

COURT OF APPEAL FOR ONTARIO

CITATION: Mellace v. Mellace, 2026 ONCA 34

DATE: 20260122

DOCKET: COA-24-CV-1263

van Rensburg, Dawe and Madsen JJ.A.

BETWEEN

Anthony Mellace, Giancarlo Mellace, and
Domenico Mellace

Applicants (Respondents)

and

Ida Dana Mellace a.k.a. Dana Mellace
and 1225046 Ontario Inc.

Respondents (Appellants)

Pathik Baxi and Malika Grewal, for the appellants

Gleb Matushansky, for the respondents

Heard: November 12, 2025

On appeal from the order of Justice Julia Shin Doi of the Superior Court of Justice, dated October 31, 2024, with reasons reported at 2024 ONSC 6031.

Madsen J.A.:

[1] The appellants are a wife and a family company, 1225046 Ontario Inc. (“122” or the “company”). The company was formed to hold and lease real estate. It currently owns five rental properties, three of which are leased. The respondents

are the husband and his and the wife's two adult sons.¹ Following the separation of the husband and wife in 2021, the parties brought competing applications in Superior Court in a dispute related to the family company and other real estate.

[2] On October 31, 2024, following a two-day hearing, the application judge granted a partial determination of the applications. The wife and 122 appeal.

[3] For the reasons that follow, I would allow the appeal, set aside the order of the application judge, and remit the matter to the Superior Court of Justice for rehearing before a different judge.

BACKGROUND

[4] The husband and wife were married for almost 33 years. They have two children, now adults: Giancarlo, age 33, and Anthony, age 29. In February 1997, when Giancarlo was four and Anthony under a year old, the husband and wife incorporated a family company, 122. Counsel on appeal explained that the company was largely dormant until 2008 when the husband won about \$8,000,000 in a lottery.² Since then, 122 has held and leased real estate, and at the time this dispute arose, held five properties. In addition, the wife and the two sons are on title to a property not held by 122, the "Alliston property."

¹ Although in the decision below the parties are referred to as the applicants and respondents, or at times by name, for simplicity I refer to Mr. Mellace as the husband, Ms. Mellace as the wife, and the adult children either by name or as the sons.

² On cross-examination, the husband explained that he won the lottery, but he put the winnings in the wife's name as well.

[5] The husband and wife separated in 2021. There are ongoing matrimonial proceedings, which the court was advised await the outcome of this matter. The sons are aligned with the husband in these proceedings.

[6] The parties do not agree on the share structure of 122. The husband and sons state that upon incorporation in 1997, the husband was the only shareholder and was issued 1,000 common shares. They assert that in 2000, the wife and sons were each issued 1,000 common shares, for a total of 4,000 shares outstanding. In support of this position the husband and sons point to the articles of incorporation, which authorize the issuance of common shares only, and to copies of four share certificates dated in 1997 and 2000.

[7] The wife states that she and the husband are and have always been the only shareholders of 122, each holding 50% of the total issued and outstanding shares. She says that the children have never been shareholders. She notes further that dividends have only ever been paid to her and to the husband.

[8] The records of 122 are unclear. Each party alleges that the other produced fraudulent or otherwise suspect documents. The husband and sons assert that the version of 122's Minute Book produced by the wife includes fraudulent documents.³ The wife states that "[t]he authenticity, creation date, and timing of

³ In support of this assertion, the husband and sons point to discrepancies between the version of the Minute Book produced by the wife and photographs of the Minute Book that they allege were taken by Anthony around the time of separation. The husband and sons submit that Anthony photographed portions of the Minute Book after the husband found it hidden under the bed in the locked master bedroom of the former matrimonial home.

the discovery of the Alleged Share Certificates of Anthony and Giancarlo is suspect to say the least". She also asserts in argument that the signature on a 2011 resolution, on which the children are reflected as shareholders, was not hers.

[9] When the parties separated, the wife was the sole director and officer of 122. The company's office was located in the matrimonial home, in which the wife continued to reside after separation. Broadly speaking, the husband and sons assert that since separation, the wife has mismanaged the properties held within 122 as well as the Alliston property. They say she has refused to discuss the operations of 122, has interfered with the renovations of the unleased properties, and refused to confirm that liabilities, including outstanding mortgages, are being paid.

[10] In May 2022, contemporaneous with the commencement of their court application, and due to their stated concerns about the wife's alleged mismanagement, the husband and sons delivered a Requisition for Special Meeting of Shareholders to the wife, seeking to remove and replace her as director. She did not call a meeting in the time required, allowing the husband and sons to do so. They served the wife with a Notice of Special Meeting of Shareholders. Through counsel, she confirmed receipt of the notice and objected to the meeting; she did not attend. The meeting proceeded on June 28, 2022, with only the husband and sons present. They passed a resolution removing the wife as a director and appointing Anthony sole director. By director's resolution,

Anthony then removed the wife as president, secretary, and treasurer; appointed himself president; and named Giancarlo secretary and treasurer.

[11] The parties also do not agree on the beneficial ownership of the Alliston property, to which legal title is held by the wife and the sons. The wife states that she is the sole beneficial owner, having advanced the down payment and made all mortgage and other payments since its acquisition. The husband and sons state that the property was a gift to Anthony and Giancarlo and that they are the sole beneficial owners.

[12] From around 2009 onwards, the parties and 122 were assisted by an accountant, David Raghubir. Mr. Raghubir advised the parties on financial issues and prepared their personal and corporate tax returns. He was extensively cross-examined by counsel for the husband and sons, and the transcripts of this cross-examination were in evidence.

PROCEDURAL HISTORY

[13] In this litigation, the husband and sons sought orders including, but not limited to: a declaration that they and the wife each own 25% of the shares of 122; an order that the Shareholders' Meeting held June 28, 2022, was validly constituted and its results binding; an order permitting them to take control of the corporate books and records; an order restraining the wife from interfering with the management of the company; an order for a full accounting in relation to

transactions of 122; an order that the wife engaged in oppressive conduct within the meaning of Ontario's *Business Corporations Act*, R.S.O. 1990, c. B.16 ("OBCA"); and an order for damages in relation to oppressive conduct.

[14] In her cross-application, the wife sought relief including, but not limited to: an order winding up 122; an order for the sale/liquidation of all assets owned by 122; an order declaring that only she and the husband are shareholders of 122; and an order declaring the purported special resolution made at the Shareholders' Meeting held June 28, 2022, to be null and void.

[15] There were numerous court appearances over a period of approximately two years before several judges. On December 19, 2023, the applications went before the application judge. At that time, the father and sons' counsel requested that only two of the substantive issues be addressed: a validation of the Shareholders' Meeting and a declaration that Anthony and Giancarlo are the sole beneficial owners of the Alliston property. Further to the objection of the wife's counsel, the application judge adjourned the matter on the basis that cross-examinations had not taken place, the record was as yet incomplete, and factums had yet to be filed.

[16] In June 2024, after several intervening appearances, the two issues raised on December 19, 2023, again went before this application judge. At that time, she had the benefit of extensive application records, including transcripts of cross-

examinations of the husband, the wife, both sons, and the long-serving accountant, Mr. Raghubir, as well as factums.

[17] The application judge determined that:

- (a) the “children”, Anthony and Giancarlo, are equal shareholders of 122, along with the husband and the wife, each holding 1,000 common shares;
- (b) the Shareholders’ Meeting held on June 28, 2022, was validly held and its results binding;
- (c) Anthony had been sole director of 122 since June 28, 2022;
- (d) Anthony had been President and Giancarlo Treasurer-Secretary of 122 since June 28, 2022; and
- (e) Anthony and Giancarlo have been the beneficial owners of the Alliston property since its purchase in 2014.

ISSUES ON APPEAL

[18] On appeal, the wife makes the following arguments: that the application judge erred in acceding to the request for a partial hearing of the applications; that she made palpable and overriding errors of fact and credibility in her determination of the share structure of 122; that she erred in validating the purported June 28, 2022, Shareholders’ Meeting as the purpose of the meeting was to enforce a

personal grievance; and that she erred in determining the beneficial ownership of the Alliston property by failing to address the presumption of resulting trust.

[19] The husband and adult children argue that this appeal was brought in the wrong court given the interlocutory nature of the issues and that the order was made under the *OBCA*; that it was open to the application judge to determine the issues on a partial basis, in light of what they say was the wife's consent to the process; and that the application judge erred neither in fact nor in law on the substantive determinations of share structure, validation of results of the Shareholders' Meeting, and determination of beneficial ownership of the Alliston property.

DISCUSSION

[20] I address the procedural issues before turning to the main substantive concerns on appeal.

(i) The appeal appropriately lies to this court

[21] As a preliminary matter, the husband and sons argue that this appeal lies to the Divisional Court because the orders appealed from are interlocutory and made under the *OBCA*. Pursuant to s. 255 of that Act, appeals lie to the Divisional Court. They further argue that on a contextual analysis, the order was interlocutory because it did not determine the real issues in dispute between the parties,

including the allegations of impropriety and the request for a wind-up of 122: *Hendrickson v. Kallio*, [1932] O.R. 675.

[22] The appeal properly lies with this court. The determination of beneficial ownership of the Alliston property was made on common law principles, falls outside of the purview of the *OBCA*, and finally determines the rights of the parties in relation to that property. It is therefore not necessary to decide whether the matters related to share structure and the impugned Shareholders' Meeting were decided based on common law principles of corporate governance, as the wife suggests, or under the *OBCA*. Pursuant to s. 6(2) of the *Courts of Justice Act*, 1990, c. C.43, because part of the order was final and grounded in common law principles, the entire order may be appealed to this court: see *Buccilli v. Pillitteri*, 2016 ONCA 775, 410 D.L.R. (4th) 480, at para. 22.

(ii) No interference with hearing application on partial basis

[23] The wife argues that the application judge erred in hearing the applications on a partial basis. She states that the issues were not readily severable and that proceeding in this manner risked inconsistent findings of fact and credibility on an incomplete record. She further asserts that the matter proceeded in this manner over her objection.

[24] It is open to the court to hear and decide part of an application where that part is ready for determination while other aspects proceed to a further and other

hearing: *407 ETR Concession Co. Ltd. v. Ontario (Minister of Transportation)*, 2004 CanLII 10753 (Ont. S.C.), at para. 33, rev'd on other grounds, (2005), 199 O.A.C. 221 (C.A.); see e.g., *P.S. v. Ontario*, 2014 ONCA 900, 123 O.R. (3d) 651, at para. 23. As with partial summary judgment under r. 20 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, however, hearing an application on a partial basis will be appropriate only where the issues can be readily bifurcated and dealt with expeditiously in a cost-effective manner, while minimizing the risk of inconsistent findings: see *Butera v. Chown, Cairns LLP*, 2017 ONCA 783, 137 O.R. (3d) 561, at para. 34; *Service Mold + Aerospace Inc. v. Khalaf*, 2019 ONCA 369, 146 O.R. (3d) 135, at para. 14; *Leitch v. Novac*, 2020 ONCA 257, 150 O.R. (3d) 587, at para. 29, leave to appeal refused, [2020] S.C.C.A. No. 194; *Chitaroni Estate v. Coleman (Township)*, 2025 ONCA 424, 70 R.P.R. (6th) 205, at para. 16.

[25] As with the decision to hear a partial motion for summary judgment, absent an extricable error of law, the decision to hear part of an application is discretionary and entitled to deference: see *Chitaroni Estate*, at para. 18.

[26] I would not interfere with the application judge's discretionary decision to bifurcate the application. There were numerous court appearances before the hearing resulting in the order under appeal. It is unclear whether, during those court appearances, the wife opposed proceeding on a partial basis. While her factum below resisted bifurcation, in oral argument, counsel at no point argued that the matter should not be heard on a partial basis. The matter had been adjourned

on several occasions to allow for cross-examinations and the completion of undertakings. At the hearing, the application judge had before her an extensive record. During oral submissions on appeal, the wife's counsel confirmed that only the business valuation remained to be prepared, the outcome of which did not bear on the issues before the court. On this record, I am not prepared to interfere with the discretionary decision of the application judge to proceed to hear the applications on a partial basis.

(iii) Failure to consider relevant evidence in relation to share structure

[27] As set out above, the wife alleges errors in fact and law in the determination of the share structure and the validation of the results of the Shareholders' Meeting. Both determinations, in my view, reflect a failure to consider relevant evidence bearing on contested issues. I would allow the appeal on this basis.

[28] *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235, instructs that findings of fact are assessed on a standard of palpable and overriding error: at para. 10. This applies to "all factual findings whether based on credibility assessments, the weighing of competing evidence, expert evidence, or the drawing of inference from primary facts": *Waxman et al. v. Waxman et al.* (2004), 186 O.A.C. 201 (Ont. C.A.), at para. 300, leave to appeal refused, [2004] S.C.C.A. No. 291. The same applies to findings of mixed fact and law: *Housen*, at paras. 36-37. "Palpable" means "clear to the mind or plain to see": *Housen*, at para. 5.

“Overriding” means “sufficiently significant to vitiate the challenged finding of fact”: *Waxman*, at para. 297.

[29] It is trite law that there is no obligation on an application or trial judge to refer, in her reasons, to each piece of evidence and every argument raised: *Levac v. James*, 2023 ONCA 73, 89 C.C.L.T. (4th) 27, at para. 82. Judges are presumed to know the law and to have duly considered the evidence before them: *Housen*, at para. 72; *Heliotrope Investment Corporation v. 1073650 Ontario Inc.*, 2024 ONCA 767, at para. 11; *2056706 Ontario Inc. v. Pure Global Cannabis Inc.*, 2022 ONCA 381, at para. 12. At the same time, judges must consider all *relevant* evidence, and the failure to do so can amount to a palpable error if the evidence was “potentially significant to a material finding of fact”: *Waxman*, at para. 343. The mere absence of any reference to specific evidence will not suffice, rather “[t]he appellants must point to something in the trial record, usually in the reasons, which justifies the conclusion that the trial judge failed to consider certain evidence”: *Waxman*, at para. 343; *Housen*, at para. 72.

[30] Here, the application judge was asked to validate the results of the Shareholders’ Meeting held June 28, 2022. To do so, she concluded that she needed to first determine the share structure of 122. That determination required findings of fact and credibility in the context of competing narratives, mutual

allegations of forgery and fraud, incomplete and imprecise record keeping, and a fraught paper record.⁴

[31] The application judge's conclusion that the husband, wife, and sons were each 25% shareholders of 122 rested on the following elements of the record: share certificates allegedly found under the master bed in the former matrimonial home and photographed by Anthony (the authenticity of which were challenged by the wife); two corporate resolutions with signature lines for the children but signed by the husband as the children were under 18 at the time (which were also challenged by the wife); a CIBC document related to a mortgage applied for by the adult children in 2021 listing all four as 25% shareholders; and the articles of incorporation, which set out only one class of shares. In arriving at her conclusion, the application judge accepted, without reasons, Anthony's allegation that "Mrs. Mellace had locked out Mr. Mellace from his office in the matrimonial home where the corporate documents were kept, and that Mrs. Mellace was known to hide documents throughout the matrimonial home." At no point did she explain *why* she preferred Anthony's evidence over the wife's or the basis on which she found the wife's evidence not to be credible.

[32] The application judge had before her important evidence squarely relevant to the share structure of 122 that remained unexamined in her reasons. In

⁴ The court was advised that neither party ever requested that this matter be converted to an action, which may have been the preferable process given the contested facts and credibility issues in play.

particular, the evidence of the accountant, Mr. Raghbir, as well as the corporate and personal tax returns of each family member, supports a contrary conclusion without reason given for their rejection. Mr. Raghbir was the company accountant from approximately 2009, preparing annual personal and corporate tax returns and assisting with financial issues related to the company. His sworn evidence included that: the husband and wife were “always 50/50” shareholders; they both attended annual meetings with him; and he prepared the entire family’s tax returns on the basis of instructions of both the husband and wife. He also gave evidence that in early tax returns for 122, only the husband was shown as a shareholder on Schedule 50 and that he updated this to reflect the longstanding 50/50 shareholdings in 2021. The accountant stated that he was good friends with both the husband and wife, was impartial, and “never wanted to side with anyone”. Finally, his evidence was clear and consistent that the children had never been shareholders of 122.

[33] It was open to the application judge to consider and reject the evidence of the accountant. The omission of any reference to or analysis of this evidence from the reasons entirely, however, where clearly relevant to the factual and credibility determinations made, constitutes a palpable and overriding error. In a case where virtually all facts were contested, the accountant’s evidence, unless explicitly found to be unreliable, would have been directly relevant to assessing the parties’ credibility.

[34] Similarly, while the application judge found it problematic that specific tax returns of the sons did not reflect dividends from 122, she did not reconcile this with her conclusion that the children were 25% shareholders. Nor did she grapple with the impact of her statement that it was “plausible” that either the husband or the wife could have prepared the tax returns and filings without the involvement of the sons. If Mr. Mellace had indeed been involved in preparing the tax returns and filings, particularly in light of the evidence of the accountant, this would substantially support the allegation that the husband and wife were “always” 50/50 shareholders, rather than 25% with the children, as she concluded. Given that the application judge found it plausible that the husband was involved in preparing the tax returns, an explanation was required for rejecting this possibility.

[35] The application judge made significant unexplained credibility findings on this hotly contested paper record. She concluded that the wife’s statements that she was unaware of the share certificates were not credible, simply preferring the explanations of the husband and sons, without giving reasons for this preference or evaluating their credibility. Credibility of the parties was directly relevant in this case, where the share structure could not be definitively determined on the paper documents alone. On this record, the application judge was required to provide some explanation for her credibility findings and to grapple with the accountant’s evidence in support of the contrary conclusion. In these circumstances, the

conclusion that the sons are shareholders of 122, each holding 1,000 common shares, cannot stand.

[36] As noted, the application judge determined the issue of share structure essentially as a precursor to her assessment of whether the Shareholders' Meeting of June 28, 2022, was validly called and its results binding. Given that s. 105(1) of the *OBCA* provides that a shareholder is required to hold only 5% of the issued shares of a corporation to requisition a meeting, it is likely that, unless an exception under s. 105(3) applies, the meeting was validly called, irrespective of which party prevails in terms of the ultimate determination of share structure. However, given the requirements under the *OBCA* for a quorum for business to be transacted and to remove and replace a director, whether the meeting's results are binding – that is the removal and replacement of the wife as director – rests on the determination of share structure.

(iv) Failure to consider or apply the law of resulting trust

[37] Finally, the wife argues that the application judge erred in both fact and law in her determination that the adult children are the sole beneficial owners of the Alliston property. I agree.

[38] The evidence before the application judge included that the wife had advanced the funds for the down-payment and made all mortgage and

maintenance payments since the acquisition of the property. However, the wife and both sons were all on title.

[39] These underlying (and uncontested) facts required the application judge to engage directly with the presumption of resulting trust and – to reach her stated conclusion – find on a balance of probabilities that the presumption was rebutted by evidence of a gift. The reasons reflect neither an engagement with the presumption nor findings of fact capable, without more, of rebutting the presumption. This conclusion too must be set aside.

Disposition

[40] I would accordingly allow the appeal, set aside the order under appeal, and remit this matter to the Superior Court for a hearing before a different judge.

[41] As requested by both counsel, I would recommend that the matter be referred to case management in the Superior Court.

[42] Costs of the appeal are set at \$17,500 as agreed between the parties, payable by the respondents. Costs below are reserved to the judge hearing the applications.

Released: January 22, 2026 “K.M.v.R.”

“L. Madsen J.A.”

“I agree. K. van Rensburg J.A.”

“I agree. J. Dawe J.A.”