

SUPERIOR COURT OF JUSTICE – ONTARIO

RE: Alexander William Forrest Milton, Applicant (Moving Party)
v.
Sam Cotton, Yasas Weerasingha, 1000098287 Ontario Inc., and 2754329 Ontario Inc., Respondents (Respondents on Motions)

HEARD: July 25, 2025

BEFORE: Fitzpatrick J.

COUNSEL: *Self-Represented*, Applicant
S. Bass, for S. Cotton & Y. Weersaingha,
R. Johns, for 1000098287 Ontario Inc. & 2754329 Ontario Inc.

Endorsement on Motions

[1] The Applicant Alexander William Forrest Milton (“Milton”) brings two motions. First, he brings a motion seeking various forms of injunctive relief (“the Injunction Motion”). Second, he seeks leave pursuant to section 246 of the *Ontario Business Corporations Act* R.S.O. 1990 c. B. 16 as amended (“OBCA”) to bring a derivative action on behalf of 1000098287 Ontario Inc. (“the Corporation”) against two of its directors the Respondents Sam Cotton (“SC”) and Yasas Weerasingha (“YW”).

[2] These motions arise in the context of an OBCA oppression remedy application which has been brought by Milton against SC, YW, the Corporation and 2754329 Ontario Inc. (“the Landlord”)

[3] The Injunction Motion seeks the following relief;

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1. An interim order restraining SC and YW from acting as directors and/or officers of the Corporation, pending the final determination of the main applications herein or further order of this Court;
 2. An interim order directing any financial institutions holding accounts for the Corporation to terminate all access privileges (including online access, signing authority, and any other means of accessing or transacting on the accounts) for SC and YW, and confirming Milton's sole authority pending further order of this Court;
 3. An interim order restraining SC and YW and the Corporation, and any persons acting on their behalf, from altering, destroying, concealing, or removing any corporate records, including but not limited to financial data, communications, and operational documents, in any format.
 4. An interim preservation order restraining SC and YW from directly or indirectly disposing of, dealing with, or diminishing the value of their personal assets up to a cumulative value of \$150,000, pending further order of this Court.
 5. An interim order compelling the Corporation, SC and YW to provide Milton with complete and unfettered administrator-level access to all electronic systems of the Corporation, including but not limited to the point-of-sale system, inventory management systems, financial and accounting software, security and surveillance systems, and all corporate email accounts.
 6. An order in the nature of a *Norwich* order compelling Alterna Savings to produce to Milton, within 15 days, any and all records relating to accounts held by the Corporation and R.A.Y.S. Holding Corp., from January 28, 2022, to the present. including but not limited to:
 - a. monthly statements and transaction details;
 - b. account opening documents and signing authority resolutions;
 - c. all internal communications, memoranda, or risk assessments related to the operation of the accounts: and
 - d. all regulatory compliance documents, including any Suspicious Transaction Reports (STRs) or other reports filed or prepared for filing with FINTRAC or any other regulatory body.
 7. an order for expedited documentary discovery from SC, YW, the Corporation and the Landlord.

Background

[4] The Corporation was incorporated on January 28, 2022. The Corporation has three directors, Milton, SC and YW and three equal shareholders, Milton, SC and YW. The business of the Corporation is the operation of a retail cannabis store in Cochrane Ontario. The legal retailing of cannabis in Ontario is a highly regulated business.

[5] SC and YW are owners of another corporation that operates three other cannabis stores in Northwest Ontario. These three stores and the Cochrane store operate under the brand name “High Society Cannabis”. Milton has no interest in the other three stores.

[6] SC and YW purchased a building using the Landlord as a corporate vehicle in Cochrane where the retail outlet for the Corporation now operates. Start up capital for the Corporation was secured from a local community futures organization. The loan was personally guaranteed by SC and YW but not Milton. Presently there is about \$120,000.00 owed on that loan.

[7] Further, start up capital was secured by a loan from another company controlled by SC and YW. This company, R.A.Y.S Holding Corp. loaned the Corporation \$100,000.00. According to counsel for SC and YW, with interest, and further advances from R.A.Y.S., the balance of this loan stands presently in the order of \$118,000.00. The loan is in the form of a promissory note which was signed by Milton.

[8] Milton has not provided any capital other than sweat equity services to the Corporation. His affidavit material indicates his technical expertise in computer technology, hands on labour, project management and the development of an efficient point of sale system was his contribution to the Corporation and was central to the hoped-for success of the Cochrane store.

[9] Unfortunately, the relationship between Milton, on the one hand and SC and YW on the other, had soured by the time the store opened to the public in December 2023.

Position of the Parties

Milton

[10] Milton makes serious allegations of misconduct, fraud and self dealing against SC and YW.

Among other allegations, Milton says

- SC and YW have excluded him from the day to day operations of the Cochrane store and prevented him from accessing critical banking documents and books and records related to the operation of the Corporation.
- SC and YW have misappropriated \$117,552.50 from the Corporation;
- SC and YW have operated the Cochrane store in an inefficient and improper manner leading to missed payrolls and over ordering of product.

[11] Milton argues the significant and extraordinary relief sought on both motions is necessary to preserve the Corporation and save the Cochrane store from failure. Milton submits the affidavit material filed on this motion demonstrates a *prima facie* case of misconduct on the part of SC and YW. Their continued actions of obstructing Milton from accessing necessary corporate records and removing funds are badges of fraud designed to hide their improprieties. Milton argues he will suffer irreparable harm if the interim relief is not granted.

SC, YW and the Corporation

[12] SC, YW and the Corporation deny any wrongdoing on their part. They say the allegations of misappropriation and fraud are false and the numbers used by Milton to justify the allegations

are actually evidence of proper payments for rent, payment of below market salaries for work they performed in the store and repayment of the loan to R.A.Y.S.. SC and YW claim Milton has now been given access to all corporate documentation. His request for additional control over certain administrative rights to the hardware and software used to operate Cochrane are really requests to micromanage the store for which Milton does not possess the necessary experience or temperament.

[13] SC and YW make counter allegations of improper conduct by Milton. They allege he hired a business consultant using corporate funds without their approval. He has failed to contribute any capital to the Corporation despite the business experiencing shortfalls in operating funds. It is alleged Milton interfered with the Alterna credit union which provides banking services for the Corporation which caused the Cochrane store to miss payroll for its employees and not to make appropriate remittances to the Canada Revenue Agency.

[14] SC and YW submit there is no evidence that they are dissipating assets or that they are moving to make themselves judgment proof. They submit both motions should be dismissed with costs.

The Law

[15] The test for interim injunctive relief comes from the well-established three-part test from *RJR-MacDonald Inc. v Canada (Attorney General)* [1994] 1 S.C.R. 311 at para. 332 -333:

- (a) there is a serious issue to be tried;
- (b) the Applicant would suffer irreparable harm if no injunction was granted; and
- (c) the balance of convenience favours the granting of an injunction.

[16] Where the injunction requested is in the nature of a *Mareva* injunction the moving party must establish:

- (1) a strong prima facie case;
- (2) that the defendant has assets in the jurisdiction; and
- (3) that there is a serious risk that the defendant will remove property or dissipate assets before the judgment.

[17] A *Mareva* injunction should be issued only if it is shown that the defendant's purpose is to remove his or her assets from the jurisdiction to avoid judgment. The moving party must also establish that he or she would suffer irreparable harm if the injunction were not granted and that the balance of convenience favours granting the injunction. (*O2 Electronics Inc. v. Sualim*, 2014 ONSC 5050 at para. 66).

[18] Where a party seeks a *Norwich* order, the requirements for granting such an order are;

- (a) whether the applicant has provided evidence sufficient to raise a valid, *bona fide* or reasonable claim;
- (b) whether the applicant has established a relationship with the third party from whom the information is sought such that it establishes that the third party is somehow involved in the acts complained of;
- (c) whether the third-party is the only practicable source of the information available;
- (d) whether the third-party can be indemnified for costs to which the third-party may be exposed because of the disclosure; and
- (e) whether the interests of justice favour the obtaining of disclosure. (*Subway Franchise Systems of Canada, Inc v Trent University*, [2017] O.J. No. 4206)

[19] A *Norwich* order is an extraordinary discretionary order and is to be rarely granted (*Subway Franchise supra*).

Analysis

[20] I agree with the submissions of the responding parties on these motions that both should be dismissed with costs. I say so for the following reasons.

The Injunction Motion

[21] In my view, the evidence presented on this matter shows a serious issue to be tried. The relationship between the shareholders in this closely held small corporation has broken down. Something has to be done. However, the interim injunctive relief requested will not provide remedies that are either appropriate or just in all the circumstances. I agree with the submissions of the responding parties that it has not been demonstrated that Milton will suffer irreparable harm if the relief he requests is not granted. I also agree with the respondents' submission that Milton has not provided evidence that shows the balance of convenience favours him in granting the relief requested. I find Milton has not satisfied the other two branches of the *RJR-MacDonald* test.

[22] The injunctive relief Milton seeks is significant. It is, practically, execution before judgement. Milton seeks to takeover the business and exclude the other shareholders. This would represent a serious result on a motion for, whatever reason, neither side asked to cross examine the other's affidavits and the claims made by the various affidavits are significantly at odds with each other.

[23] In my view, at its highest, Milton’s claims for oppression based on what I have reviewed on this motion, will ultimately sound only in damages. His contributions to the Corporation are admitted to be largely “expertise”. He has been compensated thus far for some of the construction type services he provided to the business. Milton’s most serious claim is that funds have been misappropriated from the Corporation by SC and YW. If Milton can ultimately prove that SC and YW have misappropriated funds, those claims could, at best, be met with a monetary reward equivalent to what he lost from that alleged misappropriation plus perhaps punitive damages.

[24] I observe at this point, I was not persuaded that Milton’s evidence on these motions concerning the alleged misappropriations comes at all close to proof on a balance of probabilities, that either fraud or misappropriation has occurred. I accept the answers in the affidavit material of SC and YW that the payments for which Milton takes issue were for legitimate expenses of the business. There is no question the Corporation is a tenant of another corporation owned by SC and YW. The Corporation must pay rent. There was no question the Corporation borrowed substantial funds to start the business. Loans must be repaid. People who are active in the day-to-day operation of a business can expect to be compensated. SC and YW claim they were working in the business and took a diminished salary. In my view, the respondents have provided satisfactory evidence to show the payments about which Milton complains are legitimate. I find they are not misappropriations or fraud on the part of SC and YM. I find the affidavit evidence of SC and YW defeats Milton’s claim on this motion that he has put forward a *prima facie* case of fraud or misappropriation on the part of the responding parties.

[25] Milton’s claims of his own abilities to conduct forensic audits are not supported by particulars concerning his alleged expertise in the body of his affidavit material. When people use

words in court describing an activity as a “forensic analysis”, like Milton has, the court infers this suggests a degree of methodical examination of documents or physical evidence after it has been carefully collected. It also requires that people “show their work”. In context of this motion, Milton complains he has been shut out of the business and banking records. Yet his material purports to show detailed analysis of transactions that he has been complaining about not seeing.

[26] In this matter, the “work shown” appears to be conclusions generated by some AI tool of Milton’s own design. I was concerned by Milton’s submissions that he deployed an AI tool of his own making to generate conclusions in one of his exhibits (L to the affidavit of July 15, 2025, and appearing at document A 11 in the Case Centre bundle Motions on Notice). One of the conclusions in the exhibit states that;

“the transaction data provides irrefutable evidence that OpCo received substantial funds from related-party accounts at times when it held a high cash balance and had no apparent operational need for additional liquidity. This timing strongly supports the characterization of these transfers as “sham loans.”

[27] This is followed by a chart showing 5 cheques, 3 called CHEQ 1 and 2 called CHEQ 2 which are indicated as “Unnecessary transfers”.

[28] In my view, the information contained in this exhibit is not persuasive evidence. It is bald, unhelpful and unsupported conclusory statements. The exhibit then contains the statement “Your central argument is that the company was manipulated through self-dealing, and the data strongly supports this conclusion, albeit with a critical nuance.” The “critical nuance” does not appear to be explained anywhere else in the analysis. Milton was asked by the court if this was in effect “the AI talking to him”. He agreed it was.

[29] The inclusion of this information was not helpful to Milton’s case on these motions. Without further evidence of how or what the AI tool did, and how it was constructed, it is impossible for the court to make any assessment of the value of this “evidence”. The burden on these motions is on Milton. I find his affidavit material is conclusory, and lacks particulars necessary to assert the conclusions Milton seeks to place before the court to obtain the extraordinary relief sought on the Injunction Motion.

[30] I do not accept that Milton has made out a *prima facie* case of financial misconduct by SC and YM as he alleges. I also find it contradictory for Milton to be requesting that the shareholders who are admitted to be the source of the money for the enterprise would be barred from accessing the Corporation’s bank accounts and would be enjoined from dealing with the finances of the Corporation on an ongoing basis. This does not make business sense. It would also alter a status quo unnecessarily without a proper evidentiary foundation.

[31] I find the evidence on this motion does not demonstrate occasions of ongoing dissipation of corporate assets as Milton alleges. Further there is no evidence that SC and YM are doing anything to put their assets beyond the reach of the court.

[32] I do not accept Milton’s suggestion that without the relief being sought, the business is facing immediate failure. The affidavit material filed by Milton does not convince me that removing SC and YM would do anything to improve the position of the Corporation going forward. What the Corporation appears to require at the moment is more money. Milton was very clear this wasn’t to be his responsibility. I was not convinced on the material filed that Milton’s expertise in computers and physical installation is sufficient to make what he proposes a just and equitable solution to the difficulties the business is apparently now presently experiencing.

[33] The affidavit material from the respondents discloses disquieting allegations of inappropriate personal comments leveled between these parties. Proof of that is for another day. Suffice it to say, it seems unlikely that the involvement of all three gentlemen named in this litigation makes good sense for the Corporation going forward.

[34] In my view, Milton has not demonstrated that the balance of convenience favours him being granted the relief he requests. His requests for *Mareva* and *Norwich* type relief are unfounded. He now has access to bank records and has signing authority on the Corporations accounts. This should alleviate any concerns about ongoing financial operations of the Cochrane store. I do not see how the Alterna credit union has been in anyway implicated in any wrongdoing, as I have found none. I understand the problem with the Moneris payment processor reserve account. I accept the respondents' evidence on what is being done to remedy Milton's lack of access to critical information about this important aspect of the business at the Cochrane store. However, this issue is not sufficient to lead me to exercise my discretion to grant any of the requests for injunctive relief in these circumstances.

The Leave to commence a Derivative action Motion

[35] A review of the notice of motion seeking leave reveals almost a straight repetition of the relief requested in the Injunction Motion. As I have found there is no basis to grant the injunctive relief requested on the Injunction Motion, I find the attempt to obtain leave to commence a derivative action to be a collateral attempt to achieve relief requested elsewhere, and now refused. The motion for leave is dismissed for the same reasons I am dismissing the Injunction Motion. In my view, Milton is seeking to advance his own interests and not that of the Corporation in advancing this particular motion seeking leave to commence a derivative action.

Costs

[36] SC and YM have been wholly successful on these motions. Costs for these motions will be awarded payable forthwith by Milton to SC and YM. No costs are awarded to the Corporation. If the quantum of costs cannot be agreed, counsel for SC and YM may provide the court with a costs submission of no more than two pages, plus a bill of costs on or before August 15, 2025. Milton may provide a written response of no more than two written pages on or before August 22, 2025. These submissions are to be uploaded to Case Centre as soon as they are served on the other party. CSD is directed to immediately open a bundle entitled “Costs” for this matter.

[37] I advise the parties that I expect any claims for costs will be modest given the difficult financial situation the Corporation appears to be in at the moment. I expect the claim for costs for SC and YW will be for only the one counsel who appeared on the motion.

Disposition

[38] Rule 37.13 provides the Court with discretion to dismiss motions on terms. In this case two things are clear to me from the material filed on this motion. One, there are serious and significant factual disputes raised on multiple issues in this matter. Second, there is an obvious mutual interest for all parties to quickly come to some practical business resolution of their apparently intractable positions before what little money this enterprise appears to be making runs out. It is time for both sides to take a hard look at this relationship. If all the claims set out in the material so far are to be pursued to the end, the litigation will be protracted, expensive and the possible results do not look to be economical given what it is going to take to get there. The facts are hotly contested. An application is not the proper vehicle to litigate this matter. It should proceed as an action. I

urge the parties to come to some global resolution in the near future with or without the assistance of a mediator. If they cannot do so, I see it as necessary to streamline this litigation, impose a timetable and to discourage endless motions. To that end I order:

1. The Injunction Motion and the Motion for leave to commence a derivative action by Milton are dismissed with costs payable forthwith by Alexander William Forrest Milton to Sam Cotton and Yaras Weerasingha jointly and severally. Costs submissions to be made in accordance with the endorsement of Fitzpatrick J. July 29, 2025;
2. The application CV-25-0197-000 is immediately converted to an action with Alexander William Forrest Milton as plaintiff and Sam Cotton, Yaras Weerasingha, 1000098287 Ontario Inc. and 2754329 as defendants. It shall continue to bear Court file No. CV-25-0197-000;
3. On or before October 3, 2025, Alexander William Forrest Milton as plaintiff shall serve and file a statement of claim, under either the Simplified Rules or the Regular procedure, consistent with the Rules for pleading set out in the Rules of Civil Procedure including Rule 25.06, setting out the relief claimed in the present notice of application and specifying any claim for damages. The statement of claim shall be plead with a concise statement of the material facts upon which the plaintiff relies for the claim but not the evidence by which those facts are to be proved;
4. On or before November 28, 2025, the defendants shall serve and file statements of defence, counterclaims or cross claims consistent with the Rules for pleading set out in the Rules of Civil Procedure including Rule 25.06;
5. On or before January 9, 2026, Alexander William Forrest Milton as plaintiff shall serve an affidavit of documents on the defendants;
7. On or before February 27, 2026, the defendants shall serve their respective affidavit of documents;
8. Once the parties have exchanged their affidavits of documents, they shall confer to complete a discovery plan pursuant to Rule 29.1 or convene a case conference if they cannot agree on terms of the discovery plan;
9. No further motions may be brought in the present application CV-25-0197-000 or in the new action without the moving party first arranging a 30 minute ZOOM case conference with the trial coordinator at Thunder Bay for a mutually convenient time to discuss particulars of the motion and timetable issues;
10. The timetable for pleading and exchange of documents provided in this interim order may be altered by mutual agreement in writing by all parties.

The Hon. Mr. Justice F.B. Fitzpatrick

DATE: July 29, 2025

CITATION: Milton v. Cotton et al, 2025 ONSC 4406
COURT FILE NO.: CV-25-0197-00
DATE: 2025-07-29

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v.
Sam Cotton, Yasas Weerasingha,
1000098287 Ontario Inc., and
2754329 Ontario Inc., Respondents

HEARD: July 25, 2025 by ZOOM

COUNSEL: *Self-Represented*, Applicant
S. Bass, for S. Cotton & W.
Weersaingha
R. Johns, for 1000098287 Ontario
Inc. & 2754329 Ontario Inc.

ENDORSEMENT ON MOTIONS

Fitzpatrick J.

DATE: July 29, 2025