outweigh the benefits. They say that the costs include the cost of the litigation, harm to the companies' reputation, harm to the companies' relationship with its suppliers and service providers, and diversion of the Trombleys' attention from the business.

[48] The cost of the litigation is a concern, given the poor financial condition of Meadowbrook. There is potential for the proposed action to harm the companies' reputation and relationship with its suppliers and service providers, although the potential harm is quite speculative. I agree that the litigation will divert the Trombleys' attention from the business when it is in urgent need of attention.

[49] The failure of Ms. Lamb to outline a specific plan to address the alleged

mismanagement of the companies has made it more difficult for me to assess whether the potential relief sought in the proposed action justifies the costs to the companies of being involved in the action.

[50] Nonetheless, based on the evidence to date, Ms. Lamb has satisfied me that the imminent demise of the companies is a very real possibility should the status quo remain in place. Over half of Meadowbrook's accounts payable are overdue by more than 91 days, most of which is owed to Meadowbrook's most important service providers, including the company that finances the farm's feed and Meadowbrook's butcher. The Trombleys do not know how they will be able to repay the \$172,000 loan that comes due in a mere two months, having reduced the number of marketable pigs drastically from 2,000 to 250. That reduction was made despite the fact that pork products are responsible for 60% of Meadowbrook's revenues. I am not confident, on the evidence to date, that the Trombleys will be able to save the companies. While they are not in default of the payment schedule in the promissory notes issued to Ms. Lamb, they still owe Ms. Lamb \$300,000 of the \$500,000 purchase price. They have been unable to obtain financing to complete their purchase of the business. They have admitted that they have failed to file Meadowbrook's corporate tax return, failed to pay Meadowbrook's payroll remittances, and failed to pay Pleasant Valley's HST remittances, subjecting the companies to interest charges and penalties. They have admitted that they failed to respond to the concerns of creditors in a timely way, and waited two months for a

veterinarian visit despite knowing that the pigs were suffering health issues, resulting in Meadowbrook receiving directives and a summary offence ticket under the *Animal Protection Act* and placing the pigs at risk of seizure. The Trombleys did not provide the court with an explanation for any of this conduct.

[51] What do I know, based on the evidence to date, of Ms. Lamb's ability to run the companies? She had some involvement with Meadowbrook from the time she and her husband incorporated it in 1993 to the time of his death in 2016. She was the sole shareholder of the companies for approximately three years, from 2016 to 2019. The companies were having financial difficulties during that time. Her financial advisor advised her to shut the companies down, as he was concerned that she could not afford to continue financing them. In 2018, she obtained a loan for Meadowbrook, which is secured against the farm property. Nonetheless, the accounts payable were at much more reasonable levels during the time that Ms. Lamb was the sole shareholder. The most important suppliers and service providers were being paid in a much more timely manner. There is no evidence that Ms. Lamb was late in filing corporate income tax returns or making payroll or HST remittances. She displays an appropriate concern for the state of Meadowbrook's account payables, the companies' relationship with its creditors (when she started receiving calls from creditors, she obtained the financial information and compared it to historical figures), and the health of the farm animals. I infer that Ms. Lamb has access to some credit. First, she was able to

obtain a loan for Meadowbrook using the property as security. Second, the Trombleys suggest that they would have been able to access the Business Development Bank of Canada small business loan of \$100,000 had Ms. Lamb agreed to “sign off” on the application.

[52] On balance, in all the circumstances of this case, I am satisfied that the potential relief in the proposed action is sufficient to justify the costs. The continued survival of the companies is at risk. I am not confident in the ability of the Trombleys to turn things around. I am more confident in the ability of Ms. Lamb to rescue the companies, whether she continues to operate them on her own, or sells them. The potential for the survival of the companies, should the proposed action succeed, outweighs the costs.

### **Conclusion**

[53] Having considered the entirety of the record, including the pleadings, submissions and evidence adduced by the parties, I find that Ms. Lamb has established, on a balance of probabilities, that she is acting in good faith, and that the proposed action appears to be in the interests of the companies.

[54] In making these findings, I am not deciding whether the Trombleys failed to act in the best interests of the companies or whether they breached their fiduciary duties to the companies. That determination is to be made at the trial.

[55] Ms. Lamb is granted leave to bring the proposed action against the

Respondents.

[56] If the parties cannot agree on the costs of this application, I will receive written submissions from them within one month.

Gatchalian, J.