

[3] The other proceeding is this action (“the action”), commenced in Cochrane under court file no. CV-24-00000183-0000, involving Daniel Brunet as the plaintiff (“the plaintiff”) and 9165 Inc., DJB ON, DJB QC, Martin Paquin, and 8750076 Canada Limited (“875 Ltd.”) as defendants.

[4] The first motion has been brought by the plaintiff. It seeks to consolidate the proceedings and transfer them to Cochrane for hearing. The plaintiff proposes that the application be asserted as a counterclaim in the consolidated action.

[5] The second motion has been brought by 9165 Inc. It seeks to dismiss or stay the action against it in favour of the application.

[6] The plaintiff and 9165 Inc. oppose the motions brought by the other. Martin Paquin and 875 Ltd. are represented but take no position with respect to either motion and did not attend to make submissions. DJB ON and DJB QC are presently unrepresented and take no position with respect to either motion.

Overview of the Facts

[7] The history between the parties is somewhat convoluted and will be summarized rather than recited in detail. Disputed positions and evidence will be discussed as necessary when addressing the issues. I have considered all evidence and submissions in arriving at my decision.

History of the Parties

[8] The plaintiff and Martin Paquin became business partners in 2016. Together, they owned and controlled DJB ON and DJB QC (“the DJB companies”). DJB ON was a successor of a company founded by the plaintiff prior to his involvement with Martin Paquin. DJB QC, on the other hand, was founded by the plaintiff and Martin Paquin.

[9] The plaintiff was not Martin Paquin’s only business partner. Prior to his involvement with the plaintiff, Martin Paquin held business interests with his mother, Madeleine Paquin (collectively, “the Paquins”). One such business interest was 875 Ltd., a holding company. When Martin Paquin became a co-owner of DJB ON, he designated 875 Ltd. as the registered owner of his shares.

[10] It is undisputed that Madeleine Paquin was a shareholder in 875 Inc. and that she became a creditor of DJB ON through her company, 9165 Inc. The nature and extent of Madeleine Paquin’s day-to-day involvement in the operations of DJB companies, however, is disputed.

[11] In 2019, DJB ON was experiencing financial pressures. The plaintiff alleges that the Paquins pressured him to sign a “Transfer Agreement” as a condition of DJB ON receiving financial assistance from 9165 Inc. The plaintiff alleges that the Paquins acted in concert to undermine his position, and to incur expenses and divert funds from the DJB companies, and that Martin Paquin used the Transfer Agreement to push him out of the DJB companies.

History of the Proceedings

The Application

[12] On May 16, 2024, 9165 Inc. brought the application, in Sudbury. The Notice of Application seeks, among other things, a declaration that the plaintiff has breached the Transfer Agreement and an order for specific performance of that agreement, a declaration that 9165 Inc. is the sole owner of shares in the DJB companies, an order directing rectification of records related to the shares in the DJB companies, and a declaration that the plaintiff has engaged in oppressive conduct.

[13] In correspondence to 9165 Inc. on July 9, 2024, the plaintiff broached that the application should be converted to an action. He also alluded to commencing proceedings against the defendants, Martin Paquin and 875 Ltd.

[14] Notwithstanding his concerns, the plaintiff subsequently responded to the application on July 31, 2024. He filed no counter-application seeking relief against 9165 Inc. or against any other party. Instead, he concurrently brought a motion in writing to transfer the application from Sudbury to Cochrane, Ontario.

[15] On August 13, 2024, Justice Boucher found that the motion was premature as it was not clear whether the application would be heard using written materials only or whether leave would ultimately be granted to call *viva voce* evidence. He declined to transfer the proceeding, without prejudice and without costs.

[16] Following Justice Boucher's endorsement, the application continued. Once again, the plaintiff took no steps to file a counter-application seeking relief against 9165 Inc. or to involve any other party in the proceeding. Cross-examinations were conducted from September 4-6, 2024. The application has been scheduled for argument on November 25, 2025, in Sudbury.

The Action

[17] On November 1, 2024, the plaintiff issued the action, in Cochrane. The statement of claim seeks declarations that some of the defendants have engaged in oppressive conduct, that the plaintiff is the owner of shares in the DJB companies, and that the Transfer Agreement is void and unenforceable. The claim also seeks orders directing the rectification of records related to the shares in the DJB companies and awarding general damages in the amount of \$200,000 and special damages in the amount of \$50,000.

[18] The action is presently at the pleadings stage.

Witnesses

[19] The plaintiff and at least one of the anticipated witnesses reside in Cochrane. Several of the corporations and the Paquins reside in Saint-Bruno-de-Guigues, Québec. There are also witnesses who reside in Timmins, Porcupine, and North Bay. The head office of DJB ON is in Timmins.

The Issues

[20] The plaintiff brought his motion first, however, if 9165 Inc.'s motion is successful, it may impact the plaintiff's motion. 9165 Inc.'s motion will therefore be determined first.

[21] The issues to be determined on these motions are as follows:

- a. On 9165 Inc.'s motion:
 - i. Should the action as against 9165 Inc. be dismissed or stayed pending resolution of the application?
- b. On the plaintiff's motion:
 - i. Should the application and the action be consolidated?
 - ii. If the application and the action are consolidated, should the application be converted to an action and asserted by way of counterclaim?

Discussion

Issue One: Should the plaintiff's action against 9165 Inc. be dismissed or stayed pending resolution of the application?

Positions of the Parties

[22] 9165 Inc. argues that the action as against it is an abuse of process, which is intended to delay the hearing of the application. It argues that the action is a collateral attack against an application timetable ordered on consent by Justice Cornell, as well as the order of Justice Boucher declining to transfer the proceeding. It further argues that there will be no prejudice to the plaintiff if the action is stayed pending a decision on the application.

[23] While 9165 Inc. requests a dismissal order in its motion, the thrust of its argument focused on its request for a stay.

[24] The plaintiff argues that the action is not an abuse of process, but rather that it is intended to address the oppression to which he has been subjected as a shareholder. He argues that 9165 Inc. is a necessary party to the action, and that there will ultimately be a risk of inconsistent or duplicative findings if the action is subordinated to the application.

[25] The plaintiff argues that it is the application that is irregular as it ought to have been commenced as an action. He argues that some if not all the parties to the action ought to have been included as parties to the application.

[26] The plaintiff argues that 9165 Inc. has failed to demonstrate any prejudice that it will suffer if the action is permitted to continue, beyond inconvenience and expense.

The Law

[27] Section 138 of the *Courts of Justice Act*, R.S.O. 1990, c.C.43 (“*CJA*”) affirms the general rule that multiplicity of legal proceedings is to be avoided where possible.

[28] The *CJA* and the *Rules of Civil Procedure* establish mechanisms by which the court can address the issue of multiplicity when it arises. Those mechanisms include dismissals, stays, and case management.

[29] The authority to stay proceedings is provided in s. 106 of the *CJA*. It permits the court to stay any proceeding on such terms as it considers just.

[30] The *Rules of Civil Procedure* establish specific circumstances in which proceedings can be stayed or dismissed. Relevant to this action are the following:

- a. Pursuant to Rule 6.01(1)(e), when two or more proceedings are pending in the court and it appears that: (a) they have a question of law or fact in common; or, (b) the relief claimed in them arises out of the same transaction(s) or occurrence(s), the court may stay some of the proceedings pending the determination of the others.
- b. Pursuant to Rule 21.01(3)(c), a defendant may move to have an action dismissed or stayed against it if another proceeding is pending between the same parties in respect of the same subject matter.
- c. Pursuant to Rule 21.01(3)(d), a defendant may move to have an action dismissed or stayed against it if the action is frivolous, vexatious, or otherwise an abuse of the process of the Court.

[31] The decision to stay or dismiss proceedings pursuant to Rules 6.01(1)(e), 21.01(3)(c), or 21.01(3)(d) involves an exercise of the court’s discretion. In which the court must consider the totality of the circumstances: *Birdseye Security Inc. v. Milosevic*, 2020 ONCA 355, at paras. 15-16; *Currie v. Halton Regional Police Services Board*, 2003 CanLII 7815 (ON CA), at para. 16.

[32] On a motion under to Rules 6.01(1)(e) or 21.01(3)(c), the moving party must demonstrate that a stay or a dismissal would not cause an injustice to the responding party. The Court must be satisfied that permitting the action to continue would be oppressive, vexatious, or an abuse of process, and would cause the moving party to suffer substantial prejudice or injustice, beyond inconvenience and expense. The fact that another proceeding is pending between the same parties in respect of the same subject matter is not, on its own, determinative. The totality of the circumstances must be considered: *Birdseye*, at paras. 15-16.

[33] On a motion under Rule 21.01(3)(d), the moving party bears "a heavy onus" to establish that it is plain, obvious, and beyond doubt that the action at issue cannot succeed or that it ought to be stayed: *Dosen v. Meloche Monnex Financial Services Inc. (Security National Insurance Company)*, 2021 ONCA 141, at para. 27. There is overlap in the meaning of the terms frivolous, vexatious, and abuse of process: *Currie*, at para. 17.

[34] All the applicable rules require the court to consider the doctrine of abuse of process. That doctrine is a flexible doctrine, which is intended to protect the court from the misuse of its procedures. Underlying the doctrine is the notion that litigation ought not to be permitted to proceed where it would compromise judicial economy, consistency, finality or the integrity of the administration of justice: *Behn v. Moulton Contracting Ltd.*, 2013 SCC 26, [2013] 2 SCR 227, at paras. 40-41; *Gale v. Ontario Racing Commission*, 2009 ONCA 92, at para. 12.

[35] The plaintiff has also raised the issue of a collateral attack. Collateral attack is a common law doctrine which prohibits parties from challenging prior judicial orders except through those procedures established by law to contest them: *Danyluk v. Ainsworth Technologies Inc.*, 2001 SCC 44, [2001] 2 SCR 460, at para. 20.

Analysis

[36] I find, having regard to the totality of the circumstances, that 9165 Inc. has satisfied the tests for a stay pursuant to Rules 6.01(1)(e), 21.01(3)(c), and 21.01(3)(d). It is appropriate to stay the action as against 9165 Inc. pending the outcome of the application.

[37] In my view, permitting the action against 9165 Inc. to proceed in the face of the pending application would be an abuse of process. The integrity of the administration of justice, the need for consistent judicial decision-making, and judicial economy, weigh in favour of prioritizing the application. It will not cause an injustice to the plaintiff to order a stay. Prioritizing the action, on the other hand, would be substantially prejudicial to 9165 Inc.

[38] It is difficult to view the action as anything other than a collateral attack on Justice Boucher's denial of the plaintiff's motion to transfer the application to Cochrane. By commencing the action in Cochrane and bringing a consolidation motion, it is apparent that the plaintiff is seeking to compel the court to revisit the issue of venue in the absence of an appeal or a material change in the circumstances of the application. In my view, the integrity of the administration of justice would be undermined if the plaintiff were permitted to effectively annex the application to Cochrane by commencing an action. This supports a stay of the action against 9165 Inc.

[39] The need for consistent judicial decision-making also supports a stay. The application and the action cannot co-exist with one another. In the application, 9165 Inc. seeks to enforce the Transfer Agreement; in the action, the plaintiff seeks to have the Transfer Agreement declared unenforceable. Unless one of the proceedings is stayed, conflicting outcomes are inevitable.

[40] Judicial economy also favours a stay of the action. The application is ready to proceed; the action is still at an early stage. The application may be able to proceed on a written record and would only require one day of court time; the action is certain to require oral evidence and several days of court time.

[41] I appreciate that the application judge may ultimately determine that a trial must be ordered pursuant to Rule 38.10, thereby exposing the parties to delay and additional expense. In my view, this should not weigh against a stay unless it is plainly obvious that a trial will be required. In this case, I find that it is not. The application seeks to address a discrete issue regarding the enforcement of the Transfer Agreement. Determining the enforcement of agreements between shareholders by

application is not without precedent: *Lord v. Clearspring Spectrum Holdings L.P.*, 2017 ONSC 2246 (aff'd 2017 ONCA 1016). Further, while the plaintiff argues that his issues with the remaining defendants are married to his issues involving 9165 Inc., I cannot ignore the fact that he has taken no contingent steps to put those issues or parties before the Court in the application, which he has defended.

[42] Also weighing in favour of a stay of the action is the fact that 9165 Inc. will suffer prejudice beyond expense and inconvenience if the application is subordinated to the action. Among other things, I would note the following:

- a. The principal of 9165 Inc., Madeleine Paquin, is 73 years of age. Any delay in advancing the parties' proceedings is accompanied by a risk that Ms. Paquin may become unable to testify as a witness, either effectively or at all.
- b. As long as 9165 Inc.'s application for enforcement of the Transfer Agreement remains outstanding, it is unable to exercise its rights as a shareholder in the DJB Companies. Its inability to direct the operations of the DJB Companies exposes it to non-compensable damages.
- c. The application has advanced to the hearing stage. Affidavit evidence has been filed and cross-examinations have been conducted. If the application is sidelined by the action, the plaintiff will have further opportunities to marshal evidence and to respond to 9165 Inc.'s evidence, with the benefit of insight into 9165 Inc.'s litigation strategy. Barring exceptional circumstances, such an opportunity would not be available in the application. In an adversarial proceeding, this is prejudicial to 9165 Inc.'s litigation position.

[43] The plaintiff will not suffer similar prejudice if his action against 9165 Inc. is stayed. While there is the possibility of delay and additional expense if the application is converted to an action, neither gives rise to an injustice to the plaintiff. In my view, a consolidation would be inevitable if the application were converted and could be easily accomplished as the action is at an early stage. Expense can be addressed through costs.

[44] In the circumstances, the action against 9165 Inc. will be ordered stayed pending the outcome of the application.

Issue Two: Should the application and the action be consolidated?

[45] In my view, the application judge, who will have the benefit of a complete evidentiary record regarding the dispute between 9165 Inc. and the plaintiff, will be in the best position to determine whether that dispute is so interconnected to the business relationships between the plaintiff and the other defendants that the application must be consolidated with the action.

[46] Given my ruling regarding 9165 Inc.'s motion for a stay, I find that the plaintiff's motion to consolidate the application and the action must be dismissed, without prejudice to the plaintiff's ability to revisit the issue of consolidation if the application is converted to an action.

Disposition

[47] For the reasons given, I make the following Orders:

- a. The plaintiff's action against the defendant, 9165- 6462 Quebec Inc., is stayed. This order is made without prejudice to the ability of the plaintiff to request that the stay be lifted in the event that all or part of the application commenced in Sudbury under court file no. CV-24-00011939-0000 is converted to an action.
- b. The plaintiff's motion to consolidate this action with the application commenced in Sudbury under court file no. CV-24-00011939-0000 ("the application") is dismissed. This order is made without prejudice to the ability of the plaintiff to revisit the issue of consolidation if the application is converted to an action.
- c. If the parties are unable to resolve the issue of costs of these motions, they may make written submissions, not exceeding 3 pages (excluding Costs Outlines or Bills of Costs), not later than November 30, 2025.

Cullin J.

Released: 2025-10-22

CITATION: Brunet v. Paquin 2025 ONSC 5967
COURT FILE NO.: CV-24-00000183-0000
DATE: 2025-10-22

2025 ONSC 5967 (CanLII)

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

DANIEL BRUNET

Plaintiff

– and –

**MARTIN PAQUIN, 8750076 CANADA LIMITED,
DJB MINING PRODUCTS & SERVICES LTD.,
DJB ÉQUIPEMENTS MINIERS INC., and 9165-
6462 QUÉBEC INC.**

Defendants

DECISION ON MOTIONS

Cullin J.

Released: October 22, 2025