

**CITATION:** *Clark v. Cen-Ta Real Estate Ltd et al*, 2025 ONSC 5759  
**COURT FILE NO.:** CV-24-95515  
**DATE:** 2025/10/24

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** Chris Clark, Applicant

**-and-**

Cen-Ta Real Estate Ltd., Plum Financial Group Inc., Robert  
Veillette, Fernando Bada and Anthony Bada, Respondents

**BEFORE:** Justice A. Doyle

**COUNSEL:** Chris Trivisonno and Emma Williams for the Applicant  
Jeff Saikaley and Robert Ruddock for the Respondents

**HEARD:** October 2, 2025 in Ottawa

**DECISION ON AN APPLICATION**

**OVERVIEW**

[1] The applicant Chris Clark seeks leave to commence a derivative action pursuant to s. 246 of the *Ontario Business Corporations Act (OBCA)* in the name of Cen-Ta Real Estate Ltd (Cen-Ta) and Plum Financial Planning Ltd (Plum). The claim would be against the companies' directors, Robert Veillette, Fernando Bada and Anthony Bada for breach of fiduciary duties and duties of care by awarding themselves and their companies unreasonable and unfair sums in salaries and fees. The proposed action seeks to recover monies that the directors paid themselves and a court order setting out future reasonable compensation for directors.

[2] The respondents, the directors oppose the application for leave as the applicant has failed to satisfy two of the mandatory statutory preconditions under the *OBCA*, i.e. that he is acting in good faith and that the proposed derivative action is in the interests of the companies.

[3] The applicant is already pursuing an oppression remedy against the same directors over the similar conduct where he requests damages to be paid by the directors and a buy-out of Mr. Clark's shares based on fair market value (considering the losses caused by the directors' conduct), and damages for unmet shareholder expectations.

[4] For the reasons articulated below, leave to commence a derivative action is granted.

### **Background**

[5] Both Plum and Cen-Ta are closely held companies.

[6] Plum, incorporated in 1981, is an investment firm which offers investments primarily in residential units where they buy properties and resell them to its clients (unit holders). Plum also provides the unit holders with a "rental pool" and "maintenance pool" intended to cover costs arising from vacancies, maintenance, and repairs to the unit holders' properties. The funds are collected by deducting them from unit holders' rental income.

[7] Cen-Ta, incorporated in 1982, is a property management company and manages the properties belonging to Plum's unit holders.

[8] Mr. Clark is the largest shareholder of the two companies. He owns 49.5% of Plum's shares and 45% of Cen-Ta's shares.

[9] Mr. Veillette and Fernando Bada are the only other shareholders of the companies. They are also directors of the companies along with Anthony Bada who is Fernando Bada's son who had no relevant work experience prior to being appointed a director.

[10] At the time of Mr. Clark's purchase of shares in the companies in 2013 for \$1 million he was a client of Mr. Veillette and a unit holder.

[11] On Mr. Veillette's advice that it was a good investment, Mr. Clark bought shares in the companies.

[12] The purchase of the shares is governed by a Share Purchase Agreement (SPA) dated July 17, 2013, which provides, among other things, the following:

- An acknowledgement that Mr. Veillette, the vendor, will continue to withdraw a salary in the amount of \$350,000 and benefit from car insurance and gasoline as long as Vendor is a shareholder; and
- Mr. Clark would be retained to provide information technology IT services at the annual fee of \$50,000.

[13] There were disagreements between Mr. Clark and the directors, specifically Mr. F. Bada regarding the management and financial affairs of the companies from 2017 onwards.

[14] Mr. Clark was removed as a director of the companies in February 2020. He continued to receive annual compensation even after his end of services for three years until February 2023 when his employment was terminated.

[15] The financial statements filed show Cen-Ta's annual gross and net revenues:

	Gross	Net
2014	\$1,357,564	\$103,388
2015	\$1,203,930	(\$28,819)
2016	\$1,126,445	\$99,781
2017	\$1,052,672	\$61,252
2018	\$942,657	(\$13,420)
2019	\$866,715	(\$43,934)
2020	\$854,113	(\$21,938)
2021	\$848,213	(\$17,653)
2022	\$905,761	\$6,575
2023	\$768,395	(\$41,734)

[16] Plum's annual gross and net revenues were as follows:

Gross	Net
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2014: \$523,764 \$44,864

2015: \$492,126 (\$69,686)

2016: \$344,429 (\$72,925)

2017 \$372,156 \$27,290

2018: \$370,784 \$45,973

2019 \$338,673 \$22,926

2020: \$317,193 (\$9588)

2021: \$289,545 (\$12,120)

2022: \$342,622 \$35,390

2023: \$207,219 (\$80,090)

[17] This decrease in revenue is consistent with the decline in the number of units participating in the rental pool and the repair and maintenance pools.

[18] The companies have not issued dividends to the shareholders in the past 10 years and since 2017 they have not issued bonuses to their shareholders.

[19] In 2022, Cen-Ta paid at least \$402,639 to the directors through salaries and payments to Mr. Veillette's companies (Becamex Management Canada Inc. (Becamex) and Access Financial Tax and Pension Planners Inc. (Access)). Becamex and Access do not have contracts with the companies.

[20] In 2022, Plum paid \$135,920 to the directors and to Mr. Veillette's companies.

[21] In 2023, Cen-Ta paid at least \$391,915 to the directors through salaries and payments to Mr. Veillette's companies.

[22] In 2023, Plum paid at least \$120,916 to the directors through salaries and to payments to Mr. Veillette's companies.

**Oppression Claim**

[23] In March 2021, the applicant, through previous counsel, commenced an oppression application which was then converted to an action.

[24] The claim is based entirely on the directors' oppressive conduct and the damage it caused to Mr. Clark.

[25] The Fresh as Amended Statement of Claim sets out the following claims:

- Damages to be paid by the directors in the amount of \$3 million.
- Punitive damages in the amount of \$50,000;
- A declaration that the directors have engaged in conduct that is oppressive, unfairly prejudicial to and unfairly disregards interests as a shareholder of the companies; and
- Damages for the alleged reduction of his share value and a court-ordered buyout of his shares.

[26] The allegations are:

- The current directors' conduct is a blatant breach of their fiduciary duties;
- The directors engaged in self-dealing by paying excessive salaries and/or fees to Mr. Veillette's companies and Fernando Bada that are not fair and reasonable considering the companies' financial health;
- The plaintiff had reasonable expectations that the directors would not engage in self-dealing that is contrary to the companies' interests and deprive the companies of their revenue; and
- By driving the companies' financial failure for their own benefit, the directors have deprived the plaintiff of dividends and devalued his shares.

[27] The defendants are the directors of the companies.

[28] There is also an issue with Mr. Clark's adequacy of the IT work performed by him for the companies and his efforts to bring rental units into the companies.

[29] Defendants have counterclaimed for a return of remuneration that Mr. Clark received from the companies when he did not complete any services.

[30] Mr. Clark is also suing for wrongful dismissal and a removal of Anthony Bada as director of the companies.

[31] The plaintiff has not served an expert report on the issue of the reasonable compensation for the directors in these closely held companies.

[32] The action has been ongoing for four years. Cross-examinations have taken place, and further discoveries will take place in several months.

**Proposed derivative action**

[33] The applicant alleges that the directors have breached their fiduciary duties and duties of care by awarding themselves or their personal companies extravagant, unreasonable, and unfair sums in salaries and fees. He alleges that their conduct is callous and reprehensible.

[34] The applicant also alleges that the directors put their own personal interests ahead of the companies' interests and the directors have financially abused the companies for their own personal benefit, which amounts to self-dealing.

[35] The companies have suffered harm as a result of the directors' conduct. The companies have lost funds that should not have been paid to the directors as salaries and fees.

[36] The applicant is claiming: (a) damages in the amount of \$1,500,000; (b) punitive damages in the amount of \$100,000 (c) an order prohibiting the defendants and their personal companies from drawing salaries or fees from the plaintiffs that exceed an amount or percentage to be set by the Court.

[37] The action also requests a court order setting out directors' compensation in the future and damages to be awarded to the companies.

**Applicant's Position**

[38] Since 2014, Cen-Ta had a net loss in the six years of ten years up and to including 2023. and Plum has a net loss in three of the past four years. Despite decline of the companies' revenues the directors continued to pay themselves significant salaries and fees. That is, the companies paid approximately \$1m in salaries and fees to the directors while the companies suffered a total loss of \$79,859 in year ending January 31, 2022, and January 31, 2023.

[39] The directors had no discussion among themselves about whether the amounts paid to the directors were fair and reasonable.

[40] The applicant submits that he will have no opportunity to pursue the damages done unless a derivative claim is permitted to go forward.

[41] The applicant submits that the directors take no responsibility for the companies' declining revenues.

[42] Given their direct involvement in the management of the companies, the directors know that: (1) the companies' revenues have been declining; (2) the companies' profits, which were not significant to begin with, have been declining, and in several years the companies have suffered losses; and (3) the participation in both the rental pool and the repair and management pool has been declining.

[43] If the derivative claim is allowed to proceed, the companies will seek to recover portions of the salaries and fees that the directors withdrew as reflected in the financial statements dated January 31, 2022, and January 31, 2023.

[44] In those two years, the directors withdrew \$1,694,390 from the companies. As reflected in the table above, this number constitutes 76.2% of the companies' revenues and 73.6% of the companies' expenses for those two years. When taken together, the companies lost \$79,859 in those two years.

[45] The applicant submits that amounts must be reasonable, fair, justified by the financial circumstances of the companies and set at a level consistent with the companies' wellbeing.

[46] Further, if the proposed action is successful, the companies will benefit from: (1) the return of the funds that belong to them; and (2) the protection of a court order that will determine how much the directors can withdraw in salaries and fees, which will prevent future harm from being inflicted on the companies.

[47] The applicant requests that the companies pay the legal fees for the prosecution of the action. If the proposed action is ultimately successful, he will undertake to request that the directors compensate the companies for the costs of the action to the extent that is permissible. He requests an order prohibiting the directors from receiving any funds from the companies to defend this application and the proposed action if leave is granted, since it is their unlawful conduct that is under scrutiny.

### **The respondents' position**

[48] The directors indicate that the decline in the companies' revenues is as a result of the following:

- Companies' older unit holders' decision to sell their units to capture accrued capital gains and these sales began in 2021;
- Decline in revenues has resulted from the departure of a former shareholder Jean Maisonneuve in 2016, which they say led to a decrease in the number of units the companies service and sell;
- The applicant's litigation has caused declining revenues as the litigation must be disclosed in the companies' prospectuses.

[49] The respondents submit that the applicant has failed to satisfy two of the mandatory statutory preconditions under the *OBCA*, i.e. that they acted in good faith and not primarily motivated by an improper collateral purpose, and that the derivative action appears not to be in the interests of the corporation.

[50] Further, the applicant has delayed in bringing this application thereby showing lack of good faith and this is an attempt to pressure the directors.

[51] The oppression remedy action is an appropriate alternative to proceed to remedy the applicant's claims.

[52] The oppression remedy has already caused financial jeopardy to the companies and requiring the companies to embark into, and fund further litigation will harm them further.

[53] The applicant has had sufficient time to produce an expert report to set out what he believes is a reasonable remuneration for the directors and by not doing so, has not shown he has an arguable case and hence has not met his onus on demonstrating that the derivative action is in the best interests of the companies.

### **Issues**

- Is Mr. Clark a complainant within the meaning of the *OBCA*?
- Is Mr. Clark acting in good faith as required by s. 246(2)(b) of the *OBCA* or is this proposed derivative claim primarily motivated by an improper collateral purpose, namely, to exert pressure and offload costs in his pre-existing and overlapping oppression action?
- Is this proposed derivative action in the interests of the corporation as required by s. 246(2)(c) of the *OBCA*?

### **Analysis**

#### **Introduction**

[54] For reasons articulated below, the applicant has met the requirements under the *OBCA* to bring and prosecute a derivative action on behalf of the companies.

[55] Although the derivative action is in large part duplicative of the oppression proceeding, in that both claims are based on the same alleged conduct of the directors, the applicant is acting in good faith and the derivative action, if successful, will benefit the companies.

[56] A derivative action has been described as a type of “extraordinary remedy”: *Chandler v. Sun Life Financial Inc.*, 2006 CanLII 3272 (ON SC), at para. 20, *Hevey v. Wonderland Commercial, et al.*, 2021 ONSC 540, 154 O.R. (3d) 86, at para 42 (citation omitted.)

[57] Corporations are generally deemed to be acting in their own interests, so to permit another entity to commence and prosecute an action on the corporation’s behalf without its consent is considered extraordinary. For this reason, the *OBCA* sets out specific pre-conditions for the commencement of a derivative action.

[58] Subsection 246(2) governs derivative actions, and the onus lies on the moving party to meet all criteria. Certain general key principles regarding the nature of these actions are enunciated in the case law.

[59] In *BCE Inc. v. 1976 Debentureholders* 2008 SCC 69, [2008] 3 S.C.R. 560, at para. 43, the Supreme Court confirmed that the leave requirement was to prevent “frivolous and vexatious actions, and other actions which, while possibly brought in good faith, are not in the interest of the corporation to litigate.”

[60] In *Macreanu v. Godino* 2020 ONSC 535, at para. 61, the court stated the requirements are “remedial in nature” and “set out in broad and permissive terms” and must be “given a liberal interpretation in favour of the complainant”.

[61] As stated in *Richardson Greenshields of Canada Ltd. v. Kalmacoff* (1995), 22 O.R. (3d) 577 (Ont. C.A) at p. 13, the purpose of derivate claims is ensure that shareholders have a right to recover property or enforce rights for the corporation if the directors refuse to do so and ensure some degree of accountability and that control exists over the board of directors by allowing shareholders the right to bring an action against the directors if they have breached their duty to the company.

[62] At the leave stage, the court is not called upon to determine questions of credibility or resolve all issues in dispute. These are matters for trial. To grant leave, the court should be satisfied that a reasonable basis exists for the complaint and that the proposed action is a legitimate or arguable one: *Richardson Greenshields* at p. 13.

**Issue #1: Is Mr. Clark a complainant within the meaning of the *OBCA*?**

[63] The parties do not dispute that the applicant has met the first three requirements under the *OBCA*, that is:

- the applicant is a complainant within the meaning of s. 245 of the *OBCA*;
- the directors of the corporation were provided with 14 days’ notice of the applicant’s intention to apply to the court to seek leave, as required by s.246(2) of the *OBCA*; and
- the directors of the corporation will not bring or diligently prosecute the action.

[64] Mr. Clark is the only shareholder supporting this proposed derivate claim as the other shareholders oppose it. He has provided timely notice.

[65] The court is satisfied that there is no other shareholder or directors who will bring this derivative action.

[66] I find that Mr. Clark is a complainant within the meaning of the *OBCA* as he is a shareholder of both companies under s. 245(a) and a former director of the companies under s. 245(b).

**Issue #2 Is Mr. Clark acting in good faith as required by s. 246(2)(b) of the *OBCA* or is this proposed derivative claim primarily motivated by an improper collateral purpose, namely, to exert pressure and offload costs in his pre-existing and overlapping oppression action?**

[67] For the reasons that follow, the court finds that Mr. Clark is acting in good faith and his primary purpose is to benefit the companies.

[68] In *Hevey v. Wonderland Commercial*, at para. 49, the court must answer the question whether the action is being brought to seek a remedy for the companies for a collateral and improper purpose. The court set out the following observations:

I adopt the analysis of good faith as set out in *2538520 Ontario Ltd. v. Eastern Platinum Ltd.*, [2020] B.C.J. No. 1820, [2020 BCCA 313](#) a recent decision of the British Columbia Court of Appeal. The B.C. legislation ([ss. 232](#) and [233](#) of the *Business Corporations Act*, S.B.C. 2002, c. 57) also contains a good faith requirement. Justice Griffin, for the majority of the court, noted the following at paras. 29-33:

The requirement that the complainant be acting in good faith focuses on the primary purpose for the bringing of the derivative action. The primary purpose must be to benefit the company. The onus is on the applicant to provide evidence proving this question of fact.

The good faith requirement is a separate requirement that must be established by the complainant based on evidence. It cannot simply be presumed, even where the claim can be said to be in the best interests of the company.

The evidence that may be considered by the court in determining the good faith requirement includes the applicant's stated belief in the merits of the proposed action. If this evidence is accepted by the court, it is a *prima facie* indication of good faith, but it is not necessarily determinative. The court must also consider evidence that indicates the applicant has ulterior motives, including considering any existing disputes between the parties.

A conclusion that there is an absence of “good faith” simply means that the applicant has not met the onus of showing that the primary purpose of the action is to benefit the company. There is no requirement that the respondent show the applicant is acting in bad faith.

A finding of good faith, or of a failure to prove good faith, is a finding of fact in the purview of the trial judge, typically based on inferences drawn from the record, and the appeal court will not interfere absent a palpable and overriding error. [Citations omitted.]

[69] In summary, the test for good faith is “whether the action is primarily for the purposes of pursuing a claim on the company’s behalf”: *Bennett v. Rudek*, [2008 BCSC 1278](#), at para. 46. In applying this test, the court should consider the applicant’s belief in the merits of the proposed claim, existing disputes between the parties, and alleged ulterior motives.

[70] There may be circumstances in which the applicant is acting in self interest in wanting to pursue the derivative action. However, that does not necessarily mean that the applicant is acting in bad faith. The applicant’s self-interest may coincide with the interests of the company as it is “hard to imagine a situation where a shareholder will not have a self-interest in wanting the

company to prosecute an action which is in its interests to prosecute”: *Primex Investments Ltd. v. Northwest Sports Enterprises Ltd.*, (1995) 13 B.C.L.R. (3d) 300, at para. 34.

[71] A derivative action allows a complainant to bring an action on behalf of a corporation “to enforce a right of the corporation, including the rights correlative with the directors’ duties to the corporation”: *BCE*, at para. 43.

[72] Whereas the oppression remedy addresses harm to shareholder and “focuses on harm to the legal and equitable interests of stakeholders affected by oppressive acts of a corporation or its directors”: *BCE*, at para. 45.

[73] Parallel oppression and derivative actions may exist in tandem and as stated in *The Investment Administration Solutions Inc. v. Pro-Financial asset Management Inc.* 2018 ONSC 1220, at para. 83: that two types of proceeding “are not mutually exclusive, and there may be circumstances giving rise to overlapping derivative actions and oppression remedies where harm is done both to the corporation and to stakeholders in their separate stakeholder capacities.”

[74] Here, in the oppression remedy action, Mr. Clark requests that the directors purchase his shares at fair market value (without minority shareholder discount) whereas the proposed derivative action seeks to remedy the harm caused to the companies by seeking damages and an order prohibiting the directors from drawing salaries or fees exceeding a set amount or percentage. As an alternative, he is seeking the wind-up of the companies.

[75] I accept that Mr. Clark is acting in good faith as the evidence filed that the revenues of the companies have been decreasing and it is arguable that the directors’ remuneration has not been adjusted sufficiently given this decline in the companies’ revenues.

[76] Financial statements filed show Cen-Ta’s gross revenue was approximately \$1.3 million in 2014 and it was approximately \$768,000 in 2023, almost a 40% reduction.

[77] Financial statements for Plum show gross revenue in 2014 of \$523,000 and in 2023 it was \$207,000, more than 60% reduction.

[78] Although he has brought his own action for relief as a shareholder, Mr. Clark is concerned with respect to the interest of the companies.

[79] Here, when I look at the claim as a whole, the primary purpose is to redress economic wrongs allegedly done to the companies.

[80] Mr. Clark seeks the return of funds from the directors for their remuneration to the companies in excess of what is fair, reasonable and justified for the years ending January 31, 2022, and January 31, 2023.

[81] If the suit is successful, it will not necessarily benefit Mr. Clark. That will depend on whether there are outstanding creditors and other circumstances that require the companies' resources.

[82] Yet, if damages are paid to the company by the directors, this may increase the value of Mr. Clark's shares.

[83] In *Macreanu*, the court confirmed at para. 58 that a claim of breach of fiduciary duty by directors is a claim that only the companies can advance in a derivative action. In that case, there were allegations that were clearly distinct corporate harms rather than a dispute over the quantum of agreed upon or historically paid compensation as in this case.

[84] A review of the pleadings in both actions demonstrate that the core allegations are similar which is the "extravagant, unreasonable and unfair sums and salaries and fees paid to the directions." No expert report on reasonable compensation has been submitted. This weakens the *prima facie* case that the remuneration was excessive, as well as the remedy sought.

[85] In the oppressive action, he pleads that these payments devalued his shares.

[86] Originally, Mr. Clark proposed that his current law firm represents the corporation but in his reply to affidavits, he stated he would be prepared to retain different lawyers for the derivative action if leave is granted. The respondents indicated that this is not a sign of good faith as the original request and this final request would require the companies to bear the costs of derivative action and costs of expert evidence which would apply to his personal oppression claim.

[87] Mr. Clark has not set out the names of the new lawyers, the amount required to retain them their hourly rates and costs of an expert report.

[88] There is also a delay as it is clear that he was aware of the underlying allegations of excessive compensation and improper payments since August 30, 2019, when his former counsel set out these issues in a letter to the directors.

[89] He chose to proceed by way of an oppression action, and only years later has he decided that he wishes to pursue a derivative action. In *Meyer v. Altex* 2021 ABQB 582, 30 Alta. L.R. (7th) 137, the court found a four-year delay in seeking leave without adequate explanation was “indicat[ive] of an ulterior motive which undermine the good faith requirement under the *Alberta Business Corporations Act*”: see paras. 52-54.

[90] In fact, Mr. Clark lacks good faith as he ceased providing any services to the company as of January 2020, yet he continued to receive his compensation for three years after that date.

[91] I cannot say that the remedies sought in the derivative action only benefit the complainant to the exclusion of the company. I note that in *Zeifmans LLP v. Mitec Technologies Inc.* 2019 ONSC 3643, at para. 78, where the creditor sought leave primarily to secure payment of its own invoice rather than a broader corporate recovery.

[92] Although there has been a delay between the alleged wrongdoing in 2019 and bringing this application for leave in 2024, the court notes that delay does not necessarily infer that the applicant is not acting in good faith: see *Meyer*. He has explained his delay in that he was not aware of the option of bring a claim on behalf of the company and immediately did so once he retained his current counsel.

[93] I do not find that the applicant’s own conduct undermines a finding of good faith.

[94] In addition, this derivative action would not place him in a conflict of interest: see *Hevey*, at paras. 50 and 55.

[95] The respondents indicate that the applicant wishes to use the derivative action for the strategic purpose of offloading the litigation costs onto the companies.

[96] Mr. Clark's request to proceed with a derivative claim could place further financial burden on the companies which would require them to deal with other litigation and the companies have experienced net losses in several of the last ten years.

[97] The court will deal later with the issue of the costs of the derivative action. This is a permissible claim under the *OBCA* and is anticipated in these types of leave applications.

[98] The court can structure this request to minimize the impact on the companies.

[99] With respect to the applicant's request in the proposed derivative claim for a court order determining how much the directors may withdraw in salaries and fees so as to prevent future harm to the companies, I question whether this has any validity as this would entail the court intruding on how private companies pay their officers/directors. Asking the court to set directors' future compensation is intrusive and rarely granted without clear evidence.

[100] Nevertheless, the court finds that Mr. Clark has satisfied his onus to demonstrate that he is acting in good faith.

**Issue #3: Is this proposed derivative action in the interests of the corporation as required by s. 246(2)(c) of the *OBCA*?**

[101] Looking at the second branch of the test, the moving party must show the proposed action is in the interests of the corporation. In *Peoples Department Stores (Trustee of) v. Wise* 2004 SCC 68, [2004] 3 SCR 461, at para. 46, the Supreme Court of Canada found: "[t]he phrase 'best interest of the corporation' should be read not simply as 'the best interests of the shareholders.' From an economic perspective, the 'best interest of the corporation' means the maximization of the value of the corporation."

[102] The Court went on to comment that "any honest and good faith attempt to redress the corporation's financial problems will, if successful, both retain value for shareholders, and improve the position of creditors": *People's*, at para. 46.

[103] The test was articulated by the British Columbia Court of Appeal in *Bellman v. Western Approaches Limited*, 1981 33 B.C.L.R. 45 (BC CA), at pp. 12-13 that it must appear to be in the

best interests of the corporation to bring the action in the sense that an arguable case must be shown to exist.

[104] In *Drake v. Goodwin*, 2019 ONSC 2865 at para. 13 the court concluded that the proposed derivative action “discloses an arguable claim that Goodwin breached his duties to Redtail and that he acted in a conflict of interest to the possible detriment of Redtail.”

[105] The court must consider whether the potential benefit of a successful action outweighs the certain harm that litigation will inflict upon the corporation. In *Zeifmans*, the court denied leave as it found the action would be a drain on limited corporate resources with little prospect of a net benefit.

[106] As stated in *Melnyk v. Acerus Pharmaceuticals Corporation* 2017 ONSC 1285, at paras. 38-43, the purposes of this mandatory precondition which serves as a gatekeeping function is to protect the corporation and its stakeholders from the significant financial and operational harm could result from unmeritorious or unwarranted litigation.

[107] As stated in *Crescent (1942) Ltd. v. Jones* 2011 ONSC 756, at para. 20, the court must conduct a contextual analysis to determine if, on balance, proceeding with the proposed litigation is truly in the corporation’s best interests.

[108] The court has recognized that the dispute can be resolved through other means as in *Wiens v. 1814047 Ontario Inc.* 2020 ONSC 7634, (Div. Ct.) at para. 30 where the applicant’s core grievance was his personal harm resulting from a breakdown in the relationship between a shareholder and the corporation and from being excluded from the business, the court found the oppression remedy was the more appropriate vehicle.

[109] Here it is argued that the directors’ compensation practises have negatively impacted the companies’ profitability and hence the value of his shares.

[110] There is a concurrent personal action based on substantially overlapping facts with relief being sought that is largely duplicative and thus could create an unnecessary burden on the company: see *Bellman v. Western Approaches Ltd.* at p. 12 and *Luft v. Ball* 2013 BCSC 574.

[111] At his cross-examination, Mr. Clark admitted his intention to pursue both the oppression action and the derivative action simultaneously and that the central issue for both is the appropriateness of the directors' salaries and remuneration.

[112] The court in *2538520 Ontario Ltd. v. Eastern Platinum Limited* 2020 BCCA 313, 42 B.C.L.R. (6th) 289, recognized that an oppression claim is the proper vehicle for a shareholder alleging unfair treatment and damages suffered in their capacity of a shareholder.

[113] The proposed derivation action is a pursuit of damages for alleged excessive compensation. The court must undertake a fact-specific analysis to determine what would have been a fair and reasonable compensation in the circumstances as they existed in that year. In *Radtke v. Machel* 2000 CarswellOnt 2848, at paras. 191-203, the court required an extensive and costly expert report. None has been produced here, so that the amount to be clawed back from their compensation is at this stage speculative.

[114] In addition to disclosing this action in prospectus, which affected potential investors, the companies have few employees and limited human resources that have been forced to spend considerable time away from revenue generating activities towards their defence. To require the company to fund a second action which deals with the same issue could cause financial harm to the companies.

[115] The *Limitations Act* 2002, S.O. 2002, c. 24, Sched. B, s. 4 applies-- that is two years from the date of discovery. This provision would bar any claim for alleged excessive compensation paid more than two years before the application was commenced.

[116] If the leave is granted *nunc pro tunc*, to April 2024 when the application for leave was filed, then the alleged overcompensation of the directors in 2022 and 2023 is arguably within the limitation period.

[117] In the derivative action, any damages awarded would be paid to the companies not Mr. Clark personally.

[118] His benefit would be less than half of any net amount recovered after the substantial legal and expert fees are paid. This has been considered in the context of a second parallel lawsuit.

[119] The respondents argue that the application has not showing that he has an arguable case, and they submit that his action is frivolous or vexatious. The allegation that the directors have paid themselves “extravagant, unreasonable, and unfair sums in salaries and fees” is undermined, according to the respondent, by four facts:

- First, in the 2013 SPA there is an acknowledgement that Mr. Veillette would continue to withdraw a salary in the amount of \$350,000 and car insurance and gas and he admitted in cross examination that this compensation was not tied to corporate performance metric. However, Mr. Clark indicated that he was content at the time to sign the SHA as the companies were in solid financial health;
- Second, he receives an annual fee of \$50000 plus benefits under the SPA. He claims he ceased working in January 2020 and was removed as director when he says he spoke up about his concerns with the financial status of the companies;
- Third, Mr. Clark has not produced an expert report to opine on the reasonableness of executive compensation in a closely held business.
- Fourth, the total compensation paid to the directors had in fact fluctuated in correlation to the companies’ revenues over the past decade. For example, in the fiscal year of 2023 Centa revenues decreased by 15.17% and the combined total of management fees and salaries paid decreased by a margin of 17.22%.

[120] Mr. Veillette’s total compensation for 2002 was \$250,479 and in 2023 was \$224,751 which is significantly below the \$350,000 annual salary that was acknowledged in the 2013 SPA.

[121] This is in stark contrast to the applicant receiving \$50000 for 3 years after ending his services to the companies.

[122] The applicant removed his properties from the pool as he was not satisfied that they were being properly maintained and repaired.

[123] The respondents indicate leave should not be granted because his claims against the directors essentially are in the nature of personal claims that can and should be dealt with in the oppression remedy actions.

[124] Relief sought in derivative and oppression actions often intersect and overlap, particularly in the case of closely-held corporations where a wrongful act may harm both the corporation and the personal interests of a complainant: *Rea v. Wildeboer* 2015 ONCA 373, 126 O.R. (3d) 178, at para [40](#); *Malata Group (HK) Ltd. v. Jung* 2008 ONCA 111 , 89 O.R. (3d) 36, at paras. [14 and 29](#).

[125] The respondents submit that permitting duplicative actions will inefficiently cause a multiplicity of actions that will increase costs and run the risk of inconsistent findings.

[126] In *Macreanu*, the applicant submitted that:

[T]he relief sought in her oppression claim was not identical to the remedy sought in her proposed derivative action on behalf of the companies. Her oppression action raised a personal claim for alleged wrongs because the affairs of the companies were conducted in a manner that was oppressive, unfairly prejudicial or that unfairly disregarded her personal rights as a shareholder based on the criteria under s.248 of the Act: *Rea*, at para [19](#). In contrast, her proposed derivative action is grounded on a breach of Mr. Godino's fiduciary duty to the companies that he owed as a director to both corporations. To this end, she relies on the well-established principle that a shareholder cannot sue for a wrong done to the corporation, as any action brought in respect of any such loss must be brought by the corporation itself or by way of a derivative action: *Hercules Management Ltd. v. Ernst & Young*, [1997] 2 S.C.R. 165 at paras [59-60](#); *Rea* at para [18](#). A director's fiduciary duty is to the corporation, which does not directly impact the interests of an individual shareholder: *Rea*, at para. [44](#). Caselaw establishing the fiduciary obligations that directors owe to their corporations reveals a strict application of a fiduciary's duty of loyalty, good faith and avoiding a conflict of duty and self-interest: *Canadian Aero Service Ltd. v. O'Malley*, [1973 CanLII 23 \(SCC\)](#), [1974] SCR 592 at para [25](#); *Fischer v. IG investment Management Ltd.*, [2015 ONSC 3525](#) at paras [95-99](#). As such, Ms. Macreanu submits that her proposed breach of fiduciary duty claim is properly brought as a derivative action on behalf of the companies, and not by way of a personalized claim in her oppression actions.

[127] I find that Mr. Clark's proposed derivative action essentially is based on an alleged breach of fiduciary duty claims against the directors of the companies. This is a cause of action belonging to the corporations. Accordingly, the proposed derivative actions would allow Mr. Clark to pursue

this cause of action on behalf of the companies to redress any such wrongs caused by the directors to the companies.”: *Macreanu*, at para. 58 (citations omitted.)

[128] Therefore, regardless of the remedial overlap between derivative and oppression actions, I find that Mr. Clark has demonstrated grounds to proceed with a derivative action for the breach of fiduciary duty claim against the directors. I also find that he should not be precluded from pursuing his proposed derivative action or be required to proceed only by way of his oppression action, despite arguably being able to seek relief appropriately in that proceeding: *Macreanu*, at para. 60 (citations omitted.)

[129] I adopt the court’s reasoning in *Macreanu* and “accept that the requirements under s. 246 of the Act for leave to bring a derivative action are to be given a liberal interpretation in favour of the complainant because the provision is remedial and is set out in broad and permissive terms”: at para. 61.

[130] Furthermore, as in *Macreanu*, I too, “find that proceeding with both the derivative and oppression actions would not entail costly inefficiencies or risk inconsistent findings that would compromise the best interests of the companies, if the actions are consolidated or heard together”: at para. 61. The applicant has proposed that the steps in the litigation for both actions proceed in tandem.

[131] In my view, proceeding in this manner would not likely trigger significant inefficiencies, inconsistencies, or other problems with this litigation.

[132] Turning to *Drake v. Goodwin* 2019 ONSC 2865 (Div. Ct.) where the court dismissed an appeal where a derivative claim was permitted and made some comments regarding court efficiency:

Second, in the consideration of the likely costs of the action, it is relevant that the claims being asserted would be addressed in any event in the oppression action if the derivative action did not proceed. Given that these claims are therefore likely to be addressed in one of the two proceedings, the cost/benefit analysis proposed by the Appellants has less force in the present circumstances than in the circumstances reflected in the case law upon which they rely.

Third, as a related matter and as mentioned above, the concern for duplication of judicial resources and inconsistent findings could be addressed by consolidation of the two proceedings, failing which issue estoppel would presumably operate if the derivative action were to proceed to trial before the oppression action: at paras. 44-45.

### **Payment of legal fees**

[133] The applicant has requested an order pursuant to subsection 247(d) of the *OBCA* which provides that in connection with an action under s. 246, the court may at any time make any order it thinks fit, including an order requiring the corporation “to pay reasonable legal fees and any other costs reasonably incurred by the complainant in connection with the action.”

[134] The applicant submits that such an order is appropriate given the directors’ admissions to conduct which amounts to breaches of their fiduciary duties. In addition, the applicant submits that the directors’ expressed concern about expenses the companies would incur in prosecuting the proposed action, and they accuse the applicant of burdening the companies with costs the applicant would otherwise have had to expend in the oppression action. Notably, these expenses are only necessary as a result of the respondents’ conduct. Moreover, the costs of this litigation will be “money well spent” for the companies because there is no other way to have these issues decided and because of the significant potential return of funds to the companies if they are ultimately successful in the litigation.

[135] The respondents are concerned that the costs to be paid by the corporation will impose a financial burden on the companies. They argue that the applicant has not provided the proposed law firm, hourly rates of counsel and the retainer requested to commence representation. The respondents are especially concerned that the companies would be saddled with the cost of an expert’s report.

[136] The court has the discretion under s. 247(d) of the *OBCA* to make such an order. The court, however, is not required to do so.

[137] The companies should fund some of the costs of litigation as the court has determined it is in their interests. If the companies succeed, then the companies will reap the benefit.

[138] While it is true that companies stand to benefit significantly if the claim is successful, so does Mr. Clark.

[139] I find that Mr. Clark should bear some of the litigation risk.

[140] When deciding whether to exercise its discretion under s. 247(d), the court can examine Mr. Clark's financial circumstances. There is no evidence that Mr. Clark is impecunious or does not have the financial ability to pay legal costs. I note that it is alleged that he received compensation of \$50,000 per annum from the companies after he ceased working for them.

[141] In *Wein*, the court ordered the corporation to pay half of the legal fees involved in the derivative action. Of course, ultimately the trial Judge will determine who will bear the costs of the litigation.

[142] I agree with Justice Mesbur's comments in *Wein*, at para. 47 when she ordered the complainant to pay half of the legal costs. In this manner no has a "free ride in the litigation". The lawsuit has potential benefits for both. This proportion may be re-adjusted at trial on the basis of the eventual outcome of the lawsuit.

[143] I agree with this approach. The applicant and corporation will equally share the legal costs of the derivative action.

## **Conclusion**

[144] Leave is granted *nunc pro tunc* effective April 2024 for Mr. Clark to commence and prosecute a derivative action on behalf of Plum and Cen-Ta such that Mr. Clark is authorized to control the conduct of these derivative actions and instruct legal representatives of the companies.

## **Costs**

[145] The successful party is presumptively entitled to costs. If the parties cannot agree on the quantum of costs, then they may file their two-page costs submissions along with any offers to settle by November 3, 2025. The bill of costs need not be provided as they have already been filed.

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Justice A. Doyle

**Date: October 24, 2025**

**CITATION:** *Clark v. Cen-Ta Real Estate Ltd et al*, 2025 ONSC 5759  
**COURT FILE NO.:** CV-24-95515  
**DATE:** 2025/10/24

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

**RE:** Chris Clark, Applicant

**-and-**

Cen-Ta Real Estate Ltd., Plum Financial  
Group Inc., Robert

Veillette, Fernando Bada And Anthony  
Bada, Respondent

**COUNSEL:** Chris Trivisonna and Emma Williams for  
the Applicant

Jeff Saikaley and Robert Ruddock for the  
Respondent

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**DECISION ON AN APPLICATION**

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J. DOYLE

**Released: October 24, 2025**