

However, before the quota became available, the parties decided to purchase a farm located at 1870 Bleams Road in the Township of Wilmot (the “Bleams farm”). The parties incorporated Legend Dairy Farm Ltd. (“Legend”) which took title to the Bleams farm. The parties were each issued 100 common shares of Legend. Legend was also going to carry on the dairy farm. In October 2019, the dairy quota was purchased and because of DFO rules it was held in Eric Salonen’s name.

[3] Unfortunately, the business did not thrive. In December 2020, Legend ceased producing and selling milk. In April 2021, the Bleams farm was sold and after payment of mortgages, liens and sale expenses proceeds of \$198,536 remained. This amount is being held in trust. Pursuant to a court order, Eric Salonen was ordered to sell his milk quota with the sale proceeds to be held in trust subject to further order. In November 2021, the milk quota was sold by DFO for \$902,394.

[4] There are numerous unpaid creditors of Legend.

[5] This lawsuit is about who is entitled to share in the funds being held in trust and who pays what price for this failed business venture.

Statement of Issues

[6] The parties agreed on the issues to be decided in this lawsuit and submitted a document entitled Agreed Statement of Issues, which was made an exhibit. The agreed issues are as follows:

- a) Does Lawrence Drost have a beneficial interest, and/or, a constructive or resulting trust in the proceeds from the sale of the dairy quota which was ordered to be paid into trust by the order of July 30, 2021, and if so, in what amount?
- b) Is Lawrence Drost entitled to be paid for his contributions of:
 - i. Cattle in the amount of \$122,655, or in some other amount?
 - ii. Custom work in the amount of \$11,319.89, or some other amount?
 - iii. Forage in the amount of \$66,854.15, or in some other amount?

- c) If yes to any of the above, may those amounts be paid from the funds being held in trust at Bennett Grant LLP?
- d) Was there an oral agreement between Eric Salonen and Lawrence Drost?
 - i. If so, what were the terms?
 - ii. Did Lawrence Drost breach said agreement and if he did, what damages, if any, are owed to Eric Salonen on account of the breach(es) of said agreement?
- e) Did Lawrence Drost make any misrepresentations to Eric Salonen and if he did, what damages, if any, are owed to Eric on account of said misrepresentation(s)?
- f) Should the Court order an accounting or some other process to address potential creditors as pled in paragraph 1(a) of the Counterclaim?

Background

[7] The parties agreed on many facts set out in a document entitled Chronology and Agreed Statement of Facts, which was made an exhibit. Both parties testified and called other witnesses in addition to the Agreed Statement of Facts. I have incorporated the agreed facts and the other evidence in the summary below. I will refer to additional agreed facts and evidence as required when addressing the Agreed Statement of Issues.

[8] In 2014, when he was 22 years old, Eric Salonen applied to the New Producer Program of the DFO to be allowed to purchase up to 35 kilograms of milk quota. In October 2018, Eric Salonen was advised by DFO that he would be eligible to purchase milk quota in October 2019. He paid an advance deposit of \$10,000.

[9] Lawrence Drost testified that he had extensive experience with farming operations in the United States. He owned and/or operated dairy farms in Texas and Ohio, and a hay farm in Oregon. In 2018, he returned to Ontario and was looking for investment opportunities in agriculture.

[10] Eric Salonen and Lawrence Drost met in March 2019 at a shareholders' meeting of a corporation which operated a chicken processing plant. Eric Salonen made a presentation to the shareholders. On the following day they met to discuss investment opportunities. According to

Eric Salonen, Lawrence Drost said he was going to have about \$10,000,000 to invest in the near future and was looking for different opportunities.

[11] On March 30, 2019, Eric Salonen sent an email to Lawrence Drost suggesting two investment opportunities in agricultural businesses. One of the opportunities presented was to establish a poultry research facility but this was not pursued. The second option was to milk Guernsey cattle using the quota that Eric Salonen would become entitled to purchase in October 2019. The proposal involved renting or building a barn. This option was pursued. Eric Salonen suggested that this option would require an investment of \$1,000,000 to \$2,000,000. The proposal did not specify an amount that would be required to be invested by Lawrence Drost but it appears that both parties assumed that Eric Salonen would contribute the quota and Lawrence Drost would provide financing.

[12] On June 3, 2019, Eric Salonen and Lawrence Drost entered into an Agreement of Purchase and Sale (the “APS”) for the Bleams farm from Kensington Tack Shop Ltd. (“Kensington”). Sandy and Perry Wagler (the “Waglers”) were the shareholders in Kensington. The purchase price was \$3,100,000. Eric Salonen and Lawrence Drost each contributed \$50,000 for the deposit. The closing date was scheduled for July 25, 2019.

[13] On June 13, 2019, Lawrence Drost and Eric Salonen applied to Cosman Mortgage Capital Corporation (“Cosman”) for mortgage financing for the purchase of the Bleams farm.

[14] In his Mortgage Application, Lawrence Drost stated his annual income to be \$200,000. He completed a Net Worth statement which listed two investment properties in Canada valued at a total of \$5,000,000. In cross examination, Lawrence Drost agreed that the investment property valued at \$2,000,000 was a farm in Bright, Ontario owned by his mother’s company (the “Bright farm”). He said that the Bright farm was in the process of being transferred to him as part of his mother’s estate plan. He said Eric Salonen was aware that the Bright farm had not been transferred to him yet. Lawrence Drost also admitted that his Canadian income was actually \$23,324 in 2018 and not \$200,000 as represented in his Mortgage Application.

[15] Eric Salonen also submitted a Mortgage Application. In his Net Worth Statement, he listed business equity of \$200,000, receivables of \$95,000, an annual income of \$138,000 and additional

income of \$200,000. In cross examination he said the business equity was shares in a corporation he owned with the owner of Gowans Feed Consulting (“Gowans”), the company he was employed by, but he acknowledged that the value of \$200,000 was after the shares had vested, which never occurred. He explained that the \$95,000 receivable was commission owing to him by Gowans which had not been paid to him at the time of completing the Net Worth Statement. The following day, Eric Salonen revised his testimony stating that the \$200,000 business equity was not shares in a corporation which he owned with the owner of Gowans but rather an agreement he had with Gowans that he would be paid the equivalent of 12 months income when he left his employment. He said he testified that he received this severance payment in the amount of \$226,000 after completing the Mortgage Application. However, bank statements which formed part of the application show that a payment of \$226,000 was deposited into his bank account on May 16, 2019.

[16] Eric Salonen testified that the amounts set out in his Mortgage Application were accurate but only his T4s for 2017 and 2018 were made exhibits. No income tax returns were introduced to support the claims of additional income of \$200,000 or a severance payment received after the Mortgage Application was completed.

[17] On July 9, 2019, Cosman offered to finance the purchase of the Bleams farm by way of a mortgage of \$3,135,000 at 8.75% interest for 18 months. On July 23, 2018, Cosman withdrew its offer of financing and offered to finance the purchase of the Bleams farm by way of a mortgage of \$2,825,000 at 9.5% interest with the first year interest to be withheld from the mortgage advance.

[18] Eric Salonen testified that it was because of the errors made in Lawrence Drost’s Mortgage Application, that Cosman withdrew its original offer of financing and substituted a more restrictive and expensive offer. He denied making any errors in his Mortgage Application.

[19] Eric Salonen prepared a Business Plan for Legend and sent it to Lawrence Drost. Lawrence Drost reviewed the Business Plan before the purchase of the Bleams farm. The Business Plan formed the basis of a business relationship between Eric Salonen and Lawrence Drost to operate a dairy farm and associated businesses including direct sale of food products to the public. The version of the Business Plan that was made an exhibit specifically stated that the quota would be

held by Legend, but this was not possible due to DFO rules. Lawrence Drost testified that he was not initially aware that the quota could not be owned by Legend, but he admitted that he learned in July 2019 at a meeting with a DFO representative that only Eric Salonen could own the quota to be purchased. According to Eric Salonen the plan was to transfer the quota to Legend in five years as this was permitted by DFO rules.

[20] On August 9, 2019, Legend was incorporated. One hundred common shares were issued to each of Lawrence Drost and Eric Salonen. No shareholders' agreement was signed. The parties had a lawyer who acted on the purchase of the Bleams farm and the incorporation of Legend. Both claimed it was the responsibility of the other to prepare a shareholders' agreement and send it to the lawyer.

[21] On August 26, 2019, Cosman agreed to loan \$2,825,000 to Legend secured by a guarantee from 2439926 Ontario Inc., a corporation owned by Lawrence Drost's mother and the registered owner of the Bright farm. This offer was accepted on September 3, 2019.

[22] On September 4, 2019, the purchase of the Bleams farm was completed. Title to the Bleams farm was taken in Legend's name. There was a first mortgage in the amount of \$3 million and Kensington took a Vendor Take Back mortgage ("VTB") in the amount of \$800,000. The sum of \$196,723 was paid to Legend.

[23] On October 7, 2019, DFO issued an invoice to Eric Salonen for the purchase of 35 kilograms of quota for \$840,000 plus a service fee of \$5.65. Lawrence Drost provided \$590,000 to Legend which was used to purchase the milk quota. The \$10,000 deposit paid by Eric Salonen and the balance of the mortgage advance in the amount of \$196,723 were also credited towards the purchase of the quota. Eric Salonen testified that he deposited funds to Legend's bank account from which the shortfall of \$43,267 was paid. No bank records were presented to support this evidence.

[24] Nico Reyneveld testified that on October 21, 2019, Eric Salonen told him he had a payment to make and did not have the money. Accordingly, he lent Eric Salonen \$60,000 which was repaid in January 2020. Eric Salonen said he did not remember the reason he borrowed \$60,000 from Nico Reyneveld.

[25] Eric Salonen testified that he had \$60,000 owing to him from a source which he did not name. He intended to put that money towards the purchase of the quota. When he tried to deposit the cheque, the bank placed a hold on it. For this reason, Lawrence Drost had to pay an additional \$60,000 to complete the purchase of the quota. He repaid \$30,000 to Lawrence Drost on October 31, 2019.

[26] Lawrence Drost testified that when he and Eric Salonen attended at the bank to deposit funds to purchase the quota, the bank would not accept a cheque which Eric Salonen had received from an unknown person. For that reason, he deposited an additional \$60,000 which is supported by a deposit slip dated October 21, 2019.

[27] It is reasonable to conclude that Eric Salonen borrowed \$60,000 from Nico Reyneveld on October 21, 2019, which he intended to contribute to the purchase price of the quota. The bank declined to immediately release the funds received from Nico Reyneveld thereby requiring Lawrence Drost to contribute a further \$60,000 to complete the quota purchase. No explanation was given as to why Eric Salonen only repaid \$30,000 of the additional \$60,000 contribution by Lawrence Drost although he would have had sufficient funds to do so when the Reyneveld cheque cleared.

[28] Lawrence Drost testified that he did not intend to purchase dairy quota for Eric Salonen.

[29] On January 7, 2020, John Witzel Contracting Ltd. (“Witzel”) began renovations to convert the barn at the Bleams farm into a robotic free stall dairy barn. The estimated cost of the renovations was \$385,710 plus HST for a total of \$405,342. On February 4, 2020, Witzel submitted its first invoice to Legend for foundation and framing in the amount of \$143,484 plus HST. Having completed the barn renovations, on March 17, 2020, Witzel submitted its second invoice for \$215,226 plus HST and on April 1, 2020, Witzel submitted a third invoice for \$51,787 plus HST. On June 10, 2020, Witzel filed a Claim for Lien under the *Construction Lien Act* against the Bleams farm in the amount of \$301,724.

[30] On March 2, 2020, Eric Salonen personally borrowed \$300,000 from the Waglers and signed a promissory note in their favour for that amount plus interest. On the same day, Eric Salonen deposited \$250,000 to Legend’s bank account. From this deposit Witzel was paid

\$162,137 (which was the total of its first invoice including HST) and Conestoga Agri Systems (Conestoga”) was paid \$75,000 in partial payment of what it was owed for installation of the robotic milking equipment. Eric Salonen testified that the remaining \$50,000 was not deposited into the Legend bank account but was used to partially pay for Guernsey cattle purchased in the United States. Eric Salonen also testified that he paid the difference from his own funds. No exhibits were presented to support this testimony.

[31] The Statement of Claim in the construction lien action was made an exhibit. The amount claimed was \$301,724. This shows that the only payment received by Witzel before the Claim for Lien was filed was the payment of \$162,137 from the funds borrowed by Eric Salonen from the Waglers on May 2, 2020.

[32] On March 25, 2020, Eric Salonen borrowed a further \$70,000 from the Waglers. On April 1, 2020, Eric Salonen executed a promissory note in favour of the Waglers for \$370,000 payable on October 1, 2020. There is an absence of evidence about what use was made of the \$70,000 loan from the Waglers.

[33] On November 10, 2020, the Waglers obtained judgment against Eric Salonen for \$370,000 owing plus interest and costs. Sandy and Perry Wagler were called as witnesses by Eric Salonen. They testified that the loan was a personal loan to Eric Salonen. They also testified that Lawrence Drost assured them that the loan would be repaid. The Waglers also testified that they had assigned the judgment against Eric Salonen to Thomas Faulkner who is a director of Eric Salonen’s current employer. The Waglers were paid \$200,000 for the assignment.

[34] Legend began milking in March 2020 and the first milk payment was received from DFO in the amount of \$568. The monthly statements from DFO for the period from March to December 2020 were made an exhibit. With the exception of the payment for April in the amount of \$5,161 there are no deposits in the Legend bank statements showing deposits in the amount of the payments received from DFO. Eric Salonen testified that he deposited the payments from DFO into his personal account and then he transferred the amount to Legend. He also stated that he paid Legend’s creditors with proceeds from the sale of milk. Other than on one occasion in April there

are no deposits to the Legend bank account corresponding with the amounts of the milk cheques. No evidence was presented to show what creditors were paid or how much.

[35] The statements from DFO show that every month, additional quota was purchased using the milk income. For the period March to December 2020, the value of milk shipped to DFO was \$180,473 and additional quota was purchased at a cost of \$26,160.

[36] Lawrence Drost testified that he was responsible for doing the bookkeeping for the business, but he had difficulty obtaining documentation from Eric Salonen. Lawrence Drost was also unhappy with the way Eric Salonen managed the daily operation of the farm. He concluded that Eric Salonen was careless and did not know how to operate machinery. In early July 2020 Lawrence Drost said he and Eric Salonen discussed discontinuing the business operation. Eric Salonen testified that on July 8, Lawrence Drost advised him that he was not interested in continuing with the business. There were discussions about how to wind down the relationship. Those discussions did not result in an agreement. Eric Salonen continued to operate the farm until December 2020.

[37] In December 2020, for medical reasons, Eric Salonen was granted an abeyance on the quota until the end of March 2021. The last shipment of milk was on December 22, 2020. Pursuant to an order made on July 30, 2021, in action number CV-20-1519-0000, Eric Salonen was ordered to sell his quota with the proceeds paid into trust pending further order of the court. On November 5, 2021, the milk quota was sold by DFO for \$902,394. Those proceeds remain in trust.

[38] Linda Bross, a chartered accountant, was called as a witness by Eric Salonen. She was retained to prepare financial statements for Legend. She generated draft financial statements which she has been unable to finalize because of lack of clarification from both parties. She prepared shareholder loan accounts for Lawrence Drost and Eric Salonen but they are not complete because she is waiting for information from Eric Salonen.

[39] Both parties called witnesses and introduced documentation about unpaid creditors of Legend. Eric Salonen prepared a list of creditors of Legend which total \$367,584 plus an additional amount owing to Conestoga. The judgment in favour of the Waglers is not included in this list of creditors although Eric Salonen asserts that it is a debt owing by Legend.

The Agreed Issues

[40] I will address the issues that the parties have agreed on, but I propose to do so in a different order, and I have slightly re-worded the issues.

Was there and Oral Agreement Between Eric Salonen and Lawrence Drost and if so, What were its Terms?

[41] I have no difficulty concluding that Eric Salonen and Lawrence Drost entered into an oral agreement to purchase a farm and operate a dairy farm and associated businesses from that location. More detailed terms of that agreement, however, were never agreed upon. Eric Salonen argues that a term of the agreement was that Lawrence Drost would provide an unlimited amount of financing to support by business. Eric Salonen did not testify to an amount that Lawrence Drost agreed to contribute. He agreed in cross examination that there was no email, text or other document which states an amount of money that Lawrence Drost was expected to contribute to the business. He also denied that it was part of the agreement that he contribute the quota to the business.

[42] The terms of the agreement between the parties, as best I can determine on the evidence, are that Eric Salonen was to provide the quota and Lawrence Drost would provide financing for the business. Lawrence Drost did provide financing. Cosman provided mortgage financing on the basis of the security in the form of a collateral mortgage on the Bright farm. The fact that the Bright farm was not registered in the name of Lawrence Drost does not change the fact that it was financing made available to the business by Lawrence Drost.

[43] Eric Salonen on the other hand did not provide the quota. He did not have sufficient funds to purchase the quota when it became available. More than half the purchase price for the quota was paid by Lawrence Drost.

[44] In my view the failure of the business was not as a result of Lawrence Drost failing to provide that necessary financing which he had agreed to provide. The failure of the business was caused by several factors including the incompatibility of the partners.

Did Lawrence Drost breach the Terms of the Agreement

[45] For the reasons above, Lawrence Drost did not breach the terms of the agreement.

If Lawrence Drost did Breach the Terms of the Agreement What damages did Eric Salonen Suffer?

[46] It is incumbent on Eric Salonen to prove his damages on a balance of probabilities. Eric Salonen produced a spreadsheet of his calculation of his damages. The spreadsheet was made an exhibit but there was no agreement on its contents. No expert evidence was called on this issue of damages.

[47] Eric Salonen testified that his damage calculation was based on his original plan when he applied for quota in 2014. That plan was to rent a barn for the dairy operation and continue to be employed full time at Gowans. He assumed an original investment of \$300,000 with a loan of \$600,000 over 6 years. He assumed loan payments of \$5,280 monthly for principal and interest. He calculated that at the end of five years the dairy farm would have had an accumulated deficit of \$94,491 and the debt would have been reduced to \$487,790.

[48] Eric Salonen assumed that by purchasing additional quota each month he would have held 44.98 kilograms of quota by November 2024 with a value of \$1,079,520. He also assumed that he would have owned 33 cows with a value of \$66,000.

[49] Eric Salonen calculated his increase in net worth over five years from November 2019 to November 2024 would have been \$264,580 if he had not entered into the business relationship with Lawrence Drost. He also included in his damages his loss of income from Gowans. He then deducted the accumulated deficit plus the amount of debt owing from the total of the value of the quota plus the value of the cattle to calculate his net worth to be \$564,580. From his net worth he

deducted his original investment of \$300,000 to come up with his total loss of \$264,580 plus his loss of income for five years.

[50] In addition to his loss of net worth, Eric Salonen also testified that his damages included his loss of salary from Gowans of \$200,000 per year. In submissions, Eric Salonen's counsel suggested that the loss of employment income should be based on a salary of \$138,000 per year

[51] There are several problems with this calculation of damages. There is no foundation in the evidence for many of the figures used to calculate the monthly income or deficit. Eric Salonen testified that he talked to two unnamed people who told him that the going rate to rent a barn would be between \$2,500 to \$3,500 per month. There was no evidence to support that assertion. Eric Salonen also said that most of his calculations were based on information from Ontario Ministry of Agriculture Food and Rural Affairs without producing the data relied on. He said he based his estimate of the cost for replacement cows on his knowledge of the price of cows at the time. No allowance was made for contingencies. No credit was given for income actually earned through his employment with the Faulkner group of companies.

[52] Eric Salonen asserts that damages can be proven without expert evidence relying on *C. M. Callow Inc. v. Zollinger*, 2020 SCC 45. I find that *Callow* is a very different case than the present. In *Callow*, a breach of a winter maintenance contract was found. The evidence was that the contract was for \$80,384. The principal of the plaintiff corporation testified that he paid approximately 20% in expenses. This evidence was accepted, and it was found at trial that the damages for loss of profit amounted to \$64,307. The evidence was based on the actual experience of the business, not on assumptions without underlying foundation.

[53] In this case I am not satisfied that Eric Salonen has proven damages on a balance of probabilities.

Did Lawrence Drost Make any Misrepresentations to Eric Salonen?

[54] Eric Salonen submits that Lawrence Drost intentionally misrepresented his income and assets in his Mortgage Application to Cosman. He says these were not mistakes as stated by Lawrence Drost. The content of the Mortgage Application was consistent with what Lawrence

Drost told Eric Salonen about his financial position at the beginning of their relationship. His position is that there was an agreement requiring Lawrence Drost to support the business financially as it developed.

[55] Lawrence Drost testified that he had investments in the United States that he was in the process of liquidating and that he was looking for new investment opportunities in Canada. He also testified that he at no time committed to a specific amount of funding for the dairy operation. He denied telling Eric Salonen that he had \$10,000,000 to invest. Lawrence Drost admitted that he made errors in his Mortgage Application to Cosman. He explained that he stated he owned the Bright farm because it was going to be transferred to him as part of his mother's estate plan. He said he was careless when he overstated his annual income from Canadian sources.

[56] Good faith contractual performance is a general organizing principle of the law of contract. In addition, there is a common law duty which applies to all contracts to act honestly in the performance of contractual obligations (*Bhasin v. Hrynew*, 2014 SCC 71 at para. 33). This principle of good faith in contractual dealings does not mean that a party is prohibited from acting in ones self interest (*Bhasin* at para. 70). *Bhasin* is referred to in *Callow*, a decision relied on by Eric Salonen.

[57] The facts in the *Bhasin* and *Callow* decisions are significantly different than the facts of the present case. In *Bhasin*, the defendants conspired to deprive the plaintiff of his lucrative business which had been built up over many years and in the course of carrying out that conspiracy misled the plaintiff about their intentions, lied when asked about a decision that had already been made, failed to communicate a decision that had been made and acted dishonestly. In *Callow*, the defendant condominium corporation delayed advising its maintenance contractor that a decision had been made not to renew the contract in order to have the contractor continue providing maintenance services over the summer and lead the contractor to believe that the contract would be renewed.

[58] In the present case, there is no evidence that Lawrence Drost promised to provide a specific amount of financing. If Eric Salonen believed that Lawrence Drost had agreed to provide unlimited financing for the business, that belief was unreasonable. Lawrence Drost decided in the summer

of 2020 that he did not wish to continue in business with Eric Salonen. He was entitled to act in his self interest. He did not lie or mislead Eric Salonen. Rather he stated that he did not want to continue to be a partner in the dairy farm.

[59] With respect to the allegation that Lawrence Drost acted dishonestly when he completed his Mortgage Application, I find that the errors were careless and not dishonest. Eric Salonen was aware of the incorrect information provided to Cosman. I also conclude that Eric Salonen provided inaccurate information to Cosman but he refused to acknowledge that he did so. In spite of the incorrect information, Cosman provided financing to purchase the Bleams farm. Eric Salonen was aware of the incorrect information and decided to continue with the purchase of the Bleams farm. In final submissions, it was conceded that an option open to Eric Salonen was to terminate the business relationship at that time.

[60] I do not find that that Lawrence Drost acted in breach of the duty of good faith in contractual dealings as a result of any representations made to Eric Salonen.

[61] There was much evidence presented at the trial about the reasons for the failure of the business of Legend. Each party blamed the other. Considering the evidence as a whole it is my conclusion that the business failed because it was poorly planned and poorly operated. There was no shareholders' agreement. Each party claims that the other party was responsible for providing a shareholders' agreement to the lawyer. I fail to understand why they did not just request their lawyer to prepare a draft shareholders' agreement for their consideration. Funds were deposited into the Legend bank account without documentation. It was open to the parties to document these financial contributions as loans and to take security, but they chose not to. Income from the sale of milk was deposited into Eric Salonen's account which was not documented. He said, without documentary support, that he paid Legend liabilities with this money.

[62] The business did not fail because of deceit or dishonesty on the part of Lawrence Drost.

Does Lawrence Drost have an interest in the proceeds from the sale of the dairy quota which was paid into trust by the order of July 30, 2021, and if so, in what amount?

[63] Eric Salonen knew in October 2018 that in October 2019 he would require \$840,000 to purchase dairy quota from DFO. By the end of March 2019, when he met Lawrence Drost, he had not arranged financing for the purchase. He testified that he had spoken to the TD Bank and to a few people privately who were willing to loan him money to buy the quota. No documentation or names of the private lenders was forthcoming.

[64] This was a consistent theme of Eric Salonen's evidence. There are many examples of this, some of which, I will refer to.

[65] Eric Salonen borrowed \$60,000 from Nico Reyneveld on October 21, 2019. I am satisfied that the cheque for \$60,000 which the bank would not release immediately was the Reyneveld cheque. Eric Salonen says he had some money coming in but does not name the source. He could not remember what the money he borrowed from Nico Reyneveld was used for.

[66] Eric Salonen testified that the \$138,000 shown on his 2018 T4 was his salary from Gowans for the first six months of the year before he became an independent contractor. He said he was paid a percentage of gross margin as an independent contractor. No documentation about the independent contractor arrangement was entered into evidence. He testified that the \$95,000 receivable shown on the Net Worth Statement that was part of the Cosman Mortgage Application, was owing to him by Gowans but no evidence was presented to support this assertion.

[67] Eric Salonen's testimony about money owing to him by Gowans is significant. In cross examination he testified that he had received a severance payment from Gowans, but he was unable to provide details because of a very strict non-disclosure agreement. He was reminded that he had testified at Examination for Discovery that the severance payment was for \$226,000. He agreed that was the amount. He was then confronted with his testimony given at an Examination in Aid of Execution by the lawyer for the Waglers. He said in that examination that he had never received a severance payment from Gowans. In his testimony at trial, he said the severance payment of \$226,000 from Gowans had already been paid to him by the time of the Examination in Aid of Execution and that the question was not about the severance payment. He said the question was clarified during an off the record discussion and was limited to payments received from Gowans after the loan from the Waglers was made. These explanations defy belief.

[68] Lawrence Drost paid \$560,000 of the purchase price for the dairy quota which was taken in Eric Salonen's name. There is a difference of opinion about what Lawrence Drost's financial contribution to the business venture undertaken by Legend was to be. However, it has not been suggested that Lawrence Drost was going to pay for more than half the cost of the quota and then deliver that quota to Eric Salonen. As Lawrence Drost testified, he did not intend to purchase quota for Eric Salonen.

[69] It was agreed that the quota was purchased using \$590,000 provided by Lawrence Drost to Legend, of which \$30,000 was reimbursed by Eric Salonen. It is clear from the evidence that the quota was taken in the name of Eric Salonen.

[70] There is a difference between the contribution by Lawrence Drost to purchase the quota and other contributions made by the parties to Legend. With all other contributions, Legend was the recipient of a benefit. For example, the \$50,000 each party contributed to the deposit when the APS was submitted resulted in Legend eventually obtaining title to the Bleams farm. The \$250,000 deposited to the Legend bank account by Eric Salonen from the Wagler loan was used to pay for barn renovations and milking equipment. The failure to document these contributions as loans to Legend were decisions made by Eric Salonen and Lawrence Drost. Lawrence Drost did not pay \$560,000 to Legend so Legend could purchase quota for Eric Salonen.

[71] Eric Salonen asserts that he is holding the proceeds from the sale of the quota in trust for the creditors of Legend. This however is not a formal admission. There is no evidence that Eric Salonen has transferred the proceeds from the sale of the quota to Legend. The court order of July 30, 2021, requires Eric Salonen to sell "his entire Quota" with the proceeds to be held in trust "until further Order of the Honourable Court". I do not interpret the order as addressing beneficial ownership of the proceeds. Therefore, the proceeds remain those of Eric Salonen, subject to further order.

[72] The presumption of resulting trust is a rebuttable presumption of law and general rule that applies to gratuitous transfers. When a transfer is challenged, the presumption allocates the legal burden of proof. Thus, where a transfer is made for no consideration, the onus is placed on the transferee to demonstrate that a gift was intended (*Pecore v. Pecore*, 2017 SCC 17 at para. 24).

[73] The purchase money resulting trust is a species of gratuitous transfer resulting trust, where a person advances a contribution to the purchase price of property without taking legal title. Gratuitous transfer resulting trusts presumptively arise any time a person voluntarily transfers property to another unrelated person or purchases property in another person's name (*Nishi v. Rascal Trucking*, 2013 SCC 33 at para. 21).

[74] Eric Salonen did not present evidence which rebutted the presumption of purchase money resulting trust. There was no suggestion that Lawrence Drost intended to make a gift of \$560,000 to Eric Salonen. Lawrence Drost advanced funds to purchase the dairy quota because Eric Salonen did not have the money to do so. As stated previously, it is my view that the trust funds from the sale of the quota remain under the ownership of Eric Salonen. In my view, it would be inequitable to allow him to enjoy the benefit of the entire proceeds.

[75] Lawrence Drost made it clear in his evidence that he is seeking a trust interest in the quota proceeds in the amount of \$560,000. He does ask that he be found to have a trust interest in the funds in trust based on the percentage of his contribution to the total purchase price.

[76] There will therefore be a declaration that Lawrence Drost has an entitlement to a purchase money resulting trust in the amount of \$560,000 in the proceeds from the sale of the dairy quota issued to Eric Salonen by DFO and sold by court order dated July 30, 2021.

Is Lawrence Drost entitled to be paid for his contributions of cattle, custom work and forage?

[77] It is agreed that Lawrence Drost advised Eric Salonen on July 8, 2020, he was no longer interested in continuing to be involved in Legend's business. On July 31, 2020, Westside Poultry Ltd. ("Westside") sent three invoices to Legend. One invoice was for custom work in the amount of 11,320 including HST. A second invoice was for forage in the amount of \$75,545 including HST and the third invoice was for \$122,655 for the sale of 68 heifers by London Dairy.

[78] Westside is not a party to this action. The claim is not for a judgment against Legend for the amount of the three invoices. Instead, Lawrence Drost seeks an order that he be personally paid the invoice amounts from the proceeds from the sale of the milk quota being held in trust. Lawrence

Drost made it clear that he does not seek a judgment against Eric Salonen for the total of the invoices.

[79] In my view, it would be improper to make an order that the three Westside invoices be paid to Lawrence Drost from the proceeds from the sale of the quota. This, in effect, would be to require Eric Salonen, personally, to pay Lawrence Drost, personally, for cattle, custom work and forage provided to Legend by Westside.

[80] I therefore answer this issue in the negative.

Should the Court Determine the Amounts Owing to the Creditors of Legend and Direct Payment of Such Amounts from the Moneys Held in Trust?

[81] It is clear from the evidence that there are unpaid creditors of Legend. As stated previously, some of these creditors testified at the trial. There is no agreement about who the creditors of Legend are. There is disagreement about the amounts owing to some of the creditors.

[82] The creditors of Legend are not parties to the present action. It would not be appropriate to determine entitlement to and/or quantum of the amounts owing by Legend in the absence of:

- a) agreement between Lawrence Drost and Eric Salonen as well as those claiming to be owed money by Legend; or,
- b) following evidence being presented to determine entitlement and quantum.

[83] I therefore decline to make any order affecting the rights of creditors of Legend.

Conclusion

[84] There will be a declaration that Lawrence Drost has a trust interest in the amount of \$560,000 in the funds being held in trust from the sale of the milk quota. Lawrence Drost's other claims are dismissed.

[85] The Counterclaim is dismissed.

Costs

[86] The parties are encouraged to resolve the issue of costs.

[87] If the parties are unable to agree on costs, they may make written submissions. Written submissions are to be limited to three pages exclusive of a Bill of Costs, Costs Outline and any relevant Offers to Settle and are to be filed electronically on Case Centre and delivered electronically to my attention to mona.goodwin@ontario.ca and Kitchener.SCJJA@ontario.ca. Submissions by Lawrence Drost are to be submitted within 20 days of the release of these Reasons. Submissions by Eric Salonen are to be submitted within 40 days of the release of these Reasons. If written submissions are not submitted within 45 days of the release of these Reasons, it will be assumed that the issue of costs has been resolved and the file will be closed.

G.E. Taylor J.

Released: September 11, 2025

CITATION: Drost v. Salonen, 2025 ONSC 5211
COURT FILE NO.: CV-22-616
DATE: 2025/09/11

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

Lawrence Drost

Plaintiff

– and –

Eric Salonen and Legend Dairy Farm Ltd.

Defendants

REASONS FOR JUDGMENT

G.E. Taylor J.

Released: September 11, 2025