

**CITATION:** Allison v. CMC Consumer Credit Limited et al., 2025 ONSC 3196  
**COURT FILE NO.:** CV-24-00733914-00CL  
**DATE:** 20250529

**SUPERIOR COURT OF JUSTICE – ONTARIO  
(COMMERCIAL LIST)**

**RE:** Jason Allison, Plaintiff

**AND:**

CMC Consumer Credit Limited, CMC Capital Inc., and Michael Smith,  
Defendants

**BEFORE:** J. Dietrich, J.

**COUNSEL:** *Lincoln Caylor, Thomas Feore*, for the Plaintiff

*David Schatzker*, for the Defendants

**HEARD:** May 27, 2025

**REASONS FOR DECISION**

**Introduction**

- [1] Jason Allison seeks an order requiring the Defendants, CMC Consumer Credit Limited (“**CMCL**”), CMC Capital Inc. (“**CMC Capital**”), and Michael Smith, to produce certain financial documents (the “**Financial Documents**”) on the basis that Mr. Allison is entitled to them either (i) pursuant to a Shareholders’ Agreement dated July 11, 2018 with CMC Capital, Mr. Smith’s holding company (the “**Shareholders’ Agreement**”); (ii) as a trust beneficiary in respect of Mr. Allison’s investment in CMCL; or (iii) as an intended director of CMCL.
- [2] This motion by Mr. Allison is brought in the context of an underlying claim for, among other things, oppression and breach of trust against the defendants.
- [3] The defendants take the position that Mr. Allison lacks any contractual basis for the information and seeks pre-discovery disclosure. The defendants claim Mr. Allison is not entitled to equitable relief as he does not come to the Court with clean hands and is statute barred on the basis of limitation periods.
- [4] For the reasons set out below, Mr. Allison’s motion is granted.
- [5] Terms used but not otherwise defined herein have the meaning provided for them in factum of Mr. Allison filed on this motion.

## Background

- [6] On June 21, 2018, CMCL was incorporated as the vehicle to effect a joint venture between Mr. Allison and Mr. Smith. CMCL's business was to be the provision of consumer loans. Mr. Allison's evidence is that he trusted Mr. Smith as a close friend and Mr. Smith was in Mr. Allison's wedding party.
- [7] Mr. Allison was to be the initial investor providing funding for CMCL, and Mr. Smith would manage the business.
- [8] There is no dispute that the parties understood that Mr. Allison would be responsible for personally advancing \$5,000,000 to CMCL, and for sourcing another \$5,000,000 in funding for CMCL, for a total of \$10,000,000. Mr. Allison was to receive monthly interest payments equal to 50% of the gross revenues earned from the capital he advanced or caused to be advanced to CMCL.
- [9] Both parties agree that the Shareholders' Agreement governs the relationship between the parties. There are (and have been, at all material times since CMCL's incorporation) 1000 issued and outstanding shares of CMCL with CMC Capital holding 500. Mr. Allison was to receive 100 shares (held for his benefit in trust by CMCL) for every \$2,000,000 he advanced or caused to be advanced, up to an eventual total of 500 shares, upon advancing or causing to be advanced \$10,000,000 to CMCL.
- [10] Nominally, the parties to the Shareholders' Agreement are CMC Capital (Mr. Smith's holding company) and JASONHOLDCO ("JACO"), a purported holding company that Mr. Smith indicated to Mr. Allison he would set up on his behalf. There is no evidence that JACO was incorporated. Mr. Allison's evidence is that Mr. Smith was to incorporate JACO on his behalf, but he has now come to believe that Mr. Smith failed to do so. Mr. Smith has not provided any evidence.
- [11] In any event, in 2018 and 2019, Mr. Allison personally advanced more \$5 million to CMCL. However, Mr. Allison did not receive any funds from CMCL until 2022. In May of 2022, Mr. Allison received his first payment from CMC in the amount of \$15,3288.02, which was less than expected. Mr. Allison demanded to know what Mr. Smith had done with his investment and he received certain documentation, which Mr. Allison says is inadequate and are high-level summary documents that did not provide the information requested.
- [12] Following the exchange in May of 2022, Mr. Smith made payments to Mr. Allison totalling \$488,651.46 USD, however, the payments ceased in March 2024.
- [13] Further demands for information were made in September and October of 2024.
- [14] The Defendants have led no evidence on this motion. The Defendants have not taken the position that the Financial Documents requested are privileged or irrelevant, nor have they

suggested that the Financial Documents would be unduly expensive, burdensome, or otherwise disproportionate to produce for inspection.

### Issue

- [15] The only issue to be determined is whether the Financial Documents should be produced to Mr. Allison at this time.

### Analysis

- [16] Mr. Allison claims he is entitled to the Financial Documents on three basis (i) under the Shareholders' Agreement; (ii) as the beneficiary of a trust; and (iii) as an intended director of CMCL. Mr. Smith disputes Mr. Allison's claims and asserts that Mr. Allison should also be denied production of the Financial Documents as Mr. Allison does not come to Court with clean hands.
- [17] The Court may order production of relevant, non-privileged documents "at any time": see *Rules of Civil Procedure*, R.R.O. 1990, Ont. Reg. 194 [**"Rules"**], r. 30.04(5) and *Quadrangle v. AG Canada*, 2023 ONSC 7125 [Commercial List] at para 18-23.
- [18] Counsel for Mr. Smith does not dispute that pursuant to s. 21 of the Ontario *Business Corporations Act* (the "**OBCA**") a person who enters into a contract in the name of or on behalf of a corporation before it comes into existence is personally bound by the contract and is entitled to the benefits thereof. This applies even if the corporation never comes into existence: see *Real Estate Professionals Inc. v. Castel Homes Inc. et al.* 2023 ONSC 4099 at para 84.
- [19] Based on the record before me, JACO was not incorporated and accordingly Mr. Allison is bound by and entitled to the benefits of the Shareholders' Agreement.
- [20] The defendants agree that if Mr. Allison is a Shareholder under the Shareholders' Agreement, he is entitled to the documentation requested.
- [21] However, the defendants take the position that as Mr. Allison has not contributed the full \$10 million, his shares are held in trust by CMCL for him, such that he is not a legal Shareholder – rather he is a beneficial shareholder only. Further, the defendants claim that if Mr. Allison is a Shareholder, given his failure to contribute the full \$10 million he is a 'Defaulting Shareholder' under the Shareholders' Agreement and therefore not entitled to the documentation requested.
- [22] The Shareholders' Agreement does not provide that information rights are limited in any way if a Shareholder is a Defaulting Shareholder. Rather, the respondents argue such a term should be implied, but point to no evidence or case law as to why that is the case. I disagree that such a term should be implied. The term Defaulting Shareholder is only used in Article 4.08 of the Shareholders' Agreement which relates to share purchase rights and is not relevant to the matters at issue.

- [23] The Shareholders' Agreement defines "Shareholders" as "means MSCO and JACO, together with such other persons as may become parties to this Agreement, collectively and "Shareholder" means any one of such persons individually."
- [24] The definition of Shareholder is not conditional upon the shares 'vesting' in JACO. As previously discussed, JACO is to be read to mean Mr. Allison. Accordingly, Mr. Allison is entitled to the information requested on the basis of the Shareholders' Agreement.
- [25] If I am wrong, and Mr. Allison is only a beneficial shareholder as alleged by the defendants (an not a Shareholder for purposes of the Shareholders' Agreement), I agree with Mr. Allison that as the beneficiary of a trust, he has a proprietary right to all records necessary to understand the mode in which his investment has been dealt with: see *7539088 Canada Ltd. v. Slattery*, 2022 ONSC 6882 at para 12-15. He is also entitled to the relief sought on this motion as a beneficial holder of the shares.
- [26] Accordingly, I do not need to address the argument raised by Mr. Allison that he should also receive the documentation as an intended director.
- [27] The defendants also take the position that Mr. Allison is not entitled to the relief requested because he does not come to Court with clean hands. For context, this motion was heard in connection with an application for access to the books and records of CMC Credit Ltd ("CMC") commenced by Harry Littler against CMC and Mr. Smith in court file CV-25-00742313-00CL (the "**Littler Matter**"). Mr. Allison is married to Mr. Littler's sister (i.e. they are brothers in law).
- [28] The defendants also allege that Mr. Allison and Mr. Littler are improperly coordinating and acting in concert in their respective proceedings because a sentence in Mr. Allison's affidavit in support of this motion mistakenly referred to a meeting that was arranged by Mr. Littler (rather than Mr. Allison) with Mr. Smith. Based on this, Mr. Smith alleges that Mr. Allison's credibility as a whole is undermined, he does not come to Court with clean hands and is not acting in good faith. Mr. Smith cites no case law to support his position. Further, Mr. Smith has provided no evidence in this proceeding. There is nothing on the record which supports any improper purpose and counsel for Mr. Smith could not articulate what possible improper purpose could be in play. The form of order requested by Mr. Allison also limits the use of the documents to be produced as contemplated by Rule 30.1 and 30.05.
- [29] I am not persuaded that the mistake in Mr. Allison's affidavit regarding a meeting which is not relevant to the documentation requested negates Mr. Allison's rights under the Shareholders' Agreement or as a trust beneficiary to obtain the requested documentation.
- [30] I am also not persuaded that Mr. Allison's request for documentation is statute barred under s. 4 of the *Limitations Act, 2002*, S.O. 2002, c. 24 (the "*Limitations Act*"). The defendants allege that Mr. Allison asked for documentation in May of 2022, he was refused and

therefore two-year limitation period began running at that time. Mr. Allison takes the position that he was not aware of any loss at that time as the defendants were continuing to make payments to him until the fall of 2024. I am not persuaded on the record before me that Mr. Allison knew or ought to have known the factors set out in s. 5(1)(a) of the *Limitations Act*. Therefore Mr. Allison’s request for documentation is not barred by s. 4 of the *Limitations Act*.

### Disposition

- [31] For the reasons above, the motion by Mr. Allison is granted.
- [32] As to the form of order, I am satisfied that the form of Order requested by Mr. Allison is appropriate. Mr. Smith requested that he be provided 60 days to produce documents to Mr. Allison (rather than the 15 days contained in the requested order). The order only requires production of documentation – it does not require generation of documents. Accordingly, I am not persuaded that additional time is required.
- [33] Fixing costs is a discretionary decision under s. 131 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43. In exercising my discretion, I may consider the result in the proceeding, any offer to settle or to contribute made in writing, and the factors listed in Rule 57.01. These factors include but are not limited to: (i) the result in the proceeding; (ii) the experience of the lawyer for the party entitled to the costs as well as the rates charged and the hours spent by that lawyer; (iii) the amount of costs that an unsuccessful party could reasonably expect to pay in relation to the step in the proceeding for which costs are being fixed; (iv) the amount claimed and the amount recovered in the proceeding; (v) the complexity of the proceeding; (vi) the importance of the issues; and (vii) the conduct of any party that tended to shorten or lengthen unnecessarily the duration of the proceeding. Rule 57.01(1)(f) provides that the court may also consider “any other matter relevant to the question of costs.”
- [34] In exercising my discretion to fix costs, I must consider what is fair and reasonable for the unsuccessful party to pay in this proceeding and balance the compensation of the successful party with the goal of fostering access to justice: *Boucher v Public Accountants Council (Ontario)* (2004), 71 O.R. (3d) 291 (C.A.) at paras. 26 and 37.
- [35] I fix the costs of the motion in the amount of \$35,000, inclusive of disbursements and Harmonized Sales Tax, and order that Mr. Smith is to pay that amount to the Mr. Allison within 30 days of the date of this order.
- [36] Counsel are to email a word version of the draft order to the Commercial List Office for my review and signature.

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The Honourable Justice J. Dietrich

**Date:** May 29, 2025