

Louis Bertrand and 610286 N.B. Inc. v. Paul Bertrand, 610287 N.B. Inc., 666917 N.B. Inc., and TCI Manufacturing Inc. - 2025 NBKB 238

IN THE COURT OF KING'S BENCH OF NEW BRUNSWICK

TRIAL DIVISION

JUDICIAL DISTRICT OF FREDERICTON

File: FC-60-2024

BETWEEN:

LOUIS BERTRAND and 610286 N.B. INC.,

Plaintiffs

- and -

**PAUL BERTRAND, 610287 N.B. INC., 666917 N.B. INC., and TCI MANUFACTURING
INC.**

Defendants

DECISION

BEFORE: Chief Justice Tracey K. DeWare

AT: Fredericton, New Brunswick

DATE OF HEARING: October 10, 2025

DATE OF DECISION: October 28, 2025

APPEARANCES: Evan MacKnight, for the Plaintiffs

G. Robert Basque, K.C., for the Defendants

DEWARE, C.J.

INTRODUCTION

[1] The Plaintiffs request an order of the Court compelling Deloitte to immediately begin an evaluation of the corporate defendant, TCI Manufacturing Inc., using two distinct valuation dates. The Defendants maintain such an Order is premature and outside the scope of the Court’s oversight role in the management of pretrial procedures.

FACTS

[2] The parties are involved in litigation surrounding the evaluation and potential distribution of corporate assets owned jointly by the Plaintiff, Louis Bertrand, and the Defendant, Paul Bertrand. The parties are brothers and equal shareholders in the business, TCI Manufacturing Inc. The parties have already been before the Court on an interim motion and various case management appearances. An earlier motion is particularly relevant given the issue of valuation currently before the Court.

[3] On August 29, 2024, Louis filed an Amended Notice of Motion seeking various relief including the following:

2. Substantially in the form of the draft Order attached hereto as Schedule “A” (the “Draft Order”) appointing MNP Ltd. (“**MNP**”) as receiver-manager (the “**Receiver**”) over all real and personal property of and to administer, manage and govern the affairs of TCI Manufacturing Inc. (“**TCI**”) and 666917 N.B. Inc. (“**666917**”), without security, including but not limited to, pursuant to section 59 of the *Business Corporations Act*, SNB 1981, c B-9.1, Rule 41 of the *Rules of Court* and section 33 of the *Judicature Act*, RSNB 1973, c J-2, with power to do such acts and deeds set out in the Draft Order including without limiting the generality of the foregoing, the following:

- (a) Take such action as the Receiver deems appropriate to manage, preserve and protect the assets of TCI and 666917;
- (b) Review the books and records of TCI and 666917 and report on the financial state of TCI and 666917;
- (c) Conduct, or obtain from a third party, a valuation of the assets of TCI and 666917;
- (d) Conduct, or obtain from a third party Chartered Business Valuator, a valuation of the shares of TCI and 666917 (the "Share Valuation");

[4] At the outset of the hearing of the motion on January 29, 2025, the parties informed the Court a resolution had been reached on the question of a business valuator. The parties had agreed to appoint Paul Bradley of Deloitte to conduct the business valuation of the Defendant, TCI Manufacturing Inc. The Court went on to hear the parties on the remaining issues set out in the Amended Notice of Motion and a written decision was issued on March 11, 2025.

[5] In the March 11, 2025 decision, the Plaintiffs request for an appointment of a Monitor was denied. In addressing the issue of the valuation of the business, the Court noted at paragraphs 29, 31 and 33 as follows:

[29] In the present matter, it is clear the companies must be valued and then a sale must take place. **The parties have agreed upon an experienced business evaluator who will be in a position to fully set out the financial situation of the companies and, in time, the appropriate amount to be considered for their purchase or sale.** The current concerns stem mostly from Paul's change in approach following the altercation between the brothers in May. While Louis has been frustrated by the changes of the locks and the suggestion that he communicate with Paul as opposed to the employees, there is no evidence that the health or functioning of the businesses have been impacted by these measures. The brothers can clearly no longer get along and despite the fact it remains unclear as to who is to blame for the physical altercation it is clear that such behaviours cannot occur in the workplace. In the short term, Louis' limited access is necessary to maintain the peace and not expose the employees to the turmoil. There is no evidence that in limiting Louis' access, Paul has negatively impacted the value of Louis' shares or interest in the companies.

(...)

[31] This is not a case where the appointment of a monitor is necessary. **The appointment of the business valuator will resolve the majority of the disputes between the parties.** In addition, Louis should have direct access to the financial records of the companies and my understanding is that this can be accomplished by setting up Louis with VPN access to the companies' records. This should be done immediately, and the necessary equipment and instruction provided to Louis so he can access this information as he sees fit.

(...)

[33] **The parties were able to come to an agreement on the appointment of a valuator for the business, Paul Bradley, at the outset of the hearing of the Motion.** This is an important step forward and likely would not have occurred in the absence of the Motion. Further, the parties were able to reach certain agreements to move this matter forward in a collaborative fashion. While Louis has not been successful on his Motion, in all of the circumstances, there shall be no order as to costs. This is a dispute between shareholders where everyone is clear on the problems and have charted a path forward to resolution. It is anticipated by the Court that the costs for both parties in these proceedings will be part of the consideration in the resolution of the aforementioned issues.

[Emphasis mine]

- [6] Following the January 2025 motion and the determination the parties would proceed with Paul Bradley at Deloitte to conduct the valuation, it was determined that Mr. Bradley had or was retiring imminently. The parties agreed they would continue to use the services of Deloitte even in the absence of Mr. Bradley. On February 18, 2025, the lawyers participated in a conference call with Deloitte to discuss the process and mandate.
- [7] Louis seeks a valuation of TCI Manufacturing Inc. as of December 31, 2024 – essentially the most current date feasible based upon available financial information. Initially, Paul suggested a more appropriate date would be December 31, 2021. Deloitte confirmed two valuation dates could be considered, and the additional costs to consider two different dates would be approximately \$15,000.

POSITION OF THE PARTIES

[8] Louis suggests the valuation should begin immediately as was envisioned at the time of the Court's decision in March 2025 following the parties' agreement to use Deloitte in January 2025. Louis asserts Deloitte can proceed with two valuation dates, one selected by him and the second as requested by Paul. Louis maintains the costs of the valuations should be absorbed by TCI Manufacturing Inc. as was agreed between the parties in January 2025.

[9] Paul argues the current motion is premature. Paul submits it is not the role of Court to impose upon a party the preparation of an expert report nor the parameters of such a report. Paul suggests he will only be in a position to determine what date is appropriate as a valuation date once the parties have attended discovery. Paul points out numerous attempts by his counsel to set up discovery with little assistance from Plaintiff's counsel. Paul asserts the delays in fixing discovery dates have been due to the unavailability of Louis and his lawyers, not the Defendants. Finally, Paul notes Louis may go and secure a business valuation report of his own accord, and he can pay for it, a court order is not necessary.

LAW AND ANALYSIS

[10] Louis asks the Court to order the valuation of TCI Manufacturing Inc. begin immediately using the date of December 31, 2024 as requested by him and a second date chosen by Paul. While Louis cites no ***Rule of Court*** in support of his request, he refers to the Court's earlier decision and the parties' agreement to appoint Deloitte for the purpose of conducting the valuation. Louis highlights the

parties' agreement to proceed with Deloitte must be front of mind in considering the current issues before the Court.

[11] In the present matter, there is no doubt the parties agreed on consent to proceed with Deloitte as the valuator of TCI Manufacturing Inc. This agreement resulted in the withdrawal of that issue from the questions to be resolved by the Court during the course of the January 2025 appearance. In the absence of an agreement on this issue, the Court would have decided the issue, and the appointment of a valuator would have likely formed part of the March 11, 2025 decision and resulting orders. However, as that question was resolved on consent, the Court was not called upon to weigh in.

[12] The fact the parties have agreed to use Deloitte as the valuator and this issue was resolved on consent following the filing of Louis' motion is significant. There is no doubt, as pointed out by Paul, the retention of experts by a party involved in civil litigation is discretionary and remains within the purview of a party other than in particular situations where the Court can appoint an expert witness. Paul agreed to use Deloitte to complete the valuation of TCI Manufacturing Inc. – this is not a decision that is being imposed by the Court. The parties agreed on consent to proceed with a valuation by Deloitte of TCI Manufacturing Inc. This is a significant distinction in this matter. The Court is not imposing the use of Deloitte for the preparation of the valuation, the Defendants consented to Deloitte. In exchange for the Defendants' consent on this question, the Plaintiffs withdrew their motion. In my view, the Defendants are bound by their earlier agreement.

[13] The question then remains is it appropriate for the Court at this juncture to order the valuation of TCI Manufacturing Inc. get underway and, if so, what date should be used as the valuation date. There is a considerable body of jurisprudence surrounding the question of what is or may be an appropriate valuation date. Ultimately, the appropriate date to be used may be a question only resolved at trial. However, the vast majority of civil litigation matters are resolved prior to trial and information is necessary by the parties to arrive at potential resolutions at settlement conferences, mediation or in discussions of their own.

[14] Paul has been diligently trying to secure discovery dates in this matter and maintains discovery is an important first step before he will be in a position to determine what is the most appropriate valuation date. In his pre-hearing brief, Paul notes the following are all possible valuation dates in the circumstances of this matter:

August 2019	Date Louis stopped working at the corporate office
December 2019	Year end of year Louis stopped working at the corporate office
December 2020	Year end of year Louis was diagnosed with cancer
December 2021	Two years following Louis illness
December 2022	End of reasonable notice period for Louis
May 2023	Month Louis was prevented from entering corporate office
December 2023	Year end closest to filing of Action
February 2024	Month when request for valuation order was filed
December 2024	Date proposed by Louis

[15] Paul submits the appropriate valuation date will only be discernable by the trial judge after all relevant evidence has been considered. Paul refers to the Ontario Superior Court's comments on a similar issue in *Wituluk v. Wituluk*, 2019 ONSC 2275 (CanLII) at paragraphs 22 and 23 as follows:

[22] This litigation is being conducted in a particular way because it is an oppression case. An oppression case has a unique quality in so far as the situation confronting a trial judge can be more fluid than in a regular civil action. In an oppression case conduct is assessed over a period of time, but ultimately, a trial judge has to pick a particular point in time to assess value. In this litigation, there has been no question that the plaintiffs will be entitled to either have their shares purchased or the entire business will be wound up and the proceeds will go to the shareholders, including the plaintiffs. As such, there is no automatic or patently obvious event or even series of events – like a car crash, a wrongful dismissal, or a specific breach of contract – that can be said to have definitively crystallized the rights of the parties as is the case with most civil litigation matters. **In my view, one of the most critical issues for resolution at the trial of this matter will be the valuation date of the plaintiffs' shares. That valuation issue is now, by virtue of how long this litigation has gone on and the stage the litigation is at now, very much a moving target.**

[23] Here, thus far, the parties have yet to formally identify a valuation date for the shares at issue. **This valuation date is critical to the case and has defined how the litigation has been conducted. It has made this litigation complex.** The plaintiffs' valuator, Mr. Low, had initially structured his request for documents so he could provide a valuation of the shares of the various companies around an August 2016 valuation date. That date was picked, not surprisingly in 2016. It has now been expanded to 2017. We are now two years past that date. A trial date is not in the foreseeable future. It is foreseeable that, by the time this matter gets to trial, hopefully in 2020 or 2021, the 2016 or 2017 documents may be irrelevant to the valuations put before the court.

[Emphasis mine]

[16] Paul highlights the argument advanced by Louis in his pleadings that this matter involves allegations of oppression which are relevant to the fixing of an appropriate valuation date. Paul refers the Court to *Geloso v. Geloso*, 2025 QCCS 778 (CanLII) at paragraphs 39 to 44 as follows:

[39] Regardless of the unfortunate outcome resulting from the implementation of paragraph 274 of the Judgment, the Court nevertheless believes that Antoine, as Plaintiff claiming to have been subjected to oppressive measures, is entitled to

present the evidence that he believes will be useful in the determination of just and reasonable remedies to which he may be entitled upon the Court coming to the conclusion that he was indeed the object of measures of oppression pursuant to the applicable provisions of the *Canada Business Corporations Act* and the *Québec Business Corporations Act*.

[40] **Without the benefit of a full debate, it is not up to the Court to dictate to a Plaintiff, at this early juncture, what the proper date of valuation should be. In many cases of oppression remedy, the courts are often presented with share valuations established at different dates, leaving up to the deciding judge to determine the most appropriate date under the circumstances of each case.**

[41] Antoine's counsel explained that the date of December 31, 2021, is the closest date when Antoine was essentially removed from the Aldo-Controlled Companies. Arguably and on a *prima facie* basis, there may be some merits to use that date. It will be up to the merits judge to decide.

[42] Therefore, the Court does not intend to intervene, at this juncture, to modify the date of valuation mandated by Antoine to KPMG. The onus of the proof ultimately lies in the hands of Plaintiff Antoine, who shall live with the consequences of his strategic and evidentiary decisions.

[43] The Court also believes that the merits judge shall be in a much better position to determine if the conduct of any of the parties throughout the present proceedings has amounted to a substantial breach in the conduct of the proceedings or amounted to an abuse of procedure pursuant to articles 51 and following of the *Code of civil procedure*.

[44] **Be that as it may, it does not preclude Aldo from presenting his own valuation based on a different date of valuation like December 31, 2023.**

[Emphasis mine]

[17] It appears unlikely the parties will ever be in a position to agree on a valuation date.

A far more reasonable conclusion is that the parties will each advance a position based on their proposed valuation date and it will be up to the trial judge to select which, if any, of the proposed valuation dates they feel is most appropriate following their assessment of the evidence. There is no principled basis to deny Louis the ability to proceed with his valuation based on a date of December 31, 2024. The parties have already agreed to use Deloitte and agreed the costs would be paid by TCI Manufacturing Inc. The additional cost of \$15,000.00 for a second report is not overly significant given the costs of this litigation and can be dealt with by the parties following a resolution of the matter or at trial. It is inconceivable this

matter can proceed to trial nor meaningful settlement discussions unless each party has a valuation report/date.

[18] Paul has the right to select his own valuation date and his reluctance to do so prior to discovery is understandable. This Court has no authority to impose upon Paul a valuation date at this stage of the proceedings. Louis can assist in moving the matter along by ensuring discovery takes place as expediently as possible and pre-trial procedures continue to advance.

[19] As the parties agreed on consent to use the services of Deloitte to conduct the valuation of TCI Manufacturing Inc., the Court orders the work by Deloitte is to get underway. The Court orders Deloitte to prepare a valuation report using two valuation dates – December 31, 2024, and a date to be selected by Paul.

[20] Deloitte can immediately begin work on the first valuation date of December 31, 2024, and subsequently begin the second report once advised of the selected valuation date chosen by Paul. The costs for the valuation reports with the two valuation dates will be paid by TCI Manufacturing Inc. In the event one of the valuation dates and resulting report is preferred by the trial judge over the other, the parties may address the additional costs of the second report in their submissions on costs. In all of the circumstances, there shall be no order of costs in the present motion.

DATED at Moncton, New Brunswick, this 28th day of October 2025.

Tracey K. DeWare
Chief Justice of the Court of King's Bench
New Brunswick, Trial Division