CITATION: E. Automotive Inc. v. Autocorp. AI. Inc., 2025 ONSC 3629
COURT FILE NO.: CV-24-94824
DATE: 2025/06/18

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	)	
E. Automotive Inc.	)	Jeffrey Larry and Jessica Roher, for the Applicant
Applicant	)	
– and –	)	
Autocorp. AI.Inc. and Andrew Lemoine	)	Katie Black and Sarah Lag, for the Respondents
Respondents	)	
	)	**HEARD:** January 28, February 19 and April 15th, 2025

REASONS FOR DECISION ON APPLICATION

JUSTICE I. CARTER

OVERVIEW

[1] E. Automotive Inc. ("E. Inc.") has brought an Application pursuant to Section 248 of the *Business Corporations Act* (Ontario), R.S.O. 1990, c. B.16 ("*OBCA*") seeking to unwind a transaction.

[2] The Respondent Autocorp.AI. Inc. ("Autocorp") is a software company that assists car dealerships convert their website traffic into qualified car buyers. It had previously been called Car Loans Canada ("CLC"). The Respondent Andrew Lemoine is its sole director.

[3] On August 23, 2023, Autocorp reached an agreement with Blossom Street Ventures ("Blossom") for Blossom to invest $5 million in Autocorp in exchange for Series A preferred

shares of Autocorp. E. Inc. was an approximately 50% shareholder of Autocorp at the time. It was opposed to the transaction.

[4] Autocorp was in considerable financial difficulty. The Blossom transaction was a life line. In fact, it was the only life line on the horizon.

[5] In order to implement this proposed agreement, Autocorp had to amend its articles of incorporation to create the new Preferred Shares for issuance to Blossom. This amendment required the approval of two-thirds of Autocorp's existing shareholders pursuant to s. 168 of the *OBCA*. Given E. Inc.'s opposition and that fact that it was a 50% shareholder, the deal would not be able to go through.

[6] The structure of the agreement with Blossom was subsequently changed. The new deal had the effect of diluting E. Inc.'s shareholding interest below 33 1/3% to pass the special resolutions giving effect to the transaction with Blossom. Specifically, on December 8, 2023, the Respondents (without notice to E. Inc.) issued Blossom warrants to acquire 80,000 common shares of Autocorp for consideration of $0.01 per share. Blossom promptly exercised the warrants and acquired a sufficient number of common shares such that the impugned resolutions passed on January 11, 2024, despite E. Inc.'s opposition.

[7] E. Inc. says the Respondents did a blatant end-run around its rights as a shareholder and its reasonable expectations. The issuance of 80,000 common shares to Blossom for nominal consideration was oppressive and/or unfairly prejudicial to E. Inc. As a result, the transaction must be unwound.

[8] The Respondents disagree. They say that it was always expected that E. Inc.'s shareholdings would be diluted. In fact, the percentage of the dilution was the same as the Respondent Lemoine's. The transaction was neither oppressive nor unfairly prejudicial within the meaning of the jurisprudence. Indeed, it made good business sense. In any event, the remedy of unwinding would be far too drastic and would benefit none of the parties. They argue that if the Court were to find the transaction was prejudicial to E. Inc., a scalpel would be a far better tool to remedy that prejudice than a hammer.

[9] A considerable amount of evidence was led on this application. Most of it provides context and is not directly relevant to the issues that must be decided. Although I have reviewed it, I will not set it out in these Reasons for Decision. Instead, I will refer only to the evidence that is necessary for the purpose of my decision.

LEGAL PRINCIPLES

[10] Section 248 of the *OBCA* states that, upon an application, a complainant may obtain relief for oppressive conduct:

> 248 (2) Where, upon an application under subsection (1), the court is satisfied that in respect of a corporation or any of its affiliates,
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> (a) any act or omission of the corporation or any of its affiliates effects or threatens to effect a result;
>
> (b) the business or affairs of the corporation or any of its affiliates are, have been or are threatened to be carried on or conducted in a manner; or
>
> (c) the powers of the directors of the corporation or any of its affiliates are, have been or are threatened to be exercised in a manner,
>
> that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of any security holder, creditor, director or officer of the corporation, the court may make an order to rectify the matters complained of.

[11] In determining whether oppression has been made out, there is a two-part test as set out by the Supreme Court of Canada in *BCE Inc. v. 1976 Debentureholders*, 2008 SCC 69. To establish oppression, the Applicant must: (1) identify the expectations he claims have been violated and prove that those expectations were reasonably held; and (2) show that these reasonable expectations were violated by corporate conduct that was oppressive or unfairly prejudicial to, or that unfairly disregarded, the interest of any security holder, creditor, director, or officer: *BCE* at para. 70.

[12] Factors that emerge from the case law that are useful in determining whether a reasonable expectation exists include: general commercial practice; the nature of the corporation; the relationship between the parties; past practice; steps the claimant could have taken to protect itself;

representations and agreements; and the fair resolution of conflicting interests between corporate stakeholders: *BCE* at paras. 73 to 82.

[13] As for the second part of the test, the Supreme Court of Canada in *BCE* explained the difference between oppression, unfair prejudice and unfair disregard of the complainant's interests as follows at paragraph 57:

> "Oppression" carries the sense of conduct that is coercive and abusive, and suggests bad faith. "Unfair prejudice" may admit of a less culpable state of mind, that nevertheless has unfair consequences. Finally, "unfair disregard" of interests extends the remedy to ignoring the interest as being of no importance, contrary to the stakeholders' reasonable expectations.

[14] Ultimately, the oppression remedy is an equitable remedy. It gives a court "jurisdiction to enforce not just what is legal but what is fair". Whether conduct is oppressive or unfairly prejudicial is fact specific and must be determined on a case-by-case basis: *BCE* at paras. 58 to 59.

WHAT WERE THE APPLICANT'S EXPECTATIONS?

[15] As noted above, the Applicant must identify the expectations it claims have been violated and prove that those expectations were reasonably held. In other words, there must be clear evidence of a specific expectation. Only then can a court assess the reasonableness of that expectation.

[16] In the majority of oppression cases, the focus of the litigation is on the reasonableness aspect of the test. Here, however, an issue arises as to precise the nature of the Applicant's expectation and whether there is any evidentiary basis for it. To understand why this issue arises, some understanding of how the proceedings unfolded is required.

The Expectation in the Notice of Application

[17] The Applicant's first articulation of its expectations was set out in the Notice of Application. It claimed that the terms of an unwritten investment agreement were, among other things, that:

(a) E. Inc. and Lemoine would have 50-50 ownership of the common shares;

(b) E. Inc.'s 50% shareholding interest could not be diluted without its approval; and

(c) E. Inc. would have a seat on CLC's board of directors.

[18] It was further alleged that that E. Inc. only invested in Autocorp on the understanding that E. Inc.'s 50% shareholding interest could not be diluted without its approval.

[19] As will be seen below, these allegations were seriously undermined during the discovery process.

The Evidence from the Discovery Process

[20] On March 6, 2018, Lemoine and Ryan O'Connor, the former CEO of E. Inc., created CLC, which subsequently became Autocorp. At that time, Lemoine and E. Inc. each received 50% of Autocorp's equity in the form of 50,000 common shares. When Autocorp was incorporated, it was agreed that each shareholder had a right to appoint one director to Autocorp's board. Accordingly, on March 6, 2018, Lemoine and O'Connor were appointed as the directors of Autocorp.

[21] Although O'Connor stepped down as the CEO of E. Inc. on December 9, 2019 to become the company's Chief Innovation Officer and left the company in March 2021, O'Connor remained E. Inc.'s representative on Autocorp's board as a result of inadvertence.

[22] During this time frame, Lemoine and E. Inc. engaged in discussions in order to enter into a formal shareholder agreement. No such agreement was ever reached.

[23] On July 19, 2023, Lemoine received a notice from the CRA that Autocorp had to immediately pay the entire amount of a $1.6 million debt that had accrued to CRA. CRA had also taken the position that O'Connor and Lemoine were personally responsible for that debt. Four days later, O'Connor submitted his formal resignation resigning as a director from the board of Autocorp. After O'Connor resigned from E. Inc.'s board, E. Inc. did not want to put another director on Autocorp's board because it did not want to expose its representatives to liability for the CRA debt. As a result, on July 25, 2023, E. Inc. signed a special resolution decreasing the number of directors from two to one, and confirming Lemoine as the sole director of Autocorp.

[24] In other words, to the extent that E. Inc. had an initial expectation that it would have a seat on Autcorp's board, such an expectation no longer existed at the time of the Blossom transaction. It had voluntarily given up its seat. That it did so because of liability concerns is irrelevant.

[25] The only other alleged initial expectation contained in the Notice of Application was that E. Inc.'s 50% shareholding interest could not be diluted without its approval. On this issue, the involvement of O'Connor is of critical importance. He was the one who entered into the agreement with Lemoine on behalf of E. Inc.

[26] O'Connor was examined pursuant to Rule 39.03 of the *Rules of Civil Procedur*e, R.R.O. 1990, Reg. 194, on November 25, 2024. He admitted on cross-examination that during the entire time he was involved, E. Inc. and Lemoine's mutual intention was to allow Lemoine to issue Autocorp shares on a mutual co-dilution basis to facilitate investment and create an employee stock ownership plan without requiring the consent of the shareholders or directors. E. Inc.'s current CEO Jason McClenahan's evidence was that he was not involved at the time the deal was done but agreed that it was his understanding that dilution was anticipated so long as it was done on a mutual basis.

[27] The evidence obtained during the discovery process conclusively established that there was no merit to the Applicant's expectation of no dilution below 50% as set out in the Notice of Application.

The Expectation at the Hearing

[28] Given the evidence that emerged from the discoveries, it is not surprising that the Applicant shifted positions. In its factum, the Applicant claimed that E. Inc. had an expectation as a 50% shareholder that Autocorp and Lemoine would not trample upon its statutorily protected rights as a shareholder by diluting E. Inc.'s shareholding interest to nullify E. Inc.'s voting power on special resolutions. In support of that proposition, it referred to paragraphs 22 and 24 of one of McClenahan's affidavits. They state:

> In reviewing the Report to Shareholders, E. Inc. further discovered that the respondents were purporting to dilute E. Inc.'s shareholding interest to rig the vote for the Special Meeting and ensure that Autocorp had the requisite two-thirds of the votes of the

common shareholders to pass the Amendment Resolution. In particular, the respondents effected the dilution by:

> (a) granting Blossom the Warrants to acquire 80,000 Common Shares at a nominal exercise price of $0.01 per share (when at the same time it granted options to employees at exercise prices between $12.50 and $25.47 per share, as noted further below); and
>
> (b) issuing 80,000 Common Shares to Blossom following Blossom's exercise of the Warrants (such that Blossom acquired 80,000 Common Shares, representing approximately 43% of the issued and outstanding Common Shares, for only $80).
>
> …
>
> As a result of the purported issuance of Common Shares to Blossom, and the smaller issuances, including to certain Autocorp employees under the stock option (as explained further below), E. Inc.'s shareholding interest in the Common Shares was diluted to 25%.

[29] These paragraphs describe what occurred. They say nothing about E. Inc.'s expectations.

[30] At the commencement of oral submissions at the hearing, counsel for the Applicant clarified his position. He stated that the central issue was that the Respondents had trampled on one of a shareholder's most critical rights – the right to vote. They had done so by issuing shares below value and solely to manipulate the vote. It was argued that what makes this case different from the cases relied on by the Respondent was that there was a statutory right to vote.

[31] When questioned by the Court, counsel confirmed that they were not alleging an expectation that there would be no dilution. It was conceded that a shareholder must expect that its portion of the total shares may be diluted. This, of course, is contrary to what was alleged in the Notice of Application.

[32] In any event, the point is simply this: by the time the hearing of this matter took place, the Applicant had changed the expectation it was relying on. It no longer alleged that any dilution was contrary to its expectations. It now argued that dilution below a certain threshold was.

Reasonable Expectation Not Established

[33] The difficulty that arises from this tactical change is an evidentiary one. Perhaps because it was not initially set out as an expectation in the Notice of Application, no evidence was led that E. Inc. ever had an expectation that its percentage of shares would be diluted below 33 percent. There is nothing in the affidavits. Nothing in the documents. Nothing in the transcripts from the examinations for discovery. The only source of this revised expectation is counsel, and counsel's submissions are not evidence.

[34] In the absence of any direct evidence, I am left to infer whether such an expectation existed. But from what? I agree with the Respondents that it seems that the Applicant is trying to ground this alleged expectation in section 168 of the *OBCA*. This section, however, does not grant the shareholder an expectation to avoid dilution below 1/3 equity. Instead, subsections 168(1) and (5) grant all shareholders the right to vote on amendments to corporate articles. As succinctly put by the Respondents, this section applies whether you have a 1% interest or a 100% interest. In other words, it grants shareholders the right to vote on special resolutions to amend articles at shareholders meetings. That is all.

[35] The Applicant did not lose its right to vote. It was still entitled to vote. What it lost was a guarantee that it could defeat any amendments to the articles of incorporation. There is no inherent right to such a guarantee. It certainly cannot be the foundation for an expectation that has not otherwise been expressed.

[36] Even if I were able to somehow infer that such an expectation existed, there is no evidence to support the reasonableness of it. It is not part of any shareholders agreement and does not otherwise show up in any of the voluminous documentation put before me. There is no evidence of any oral discussions about it. In short, there is no explanation as to why the Applicant may have held such an expectation: see *Darvish-Kazem v. Pazkaz Enterprises Inc.*, 2022 ONSC 1667 at para. 23.

[37] There is no question that in certain circumstances the dilution of shares below a certain threshold, especially where the purpose is to block opposition on a vote, may constitute oppression:

Markus Koehnen, *Oppression and Related Remedies,* (Toronto: Thompson Canada Ltd: 2004). But that will not be the case in all situations. It very much depends on a parties' expectations. There can be no general rule that a shareholder, regardless of the circumstances, will always expect not to have its share percentage dip below some predetermined level.

[38] The other aspect of the Applicant's purported expectation is that the Respondents would not issue shares for far below market value solely for the purposes of rigging a vote. Again, there is no direct evidence of this expectation in the record.

[39] I accept that it may be possible in some circumstances to infer that the issuance of shares for far below market value solely for the purposes of rigging a vote is contrary to the expectation of any shareholder. That, however, is not the circumstance here. There is no question that the Respondents were attempting to dilute the number of shares held by E. Inc. in order to ensure they could not block a deal with Blossom. But the issuance of the common shares for a penny each was not the entirety of the transaction, it was simply part of the transaction. Blossom was providing a $5 million loan to Autocorp. The 80,000 common shares were partly consideration for the loan, otherwise the transaction would not make commercial sense for Blossom.

[40] The issuance of the common shares for a penny each cannot be looked at in isolation. The purpose of the Blossom transaction as a whole was to save Autocorp from insolvency. It was a business decision that Lemoine as sole director was entitled to make. The evidence led on this Application suggests it was a good one. If there had been evidence that the Applicant had a reasonably held expectation that shares would not be issued for below market value and that its percentage of the shares would not be diluted below 1/3 then it would be a different story. The Respondents could not necessarily unfairly prejudice E. Inc.'s interests even if it were done to further a laudable business goal. No such evidence exists however, and I am unable to infer such expectations merely on the basis of the transaction itself.

[41] When Autocorp found itself in financial distress, the Applicant attempted to improve the terms of its agreement by leveraging that distress. There was nothing inherently wrong with that. The Respondent Lemoine opted not to cave to those demands. Similarly, there was nothing inherently wrong with that, so long as he did not violate the reasonable expectations of the

Applicant by corporate conduct that was oppressive or unfairly prejudicial to, or that unfairly disregarded, the interests of E. Inc. Based on the evidence before me, I conclude that the Respondents did nothing contrary to any reasonably held expectations of the Applicant.

[42] The Application is dismissed.

COSTS

[43] The parties are encouraged to agree on the quantum of costs. If they are unable to do so, the Respondents shall deliver costs submissions by September 2, 2025 and the Applicant party shall deliver responding costs submissions within 15 days of receipt of the submissions of the Respondents. Reply submissions, if any, are to be delivered within 5 days of receipt of the submissions on behalf of the Applicant. The initial and responding submissions are not to exceed five pages doubled spaced excluding costs outlines, offers to settle and authorities. Any reply submissions are not to exceed four pages. All submissions are to be sent to my attention by email to scj.assistants@ontario.ca

Ian Carter

Justice I. Carter

Released: June 18, 2025

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