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**Court of Appeal for Saskatchewan**  
**Docket: CACV4371**

**Citation: *Odelein v Odelein Farms Ltd.*,**  
**2025 SKCA 48**  
**Date: 2025-05-13**

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Between:

**Lyle Theodore Odelein**

*Appellant*  
*(Plaintiff)*

And

**Odelein Farms Ltd.**

*Respondent*  
*(Defendant)*

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Before: Caldwell, Schwann and Bardai JJ.A.

Disposition: Appeal dismissed

Written reasons by: The Honourable Justice Neal W. Caldwell  
In concurrence: The Honourable Justice Lian M. Schwann  
The Honourable Justice Naheed Bardai

On appeal from: 2024 SKKB 74, Saskatoon  
Appeal heard: March 31, 2025

Counsel: Robert Kennedy, K.C. for the Appellant  
Douglas Hodson, K.C. and Paul Olfert for the Respondent

## Caldwell J.A.

### I. OVERVIEW

[1] Lyle Odelein appeals from the judgment of a Court of King's Bench Chambers judge dismissing his claims in his application for summary judgment against Odelein Farms Ltd. [*Odelein Farms*] (*Odelein v Odelein Farms Ltd.*, 2024 SKKB 74 [*Judgment*]). Lyle claims that Odelein Farms owes him \$2,134,283, that he has demanded payment thereof, and that the debt remains unpaid. The amount represents his net contributions to Odelein Farms on its incorporation and thereafter. Odelein Farms does not dispute that \$2,134,283 is recorded in its financial statements as a shareholder loan owing to Lyle. It says that the amount was a gift, or it is not a collectible debt. The Chambers judge concluded that none of it was recoverable in the action.

[2] The action is more particularly described in *Odelein v Odelein Farms Ltd.*, 2022 SKCA 28 at paras 4–11, where this Court set aside an earlier summary judgment that had also dismissed Lyle's claims (see *Odelein v Odelein Farms Ltd.* (21 January 2021) Saskatoon, QBG 367 of 2015 (Sask QB)). The *Judgment* arises from this Court's remittal of the summary judgment application to the Court of King's Bench for rehearing.

[3] At the rehearing, Odelein Farms defended against Lyle's claims by principally arguing that the assets and money that he had contributed were gifts. Its witnesses testified that Lyle had said that he did not want anything out of the farm and did not expect to be repaid. Among its arguments, Odelein Farms submitted that it had relied on Lyle's statements about foregoing repayment of his contributions to its detriment, thereby establishing defences under the equitable doctrines of promissory estoppel and waiver.

[4] The Chambers judge examined Lyle's contributions in two contexts, namely, those contributions he had made at incorporation of Odelein Farms and those made after that date. He found that, although Lyle's initial contributions had given rise to a debt owing to him, Lyle was estopped from demanding repayment of that debt, and that he had waived the right to repayment. The Chambers judge concluded that the post-incorporation contributions were gifts. Since he found that none of Lyle's contributions were recoverable from Odelein Farms in the action, the

Chambers judge dismissed Lyle's application for summary judgment. He granted judgment in favour of Odelein Farms, dismissing Lyle's action.

[5] In this appeal, Lyle submits that the *Judgment* is flawed because the Chambers judge found that so-called "aspirational" discussions among members of the Odelein family about the prospective incorporation of their farming operations had legal effect and were enforceable as against the parties to those discussions. He frames this as a "foundational issue". It is foundational, he says, because the Chambers judge's improper finding that the Odelein family had intended to establish a multi-generational, family-farm corporation led the judge, as I understand Lyle's principal arguments, to misapprehend the evidence, to make erroneous findings of fact, and ultimately to draw the wrong legal conclusions from the facts he had found. Lyle does not take issue with the correctness of the law applied by the Chambers judge but does with the findings of fact that he made and therefore with the result of its application. Lyle also asserts that the Chambers judge committed a collection of legal errors that stand apart from this primary submission that he made and therefore with the result of its application.

[6] I conclude that Lyle's allegations of error are without sufficient merit to satisfy the applicable standards of appellate review and thereby to warrant appellate intervention in this matter. Accordingly, I would dismiss the appeal with costs to Odelein Farms on Column 3 of the Tariff.

## II. *JUDGMENT*

[7] Before turning to the findings in the *Judgment*, it is important to know that the parties agree that \$2,134,283 is recorded in Odelein Farms' financial statements as a shareholder loan owing to Lyle. The evidence established that Odelein Farms had periodically paid down Lyle's shareholder loan account between 2002 to 2014. In this appeal, the parties do not dispute that, of the initial \$819,666 that Lyle had contributed, \$358,788 remains a debt owing to him. The parties also agree that Lyle contributed \$1,775,495 to Odelein Farms post-incorporation. The principal issue in the rehearing of the summary judgment application was whether Odelein Farms had a defence to Lyle's claims for repayment of those amounts. In that regard, the Chambers judge concluded that Lyle was estopped from demanding (and had waived) repayment of the balance of his initial

contributions and that his post-incorporation contributions were a gift, thereby accepting three of Odelein Farms' defences to Lyle's claims.

[8] The Chambers judge's legal conclusions about the defences of promissory estoppel, waiver and gift rest on his findings of fact and the inferences of fact that he drew about the content of discussions among members of the Odelein family. In that respect, he determined that the Odelein family had intended to establish a multi-generational, family-farm corporation when they incorporated Odelein Farms. This finding is the "foundational issue" that Lyle has with the *Judgment* because he says that it led the Chambers judge to erroneously infer that none of the Odelein family had intended to take back their initial contributions to Odelein Farms, thereby giving credence to the defences of promissory estoppel and waiver. The Chambers judge relied on his findings about other discussions between Lyle and Odelein Farms when concluding that Lyle's post-incorporation contributions were gifts.

[9] For these reasons, it is necessary to have an understanding of the Chambers judge's conclusions about the credibility and the reliability of the witnesses' evidence in order to evaluate whether there are errors in the *Judgment* as alleged.

#### **A. Witnesses and evidence**

[10] Five witnesses had knowledge of the family discussions that were said to underpin Odelein Farms' defences: Lyle and four of his family members, namely, Eric Odelein (his father), Hilda Odelein (his mother), Selmar Odelein (his brother) and Sandra Odelein (his sister-in-law). (Lee Odelein, brother to Lyle and Selmar, participated in the family discussions, but passed away shortly after the commencement of this litigation.) Between 2017 and 2019, these witnesses provided affidavit evidence for the first summary judgment application hearing, and they were cross-examined at that time on those affidavits. In 2023, these same witnesses were examined and cross-examined during the rehearing before the Chambers judge.

[11] As to other evidence, Lyle had introduced documents regarding the incorporation of Odelein Farms and the roll-over of assets by the family under his 2017 affidavit. As well, he had engaged an accountant to review those documents and the financial records of Odelein Farms. The

accountant averred that the corporation's October 31, 2016, balance sheet had properly reflected the shareholder loan amount owing to Lyle, which he said was \$2,134,282.

## **B. Credibility and reliability findings**

[12] As noted, the Chambers judge based the findings of fact that were central to his acceptance of Odelein Farms' defences on the affidavits and *viva voce* evidence of the five witnesses who had participated in Odelein family discussions, although he principally drew the findings from the evidence of Selmar and Sandy. Eric and Hilda, who had both adopted Selmar's evidence in their 2019 affidavits, were in their 80s at the time of the rehearing, and they had little recollection of the details of relevant family discussions when testifying in person.

[13] The Chambers judge essentially found that all the witnesses were credible. Of the judge's reliability findings, the most notable concerned the reliability of both Lyle's affidavit evidence and his *viva voce* testimony. In that regard, the judge found that Lyle "does not have a reliable recollection of the relevant events or discussions" (*Judgment* at para 9), but he accepted that Lyle nonetheless remembered the impetus for incorporating Odelein Farms:

[11] Lyle recalls that the family members had discussed setting up the farm as a multi-generation family farm, to operate as it had been operating, on a permanent basis. He recalls, as well, that the 2001 incorporation of Farms served not only the aim of addressing his income tax situation, but also this goal of establishing a multi-generation family farm. He recalls that everything was being rolled into a company. For Lyle, an element of the concept of a multi-generation family farm was his intention to return to farming once he had completed his hockey career.

[14] Later in the *Judgment*, after setting out several detailed examples of Lyle's inability on cross-examination to "reliably recall... specifics of conversations or of various events" and of his "lack of reliable recollection" (at para 12; examples at paras 13–20), the Chambers judge wrote:

[21] Lyle does not actually recall any detail of his discussions with the other shareholders at the relevant times. The version of those discussions that he has presented in his evidence is based on his attempts to reconstruct what was said. That version, therefore, does not arise from Lyle's memory, and it has been affected by what he knows now and by what has been reconstructed by others.

[22] The effect of this circumstance is that the version of events that has been presented by Lyle is not reliable. I do not conclude that Lyle has been deceptive in presenting that version. Rather, I conclude that he simply does not remember, and that in that context someone on his behalf has tried to help him reconstruct what happened.

[15] Because he found that Lyle, Eric and Hilda recalled that the family discussions had occurred but had no present recollection of what had been said, the Chambers judge's assessment of what those conversations had been about rested on Selmar and Sandy's evidence. And, in respect of their credibility as witnesses and the reliability of their evidence, the Chambers judge wrote in the *Judgment*:

## **2. Selmar Odelein**

[24] Selmar testified in a straightforward and honest manner. He did not evade questions or resist addressing subjects that might be embarrassing for him. In all respects I conclude that he was testifying truthfully.

[25] I have concluded also that Selmar knew what he was talking about in his evidence. When he was asked a question in an area with which he was unfamiliar, he said so (e.g., the area of bookkeeping and preparation of financial records and statements for [Odelein Farms]). Thus I conclude that Selmar's testimony was accurate and reliable. Consequently, I conclude that discussions and events occurred as he related them.

[26] I observe that some of Selmar's affidavit evidence purports to describe what were the understandings and intentions of other shareholders, including Lyle. While Selmar can describe what another person said and did, including what that other person indicated that he or she understood or meant, Selmar cannot state as a fact what that other person understood or meant. It is up to me to determine what were the understandings and intentions of the people involved. This observation applies, as well, to the evidence of Sandy, Eric and Hilda.

[27] Having said that, I further observe that each of Sandy, Eric and Hilda has expressly adopted as her or his own recollection several statements in Selmar's first affidavit that were phrased in terms of "we understood this" and "we meant that". In such instances, the evidence of Selmar as to what "we" understood or meant is evidence of what Selmar, Sandy, Eric and Hilda understood or meant.

## **3. Sandy Odelein**

[28] I found Sandy to be an honest and reliable witness. All indications were that she was answering questions as correctly and accurately as she could. I conclude also that she knew what she was talking about and that her evidence is reliable.

[29] Therefore, I conclude that discussions and events occurred as Sandy related them.

## **C. Factual findings**

[16] Although it requires reproduction of a lengthy excerpt from the *Judgment*, it bears repeating here precisely what the Chambers judge found regarding the Odelein family's pre-incorporation expectations and their discussions relevant to Odelein Farms' defences:

[40] Prior to the incorporation of [Odelein Farms], several quarter sections of land were held by the family members, some of the land holdings being joint holdings. Farming of those quarter sections was conducted as a single operation, the family members pooling their assets for the purpose. As Selmar described the situation in his first affidavit:

19. As noted above, prior to the incorporation of Odelein Farms in 2001, the Odeleins managed a family farming operation, with different assets held in different names without any overarching strategy other than to protect the farm from potential family property issues. No one had any expectation that they would be entitled to draw value from the farming operation without working for it. ...

[41] Prior to incorporation the family members repeatedly discussed establishing a multi-generation family farm, so that the farm could be a source of employment and income for family members through future generations. Sandy described the context of such discussions in cross-examination before me (hearing transcript pages T167-T168):

Q Okay. And in pre-incorporation, who is the we that was discussing it?

A This was a very close, trusting, loving family. They are very informal. When you talk, you -- you make it sound like we were supposed to -- we had directors' meetings in a boardroom because we're some big corporation. It was a family farm, operated and ran by people who truly, truly loved, respected, and trusted each other. So when one of them said something, the others took it at face value that that's what they meant. ... Were there discussions about a dream farm? Yes. ... There were so many conversations about what life would be like after hockey, after everybody was at home on the farm. Everybody was going to have a house in the same yard. Lyle was coming back to farm. There was no worry about -- about who was going to benefit more or less or whatever because he was building this for his future. He was coming back to farm. So you sit and you have conversations about -- and we had many, many conversations. We spent hours, days, months, years together until this happened. ...

[42] The impetus to make the multi-generation family farm a reality was Lyle's tax situation. His financial advisers proposed that, for Lyle's tax-planning reasons, a corporation should be set up. The proposal dovetailed with the multi-generation family farm concept, and the family members decided to proceed.

[43] That multi-generation family farm concept, as I have said, was to establish a corporation that would provide a farming operation for future generations. The foundation of that farming operation was to be the formal pooling of assets. That is, in establishing the multi-generation family farm the family members continued the arrangement by which they had been conducting a single farming operation, using the pooled land and equipment. A new element was that, in the formal arrangement being put in place, they were committing to leaving those assets in the corporation permanently, for the benefit of their own participation and for the benefit of future generations of the family.

[44] This arrangement fit with Lyle's plans. As long as he was playing professional hockey, he had no need for any payment from the farming operation. He intended to return to the farm after hockey, however. In keeping with the family farm goal that he shared with the other family members, contributing his assets on incorporation helped to set up the farm -- not only for future generations but also for himself on his return to farming after retiring from hockey.

[45] So it was that on the incorporation of [Odelein Farms] each family member -- each of whom became a shareholder -- contributed his or her assets to [Odelein Farms] with no intention of ever taking them back out or being paid the value. Instead, the shareholders

were setting up the farm on a permanent basis. This was what they had discussed, and this is what they told one another that they were going to do.

...

[51] At the time of incorporation none of the shareholders considered the shareholder loan accounts to represent loans in the sense of representing debts that would have to be repaid. While the initial amounts of those accounts were established by the accountants' valuation of each shareholder's contribution to [Odelein Farms] on incorporation, no shareholder expected to get "their" land or equipment (or an equivalent cash value) back. Rather, each shareholder understood and intended that the land and equipment that were contributed to [Odelein Farms] on incorporation would remain in [Odelein Farms] permanently, as the foundation for the multi-generation family farm.

[52] This disconnect between the shareholder loan accounts and the shareholders' understanding is explained by the fact, which I infer from the evidence, that the shareholders did not make a connection between the shareholder loan accounts and the plan that the contributed assets would remain with [Odelein Farms] without return or repayment. It was for this reason that the accountants' explanation, that the shareholder loan accounts were being set up to reflect the initial asset contributions, did not raise any red flags with the shareholders.

...

[59] To sum up the circumstances surrounding the incorporation of [Odelein Farms], I find as fact that, in the context of the incorporation of [Odelein Farms], each of the five shareholders understood and intended – and communicated that understanding and intention to the other four – that:

- (a) The shareholder was contributing his or her assets to [Odelein Farms] to establish a multi-generation family farm.
- (b) The assets that the shareholder had contributed to [Odelein Farms] would remain with [Odelein Farms] permanently, as the foundation of the multi-generation family farm.
- (c) Specifically, that shareholder could not require a return of the assets that he or she had transferred to [Odelein Farms] in connection with the incorporation.

[60] I find further as fact that, in the context of the incorporation of [Odelein Farms]:

- (a) There was no discussion or understanding or intention among the shareholders about what would be done with the shareholder loan accounts after incorporation. The shareholder loan accounts were beyond the focus of attention of the shareholders. Those accounts were something that was left in the realm of the accountants.
- (b) No shareholder turned his or her mind to how the payment to shareholders, in exchange for contributing to the farm operation, would be dealt with for the purposes of financial statements or income tax filings in future. That determination was something that was left in the realm of the accountants.
- (c) No shareholder believed or intended that a shareholder loan account would have to be paid out to a shareholder as a matter of debt

repayment (since such a payment would amount to indirectly returning the assets that had been contributed).

[17] Here, I must also identify that Lyle took issue in this appeal with the fact that the Chambers judge appears to incorrectly collectively refer to the Odelein family members as “shareholders”, when Lee and Sandy have never held shares in Odelein Farms. While this generic reference might have been problematic in other circumstances, I do not interpret it as anything more than a reference to the individuals who became creditors of Odelein Farms upon its incorporation, and it did not affect the judge’s analysis of the legal issues that were put before him to decide.

### III. ISSUES

[18] Although Lyle’s arguments are many and his allegations broadly cast, I understand him to ask this Court to address the so-called “foundational issue” and then to answer two principal questions:

- (a) Did the Chambers judge err when he found that Lyle was estopped from demanding, and had waived his right to demand, repayment of the contributions he made to Odelein Farms upon its incorporation?
- (b) Did the Chambers judge err when he found that Lyle’s post-incorporation contributions to Odelein Farms were gifts?

### IV. ANALYSIS

#### A. Did the Chambers judge err in respect of a foundational issue?

[19] Underpinning many of the arguments in this appeal is Lyle’s submission that the Chambers judge’s finding about the family’s intention to create a multi-generational, family-farm corporation is a foundational error. He takes many broad swipes at the trustworthiness of that finding and asserts, in effect, that it is overriding of the result without arguing that it is a palpable error of fact (see *Housen v Nikolaisen*, 2002 SCC 33, [2002] 2 SCR 235 [*Housen*]).

[20] Notably, the finding—at least as it relates to Lyle’s intentions—is itself based in some measure on the Chambers judge’s acceptance of parts of Lyle’s own testimony. It is clear, however,

that the Chambers judge rejected Lyle’s evidence of family discussions and events, except as it related to “the broadest of concepts—such as his general approach that the shareholders intended to set up the farm as a multi-generational family farm” (*Judgment* at para 23). As noted in these reasons, the Chambers judge rejected Lyle’s evidence principally because Lyle was unable to recall the specifics of family discussions.

[21] Another difficulty with the foundational-error argument is that it is undermined by subsequent events upon which it expressly relies, despite Lyle’s attempt to put a retroactive spin on those events. In his submissions, Lyle says that it is a “plain and uncontested fact that this multi-generational farm corporation ceased to be ‘multi-generational’ in 2019 (a mere 18 years after [Odelein Farms’] incorporation)” following certain transactions that apparently left Selmar in control of the corporation. Of course, the corollary conclusion more readily drawn from that information is that Odelein Farms was indeed incorporated in 2001 to act as a multi-generational, family-farm corporation because it carried out that function for 18 years, including past the commencement of this litigation. The submission therefore does not even begin to damage the soundness of the Chambers judge’s conclusion that the family had intended to establish a multi-generational family-farm corporation at the time of Odelein Farms’ incorporation.

[22] At bottom, although Lyle has made many broad allegations about the untrustworthiness of what he sees as a foundational finding regarding the incorporation intentions of the Odelein family, he has not explained why it was a palpable error for the Chambers judge to find that they intended to establish a multi-generational, family-farm corporation when they incorporated Odelein Farms. To do that, aside from his own evidence to that effect, he would have had to draw into question the Chambers judge’s assessment of Selmar and Sandy’s credibility or the reliability of the affidavit and *viva voce* evidence upon which the finding rests, which, as discussed below, he did not attempt to do.

[23] In sum, I conclude that there is no basis for this Court to disturb the Chambers judge’s finding of fact that the Odelein family intended to establish a multi-generational, family-farm corporation when they incorporated Odelein Farms.

**B. Did the Chambers judge err when he found that Lyle was estopped from demanding, and had waived his right to demand, repayment of his initial contributions to Odelein Farms?**

**1. The defence of promissory estoppel**

[24] The issue here is whether the Chambers judge erred when he concluded that Lyle was estopped from demanding repayment of that part of his shareholder loan account representing the net balance of his contributions to Odelein Farms upon its incorporation. To be clear about the confines of this issue, no appeal or cross-appeal has been taken from the Chambers judge's finding that those contributions created a debt owing to Lyle in the form of a shareholder loan.

[25] The core question is whether, having assessed the evidence of pre-incorporation discussions among members of the Odelein family, the Chambers judge erred when he found that they had all made representations to Odelein Farms upon which the corporation had relied to its detriment regarding repayment of their respective contributions. Specifically, the Chambers judge concluded that each family member was "estopped from requiring payment out of the part of his or her shareholder loan account that reflects that shareholder's contribution of assets on incorporation" (at para 105). In other words, while the Chambers judge found that Odelein Farms owed Lyle \$358,788 (being the remaining balance of his initial contributions), he concluded that Lyle is barred from demanding repayment of that debt.

[26] The law relevant to this issue, which the Chambers judge applied, was summarised in *Viterra Inc. and GSU (ILWU Canada), Re*, 2013 SKCA 93 at para 41, 368 DLR (4th) 19, where Richards C.J.S. wrote that the equitable doctrine of promissory estoppel is engaged when the evidence establishes that there was both an unambiguous representation intended to affect legal rights and intended to be acted upon, as well as reliance on that representation (see also *Maracle v Travelers Indemnity Co. of Canada*, [1991] 2 SCR 50 [*Maracle*]).

[27] As noted earlier, the Chambers judge made findings of fact at paragraphs 59 and 60 of the *Judgment*. When addressing the elements of promissory estoppel, he summarised the facts that he considered were relevant under that doctrine and concluded that they satisfied the requirement of an unambiguous representation intended to affect legal rights and intended to be acted upon:

[97] The discussions among the shareholders to which I have referred constituted a representation. All five of the shareholders made the same representation on the incorporation of [Odelein Farms]. In each case, that representation was that:

- (a) The shareholder was contributing his or her assets to [Odelein Farms] to establish a multi-generation family farm.
- (b) The assets that the shareholder had contributed to [Odelein Farms] would remain with [Odelein Farms] permanently, as the foundation of the multi-generation family farm.
- (c) Specifically, that shareholder could not require a return of the assets that he or she had transferred to [Odelein Farms] in connection with the incorporation.

[98] While the shareholders were planning and deciding to proceed with incorporating a multi-generation family farm, they made this representation to each other. Once [Odelein Farms] was incorporated, each shareholder made the representation to [Odelein Farms] as well. [Odelein Farms] received those representations in the context of receiving the shareholders' assets for the operation of the multi-generation family farm – representations that were received by [Odelein Farms] by way of the shareholders, who controlled the actions and decisions of [Odelein Farms].

[99] The foundation for that operation of a multi-generation family farm was the assemblage of land and equipment contributed by the five shareholders. Each shareholder represented to [Odelein Farms] that, in taking on the operation of the multi-generation family farm, [Odelein Farms] would have the use of those assets permanently, with no obligation to return them or their value.

[100] Each shareholder represented to [Odelein Farms] that he or she would not require return of the contributed assets (or their value), making such representation to induce [Odelein Farms] to undertake the operation of the multi-generation family farm.

[28] As to whether the evidence also established that Odelein Farms had relied on the representations of its contributors, the Chambers judge concluded:

[101] [Odelein Farms] acted in reliance on that representation. [Odelein Farms] took on the operation of the multi-generation family farm. In so doing [Odelein Farms] relied on each shareholder's representation that he or she would not require a return of the contributed assets or their value. It was on the basis of this foundation for the farm's operation that [Odelein Farms] undertook the operation of the multi-generation family farm. [Odelein Farms] would not have taken on that operation in the absence of the representations. That is clear from the plans and discussions among the shareholders (who, as I have said, controlled the actions and decisions of [Odelein Farms]).

...

[103] At the time of incorporation and the initial contribution of assets, [Odelein Farms] relied on each shareholder's representation, which effectively was that the foundation for [Odelein Farms'] operation of a multi-generation family farm would not be undermined by a shareholder requiring return of the initially contributed assets or their value.

[104] [Odelein Farms] continued to rely on the shareholders' representations in the years following its incorporation. In broad terms, [Odelein Farms] reacted to certain circumstances in the context of knowing that the assets that were contributed on

incorporation would not have to be returned, or their value paid out. Such circumstances, as described by Selmar in his first affidavit, include expanding the farm's land base and accepting the contracts for equipment that Lyle had arranged to lease or purchase. Had [Odelein Farms] been aware of a potential claim for payment out of a shareholder's shareholder loan account, Selmar explained, [Odelein Farms] would have taken a much more limited approach to expanding land and equipment holdings, since such expansion necessarily involved expanding financial liability.

[29] Since Lyle accepts that the Chambers judge identified and applied the correct law in respect of the equitable doctrine of promissory estoppel, he must establish palpable and overriding error in the facts to which the law was applied or in the way in which the judge applied the law to those facts (*Housen* at para 36). I am not persuaded, however, that Lyle's arguments of error satisfy the standard of appellate review.

[30] In my view, the overall efficacy of Lyle's allegation of error falters on his inability to undermine the Chambers judge's credibility and reliability assessments or to palpably draw into question the findings of fact that are relevant under the doctrine of promissory estoppel. The evidence as to the detail of family discussions prior to and at the time of incorporation of Odelein Farms came primarily from Selmar and Sandy. The Chambers judge found, however, that Lyle had no recollection of the details of those discussions.

[31] As I noted earlier with regard to Selmar, the Chambers judge found that he had testified "in a straightforward and honest manner" without evading questions or subjects, that he was "testifying truthfully" (*Judgment* at para 24), and that his testimony "was accurate and reliable" (at para 25). The Chambers judge expressly identified the trap of improperly attributing Selmar's recollection of other family members' intentions and understandings to those family members. Nonetheless, where Sandy, Eric or Hilda had plainly adopted aspects of Selmar's evidence, the judge accepted that as corroborating Selmar's own recollection of what he said had occurred. At bottom, the Chambers judge concluded that "discussions and events occurred as [Selmar had] related them" (at para 25). He similarly found Sandy "to be an honest and reliable witness" who answered questions "as correctly and accurately as she could" and who "knew what she was talking about" (at para 28). He also concluded that her evidence was reliable and that "discussions and events occurred as Sandy related them" (at para 29).

[32] As noted earlier, Lyle does not directly challenge the Chambers judge's findings about Selmar and Sandy's credibility or the reliability of their evidence. As such, I am unable to

determine that it was unreasonable for the Chambers judge to have made any of the three findings of fact at paragraph 97 of the *Judgment* that are critical to his legal conclusion on the issue of promissory estoppel. Which is to say that, in terms of Lyle's position vis-à-vis the corporation, the evidence the Chambers judge accepted and relied upon cogently supports his findings that Lyle had made unambiguous statements to Odelein Farms about not expecting his contributions to be returned, which intended to affect his legal relationship with the corporation, and that Odelein Farms relied upon those statements to its detriment.

[33] For these reasons, I would not interfere with the Chambers judge's conclusion that Lyle is estopped from requiring Odelein Farms to repay that part of his shareholder loans that represent the net balance of his contributions at the time of incorporation.

## 2. The defence of waiver

[34] The Chambers judge also held that Lyle had waived his right to require repayment of "the part of his shareholder loan account that represents his initial contribution at the time of incorporation" (*Judgment* at para 111).

[35] The equitable doctrine of waiver is similar to that of promissory estoppel in that, to be invoked, the evidence must establish that the waiving party had full knowledge of an entitlement that might be relied upon and that the waiving party unequivocally intended to relinquish the right to rely on it (see *Saskatchewan River Bungalows Ltd. v Maritime Life Assurance Co.*, [1994] 2 SCR 490 at para 18).

[36] Based on the same three facts to which he had applied the doctrine of promissory estoppel, the Chambers judge applied the law of waiver and concluded as follows:

[109] At the time of setting up the multi-generation family farm and so incorporating [Odelein Farms], Lyle knew that he owned the assets that he was transferring to [Odelein Farms], and he knew that – along with the other shareholders – effectively he was giving those assets to [Odelein Farms] permanently, as part of the foundation for the multi-generation family farm.

[110] In making the representation that I have discussed in the context of promissory estoppel, Lyle took steps amounting to foregoing reliance on his right to return of the assets, or to payment of their value. He expressed an unequivocal and conscious intention to abandon that right.

[111] The elements of waiver are established. Lyle waived his right to require a return of his contributed assets or payment of their value. That waiver applies to his demand for

payment out of the part of his shareholder loan account that represents his initial contribution at the time of incorporation.

[37] For the same reasons as were given for rejecting the allegations of error in the Chambers judge's conclusion in relation to the doctrine of promissory estoppel, I find that the evidence provides an ample foundation for the Chambers judge's determination that the elements of waiver had been established. I would not, therefore, interfere with his decision under the equitable doctrine of waiver.

**C. Did the Chambers judge err when he found that Lyle's post-incorporation contributions to Odelein Farms were gifts?**

[38] As to Lyle's post-incorporation contributions, which amounted to \$1,775,495, the Chambers judge found that Lyle had gifted assets and money to Odelein Farms after its incorporation and that "the part of his shareholder loan account that reflects those post-incorporation contributions does not reflect a debt that is owed by [Odelein Farms] to Lyle" (*Judgment* at para 90). That is, the Chambers judge found that Lyle's post-incorporation contributions had been gifts because Lyle had made assurances to Odelein Farms "along the lines of 'Don't worry about paying' and 'I don't want anything from the farm'" in respect to his contributions of assets or money to the ongoing operations of Odelein Farms (at para 64).

[39] Again, Lyle challenges the factual findings upon which the Chambers judge reached his legal conclusion that the post-incorporation contributions were gifts. Lyle does not take issue, however, with the correctness of the principles of law applied by the Chambers judge, which the judge drew from *Dyck Estate v Oliver*, 2010 SKQB 384, 361 Sask R 301, where Popescul J. (as he then was) wrote:

[31] An *inter vivos* gift is one that is intended to take effect during the life of the donor. In *Re Bayoff Estate*, 2000 SKQB 23, [2000] 3 W.W.R. 455, Krueger J. at para. 11 set forth the three elements of a perfectly constituted *inter vivos* gift as follows:

1. an intention to donate;
2. acceptance of the gift; and
3. a sufficient act of delivery.

[40] Relevant to the issue of post-incorporation contributions and the law of gift, the Chambers judge made the following findings of fact in the *Judgment*:

[64] The context of Lyle and Selmar having such discussions was that, on those occasions where Lyle advised that he had leased or purchased a piece of equipment for the farm, he was met with objections from Eric and Selmar. Eric and Selmar objected that [Odelein Farms] neither needed more equipment nor could afford to pay for more equipment. Lyle's assurance, in each case, was along the lines of "Don't worry about paying" and "I don't want anything from the farm". In their affidavits and cross-examination answers, Eric, Hilda, Selmar and Sandra all have confirmed that Lyle repeatedly said words to that effect. Selmar has confirmed that Lyle provided this assurance on each occasion.

[65] As was the case with corporate law, tax law and preparation of corporate financial statements, none of the shareholders was familiar with the law pertaining to what constitutes a legal gift. They did understand that, in those early years after incorporation, Lyle was earning large amounts of money (over \$1 million USD in each of several years), and that in those same years [Odelein Farms] was doing poorly financially. The shareholders understood, as well, that they had established a multi-generation family farm, one to which everyone expected Lyle to return to work after he had finished his hockey career.

[66] In the context of the multi-generation family farm, of Lyle's plans to return to farming after hockey, of [Odelein Farms'] poor financial situation at the time, of Lyle's strong financial situation at the time, and of Lyle's assurance on each occasion, each shareholder understood the circumstance of Lyle contributing these items of equipment (or at least the initial payments on them) to be a matter of Lyle giving the equipment (or the money) to [Odelein Farms], without any expectation of repayment.

[67] I infer that no shareholder thought about there being any potential legal or accounting significance about Lyle having assured the others that they were not to worry about the money that he had spent on these transactions. I further infer that, consequently, no shareholder advised the accountants that the money that Lyle had spent on those transactions was not something to be paid back.

[68] When the accountants generated annual financial statements that started to show an increase in Lyle's shareholder loan account, the shareholders paid little or no attention to that increase. This was so because – as I have discussed – the shareholder loan accounts were of no significance to the shareholders, in that no shareholder perceived a connection between those accounts as stated in the financial statements and real life. The numbers that mattered to them were the expenses of operating the farm and the revenue that was generated by that operation.

[41] While Lyle questions these and other findings of fact and the Chambers judge's application of the law, he does so in an indirect manner, by picking at the edges of the judge's findings not their substance. As I understand it, his arguments for the most part track the three legal aspects of a gift.

### **1. Intention**

[42] Lyle submits that the Chambers judge's gift analysis was "simply wrong" because he failed to understand that some evidence relevant to his purported intention to gift assets and money to

Odelein Farms was “wrong as a matter of law”. In other words, I understand him to allege that relevant evidence contradicts the Chambers judge’s finding that he intended to gift money and assets to Odelein Farms after its incorporation.

[43] The argument starts with reference to an accountant’s affidavit that was filed in a court in Texas, USA, in connection with Lyle’s divorce in 2007 from Andrea Odelein. Under that affidavit, the accountant expressed the opinion that Lyle’s shareholder loan account was a debt owing by Odelein Farms, but that it was likely uncollectable due to the corporation’s financial situation at the time. Juxtaposed to this, Lyle points to an affidavit sworn by Andrea and filed by Odelein Farms in this matter where Andrea averred that Lyle’s shareholder loan account was “worth nothing” also due to Odelein Farms’ financial situation. It is this “worth nothing” averment by Andrea that Lyle submits is simply wrong as a matter of law.

[44] Andrea’s averment is wrong, Lyle argues, because he relied on the accountant’s representation to the Texas court in his negotiations with her leading up to their divorce, where he says the full face-value of his shareholder loan account and Class “D” shares in Odelein Farms was awarded to him in the division of family property. From this argument, I take Lyle to mean that he could not have understood that his shareholder loan account represented gifts made to Odelein Farms since, if that were the case, he would have negotiated in his divorce proceedings for a different division of family property.

[45] I am not, however, persuaded that there is even a long-bow inference available on that evidence that supports Lyle’s position in this appeal. I fail to see how what occurred in Lyle’s divorce proceedings makes any difference to the issues that were put before the Chambers judge in the summary judgment application or, for that matter, to the resolution of this appeal. Moreover, I do not interpret Andrea as attesting to anything of substance that differs from the accountant’s opinion evidence.

## **2. Acceptance**

[46] Lyle argues that the Chambers judge erred when he found that Odelein Farms had accepted gifts of money and assets because that would have legally required a directors’ resolution accepting the gifts. He identifies no statutory authority or case law in support of that proposition because, in my view, it is not found in corporate law. Subject to the terms of the articles of a corporation, its

bylaws or a unanimous shareholders agreement, the directors of a corporation are statutorily imbued with the general authority to direct the management of the business and affairs of the corporation and to delegate the exercise of the powers of the corporation to employees and agents (e.g., see *The Business Corporations Act, 2021*, SS 2021, c 6, ss. 3-4, 9-1, 9-22).

### 3. Delivery

[47] Although he does not dispute what is required at law to establish a gift, Lyle says that the Chambers judge's analysis was "both superficial and wrong as a matter of fact and law" when it came to the requirement that a gift be delivered to the donee. The error of fact, Lyle says, is that he never owned any equipment and therefore could not have delivered any to Odelein Farms. He submits that the money he paid for equipment or equipment leases was paid to the equipment dealers not to Odelein Farms. The alleged error in the application of the law, as I understand it, is that the only property interest of which Lyle could divest himself was his shareholder loan account, which he describes as a chose-in-action that could only have been legally delivered through a written instrument. I would reject these arguments about delivery.

[48] While Lyle argues that the law requires *physical* delivery by the donor of personal property to establish a gift, he has provided no authority for that proposition. In Eran Kaplinsky, Malcolm Lavoie and Jane Thomson, *Ziff's Principles of Property Law*, 8th ed (Toronto: Thomson Reuters, 2023) at 186–197, the authors state, with respect to this criterion, that there "must be an effective delivery of the gifted property *or some accepted substitute*" (at 187). Furthermore, logic and the law of agency would dictate that physical delivery cannot be the only means of making a gift at law (for instance, land cannot be physically transferred). This is what the Chambers judge effectively held when he wrote that "[t]he requirement of an act of delivery or transfer was completed by way of the contracts and equipment being placed in the name of [Odelein Farms], and in the equipment being delivered to [Odelein Farms]" (*Judgment* at para 81).

[49] As to the chose-in-action argument, Odelein Farms did not assert, and the Chambers judge did not find, that Lyle had made a gift of his shareholder loan account or any part thereof. The Chambers judge found, rather, that Lyle had gifted assets and money to Odelein Farms and that the full net amount of his pre- and post-incorporation contributions was properly recorded in Odelein Farms' books as a shareholder loan owing to him. As such, there was no requirement at

law for the Chambers judge to have found that Lyle had executed a written deed of gift or assignment of that debt.

#### 4. Overlooked evidence of mortgage payments

[50] Under a late-arising and indirect challenge to the judge's findings, Lyle remarks that the Chambers judge spoke only about his *in-specie* contributions of equipment to Odelein Farms, when there was some evidence from Sandy that he had also contributed cash or money toward mortgage loans. Due to this overlooked evidence, Lyle submits that the Chambers judge's legal conclusion about post-incorporation gifts must fall.

[51] While the Chambers judge initially acknowledged that Lyle had contributed "assets and money" to Odelein Farms (at para 60), I agree that he referred almost exclusively to Lyle's post-incorporation contributions in terms of equipment or money to lease equipment (e.g., at paras 61, 66, 67, 80 and 83). Notably, the word *mortgage* is not found in the relevant parts of the *Judgment*. Furthermore, it would be a strain to infer that the Chambers judge's references to contributions of *money* included payments made in respect of mortgage loans.

[52] Nonetheless, even *if* the fact that the Chambers judge did not specifically refer to mortgage-payment contributions were considered a palpable error, it is not overriding of the judge's legal conclusion that Lyle had gifted his post-incorporation contributions, regardless of their nature, to Odelein Farms. That is because the allegation of error here is one of overlooking reliable evidence, but the evidence is not inconsistent with an intention by Lyle to divest himself of any money that he provided to Odelein Farms and that was allocated to mortgage loan payments. Which is to say that, if it had been considered, the evidence would not have changed the Chambers judge's overall legal conclusion under the law of gift.

[53] To expand further on this point, Sandy's reference in cross-examination to Lyle's contribution toward mortgage payments is reliable evidence. In general terms, the Chambers judge made the findings of fact about Lyle's intention to gift money and assets when making post-incorporation contributions based on the reliability of Sandy's evidence. In specific terms, based on Sandy's evidence, he expressly held that Lyle had gifted equipment to Odelein Farms. However, the air is let out of Lyle's assertion that the judge's failure to mention mortgage payments undermines his analysis because Sandy's evidence about his contribution to mortgage

payments was inextricably intertwined with and just as probative of the issue of gift as her testimony about his contributions of equipment and lease payments. She testified as follows when being cross-examined on this issue:

Q All right. In these proceedings, we have a particular focus on -- on the years from incorporation till 2006 as -- as I've noted. Was Lyle Odelein making financial contributions to Odelein Farms during that period?

A Yes.

Q All right. What form did those financial contributions take?

A In terms of what he was purchasing or what --

Q What -- what was he -- what was he providing to Odelein Farms?

A Mostly machinery, and by that I mean he would go to the dealers and buy a tractor and say he was going to pay for it and it was for the farm.

Q Okay. And were there other payments made by Lyle in those periods?

A He made some mortgage payments, but, like, the majority of it was his equipment, vehicles.

Q Okay.

A Yeah.

Q And how were those payments made?

A In -- in the early years, he just sent money or made the payments. He didn't --

Q This is after 2001.

A After 2001? He would send money. It got to be too complicated because he had lines of credit at the, you know, Bank of Nova Scotia in Wynyrd, the Bank of Nova Scotia in Melfort, but Bank of Montreal became our main corporate banking entity, and when they had come out one time, they told Lyle that he could get a personal line of credit, and he -- he took that. He put Selmar and I on as signatories only. We -- I mean, we -- we weren't guaranteeing it. It was his personal line of credit that he set up so that he could pay his bills, so that I could manage the payment of his bills, because he never paid his bills. I -- I paid them. When whatever bill came that was his, I would pay out of that account as directed by -- by Lyle.

Q All right. And what -- how did you use it? What payments did he direct you to make?

A Machinery, vehicles, some mortgage payments.

Q So those were purchase and lease payments on -- on machinery, and then was it -- were those the only equipment payments, or were there ongoing payments on equipment?

A The -- in -- I don't know what you mean.

Q So when -- when Lyle initially brought a piece of equipment to the farm, there often, I -- I imagine, would have been a down payment or an initial lease payment. Are those -- and then subsequent payments would follow. Is -- are those all captured under the same umbrella, or -- or are those -- did those payments come from somewhere else, or maybe they were --

A No. They're -- they all -- all of the equipment that I was directed to pay for came out of that account, and Lyle would fund money into it from someplace else. I don't know where.

Q Right. So the payments that were made out of that account -- the payments that were made out of that account, were those for things just -- that you and Selmar decided that the farm needed, or were they things that Lyle decided to buy?

A No. Those were things that Lyle decided the farm needed and would buy them and say, I'm making the payments, pay it out of that account.

Q So -- so those -- in other words, those payments were things that Lyle had told you that he personally would be responsible for?

A Yes.

Q And did he say that Odelein Farms would have to pay him back?

A No. Never.

Q And did you understand that Odelein Farms would have to pay him back?

A No.

Q All right. So when -- when those transactions happened, the -- the equipment payments and the other payments that came out of that account that was Lyle's account that -- that you and Selmar were signing authorities on, how were those payments accounted for within Odelein Farms's financials?

A When a new piece of equipment was purchased, the contract would go to Virtus Group. Virtus Group would enter it as an asset purchased into the AgExpert books, and they would set up a loan or lease payments or however that piece of equipment was done, set it up so that as -- 'cause there was monthly payments. They were monthly payments, so every month I would have to pay those bills. Then I would enter them into the Odelein Farms AgExpert record as -- and it would go as a -- I enter it as a -- comes out of the bank, put it onto the loan, as it was, or a lease as, you know, rental equipment. That's how I entered it because that's how Virtus Group told me to enter them. It would be specifically out of that bank account that was Lyle's. On my -- on my AgExpert, I had a Bank of Montreal account, I had a Lyle account, I had a MasterCard account, I had a cash account, and where that money came from came out of those accounts. So it was -- it was treated -- Virtus Group set it up as a farm bank account on my -- on my records.

(Emphasis added)

[54] While it is not clear whether the mortgage-contribution aspect of Sandy's evidence was put to the Chambers judge for consideration, it is true that he did not refer to Sandy's evidence about Lyle making "some mortgage payments". Nonetheless, I cannot conclude that his analysis on the issue of gift would have changed if he had found, as an explicit additional fact, that Lyle had *also* contributed money toward mortgage loans. The elements required to establish at law a gift of money for mortgage loan payments — intention, acceptance and delivery — were satisfied by the same evidence that had underpinned the Chambers judge's findings of fact regarding the gifting of equipment.

**D. Did the Chambers judge otherwise err under contract law, criminal law, corporate law, etc.?**

[55] In his submissions, Lyle made wide-ranging arguments alleging that the Chambers judge had erred under contract law as well as under a well-known principle of criminal law and in other ways that undermined the soundness of his decision. As none of these secondary arguments have merit, I address them in brief below.

**a. Ignorance of the law**

[56] In matters to which the criminal law applies, the *Criminal Code* codifies the principle that ignorance of the law is no excuse:

**19** Ignorance of the law by a person who commits an offence is not an excuse for committing that offence.

[57] Leveraging from the Chambers judge’s findings that the Odelein family was unsophisticated and lacked knowledge about the legal and accounting aspects of incorporation, Lyle argues that the Chambers judge should not have used those facts “as a springboard to invoke the promissory estoppel and waiver”. He submits that the Chambers judge’s reliance on those findings “clearly runs afoul of the age old maxim that ignorance of the law is no excuse”. To my knowledge, neither Parliament nor the Legislature has recognised that maxim under statute law for the purposes of civil matters. And, there is no need to determine whether it could be considered an axiom or principle of the common law applicable in civil matters. That is so because, if it were a common law principle, it would operate where a defendant had asserted ignorance of the law as a defence that excused the conduct on the defendant’s part that had given rise to the plaintiff’s cause of action. There is no merit to this argument because Odelein Farms did not attempt to defend against Lyle’s claims on that basis.

**b. The parol evidence rule**

[58] In simple terms, at common law, the parol evidence rule states that oral evidence cannot be used to contradict the terms of a written contract.

[59] Here, Lyle asserts that there is a question as to whether the evidence of the family discussions was admissible since the judge’s findings mean that those discussions contradicted written agreements under which the family members had rolled their assets into Odelein Farms.

He specifically points to his understanding that repayment of shareholder loans was “one of the fundamental undertakings made by [the corporation] in the agreements”. The parol evidence rule is a feature of contract law that may be engaged in matters of contract interpretation, whereas promissory estoppel and waiver are doctrines of equity. While there were contracts relevant to the roll-over of the family members’ assets to Odelein Farms, the interpretation or meaning of those contracts was not at issue in this matter. There is no error here.

**c. *Consensus ad idem*, privity of contract and equivocation**

[60] As I understand Lyle’s several assertions under this rubric, the Chambers judge is said to have erred because the law of promissory estoppel and waiver requires proof of the exact words spoken by the party making representations so as to establish *consensus ad idem* between the maker and the recipient of those representations. First, the concept of *consensus ad idem* is a requirement of the formation of a binding contract at common law; the idea has no application in equity. Moreover, the jurisprudence Lyle cites does not support the proposition that the exact wording of a representation must be established under contract law. In *Ziola v Petrie*, 2021 SKCA 97, [2021] 10 WWR 123, this Court held that it is desirable to determine the exact words spoken when deciding whether there was *consensus ad idem* for the purposes of contract formation, but the Court also recognised that it was “not necessary in all cases” (at para 43). To this point in equity, in *Maracle*, Sopinka J. wrote that a party relying on the doctrine of promissory estoppel “must establish that the other party has, *by words or conduct*, made a promise or assurance which was intended to affect their legal relationship and to be acted on” (at 57, emphasis added), which belies a requirement for exactitude of wording. Under a similar argument, Lyle suggests that his representations, as found by the Chambers judge, were not unequivocal or unambiguous. However, given the standard of appellate review for findings of fact, there is simply no room in the evidence and the findings in the *Judgment* to debate that point.

[61] Drawing further on aspects of corporate law, Lyle appears to assert that the Chambers judge erred because the family’s “aspirational consensus” to establish a multi-generational corporate farming vehicle could not “evolve into a binding and enforceable legal relationship” or contract enforceable as among them or that was binding on Odelein Farms. Even if it were legally possible to achieve that goal, Lyle submits that the family would have had to do so through the articles of incorporation of Odelein Farms or under a unanimous shareholders agreement. Since they did not

do that, Lyle says the other members of his family are the authors of their own misfortune because they did not discuss the matter with their accountants and lawyers. As I remain uncertain as to what error is alleged here, I would give no further consideration to this argument.

[62] At bottom, I can give no weight to this mélange of thoughts about the principles of common law, corporate law and equity. The Chambers judge did not find, and was not required to find, that a contract or legal relationship had been formed among the Odelein family members or between the family and Odelein Farms. Contract law and corporate law were not directly engaged by the issues the parties had put before the judge. With respect to what he was asked to decide, the Chambers judge concluded, in a straightforward manner, that Lyle and the other Odelein family members had each made unequivocal, extra-contractual representations to Odelein Farms at its incorporation that estopped them from demanding repayment of their initial contributions to the corporation. The arguments under this heading do not undermine that conclusion.

**d. Time of incorporation**

[63] Lyle's argument here is based on the pre-incorporation timing of the family discussions and the date when Odelein Farms was incorporated, which he says means that his purported representations could not have been made to the corporation because it was not yet in existence. However, he incorrectly understands the Chambers judge to have found that his representations had all been made to his family members before Odelein Farms was incorporated. The argument has no foundation because the Chambers judge found in the *Judgment* that:

[98] While the shareholders were planning and deciding to proceed with incorporating a multi-generation family farm, they made this representation to each other. Once [Odelein Farms] was incorporated, each shareholder made the representation to [Odelein Farms] as well. [Odelein Farms] received those representations in the context of receiving the shareholders' assets for the operation of the multi-generation family farm – representations that were received by [Odelein Farms] by way of the shareholders, who controlled the actions and decisions of [Odelein Farms].

(Emphasis added)

[64] An argument on appeal will be unpersuasive if it takes a different view of the facts without alleging or establishing palpable and overriding error in the judge's findings of fact.

**e. Absence of a legal relationship**

[65] Like in the immediately preceding argument, Lyle says that the doctrines of promissory estoppel and waiver require that the parties be in a pre-existing legal relationship. And, since Odelein Farms was not in existence at the time of the family discussions, he submits there could not have been a legal relationship between him and the corporation.

[66] This argument is also fully answered by the Chambers judge's finding of fact in paragraph 98 of the *Judgment* (quoted above). Furthermore, while a promise or representation by one party often induces another party to enter a legal relationship, the term *promissory estoppel* and the circumstances in which it is usually invoked more than suggest that the pre-existence of a binding and related contractual relationship between parties is not required.

**f. Tax law**

[67] Lyle observes that the Chambers judge found that he had proposed the incorporation of Odelein Farms to assist with his income tax problems. In this appeal, he submits that this finding is in error because there was no evidence to explain how the incorporation could have assisted him in that way. The argument goes nowhere because Lyle's own uncontroverted evidence was that his accounting and investment advisors had first proposed the incorporation of the family farming operations.

**g. Expert evidence of an absence of debt forgiveness**

[68] Lastly, Lyle says the Chambers judge erred by failing to give sufficient weight to his accounting expert's evidence that, if Lyle had forgiven his shareholder loan amounts, that fact would have been recorded in the financial statements of Odelein Farms, and it was not. This allegation mistakes what the Chambers judge found. He did not conclude that Lyle had forgiven any part of his shareholder loans. To the contrary, he found that all the amounts that Lyle claimed were owing to him were recorded in the corporation's books as outstanding shareholder loans. The Chambers judge held that Lyle could not demand repayment of those loans, whether by reason of gift or promissory estoppel and waiver. The argument is directed at a finding the judge did not make.

## V. CONCLUSION

[69] Principally because Lyle has not established palpable and overriding error in the Chambers judge's findings of fact, I would not interfere with the judge's conclusion that none of Lyle's contributions were recoverable in his action against Odelein Farms.

[70] As there is no basis to set aside the dismissal of Lyle's application for summary judgment or the dismissal of his claims against Odelein Farms, I would dismiss the appeal from the *Judgment* with costs to Odelein Farms on Column 3 of the Tariff.

“Caldwell J.A.”

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Caldwell J.A.

I concur.

“Schwann J.A.”

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Schwann J.A.

I concur.

“Bardai J.A.”

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Bardai J.A.