

[3] The Company as installed 14 Bitcom Automated Teller Machines (“ATM’s”) in convenience stores primarily in the Ottawa area.

[4] Desormeaux alleges that Oloko improperly took \$2,000 from the Company’s account to pay personal expenses without authorization. Oloko doesn’t deny taking the funds for his personal use and claims that he was owed back pay. The also alleges that Oloko has failed to meet the Company’s reasonable expectations with regards to his performance and behaviour as an employee and director and officer of the Company.

[5] Desormeaux issued a “Notice of Dispute” on May 9, 2024, to which Oloko has not responded. Desormeaux then served Oloko on June 14, 2024, with a notice of intention to bring a derivative action, which was approved by all of the other shareholders of the Company.

Analysis

[6] The test for leave to commence a derivative action is set out in s. 239 of *the Canadian Business Corporations Act* (“CBCA”) R.S.C. 1985, c C-44. Following three conditions must be met:

- [a] the Complainant has given notice to the directors of his intention to apply for leave, not less than 14 days before bringing the Application;
- [b] the Complainant is acting in good faith; and
- [c] bringing the derivative action is in the interests of the corporation.

[7] D has provided his notice of intention to apply for leave on June 14, 2024, complying with the timeline set out in section 239 of the *CBCA*.

[8] The test for good faith is whether the derivative action is brought primarily for the purpose of pursuing a claim on behalf of the company.

[9] The test of good faith has both a subjective and an objective element. The subjective element is whether the Applicant believes that the proposed derivative action has merit, and that it is not motivated by self-interest or a “private vendetta”. The court must also consider whether, objectively viewed, the action is not frivolous or vexatious.

[10] Desormeaux has a strong subjective belief that the derivative action has merit and has been brought to recover losses suffered by the Company, including through Oloko’s negligence, breach of fiduciary duty and breach of contract.

[11] Desormeaux and Oloko have been involved in a heated dispute, but Desormeaux states in his affidavit that his actions are not a personal vendetta, and his actions are supported by the other directors of the Company.

[12] Based on the evidence presented, I’m satisfied that Desormeaux has met the subjective and objective elements for the test of good faith. Oloko opposes the application but is not presented evidence against the allegations made by Desormeaux.

[13] Desormeaux has presented an arguable case for all to meet. The Company is effectively in gridlock and without the relief sought, the Company will go bankrupt. The relief sought justifies the cost and inconvenience incurred.

[14] Section 241 (d) of the *CBCA* allows a court to order that the corporation pay the reasonable legal fees for the derivative action. The ultimate determination of the legal fees will be decided once the action has been heard.

Disposition

[15] Order to go as follows:

[a] the Applicant is granted leave to commence a derivative action;

[b] the Company shall pay the Applicant's reasonable legal fees related to the derivative action until the matter is finally decided when the action is heard, where the costs shall be determined; and

[c] costs of this Application shall be determined when the action is finally decided by the court.

Date: January 13, 2026

The Honourable Justice Robert Smith

CITATION: Desormeaux v. Oloka 2026 ONSC 162
COURT FILE NO.: CV-24-97922
DATE: 2026/01/13

ONTARIO

SUPERIOR COURT OF JUSTICE

Christophe Desormeaux

Applicant

– and –

Subair Abayomi Oloko

Respondent

REASONS FOR DECISION

Justice Robert Smith

Released: January 13, 2026