

CITATION: Ferguson v. Sutherland et al, 2026 ONSC 460
COURT FILE NO.: CV-25-13199-00
DATE: 2026-01-23

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:)
)
Paul Ferguson) *G. Caplan and A. Simovonian*, for the
) Plaintiff
)
)
Plaintiff)
)
- and -)
)
)
Sean Sutherland and 2210985 Ontario) *A. Castonguay and A. Lambert*, for the
Limited) Defendants
)
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Defendants)
)
)
) **HEARD:** January 15, 2026, via Zoom
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2026 ONSC 460 (CanLII)

Justice W.D. Newton R.S.J.

Decision On Injunction Motion

Overview

[1] The Plaintiff (“Ferguson”) seeks an interlocutory injunction:

- a. restraining the defendants (“Sutherland” and “221”) from carrying on the business of 221 without the involvement of Ferguson as co-director and president;

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- b. Re-appointing Ferguson as president of 221; and
 - c. Restricting the banking arrangements of 221 to “deposit only”.

[2] During argument Ferguson presented proposed terms for co-management of 221 should I find in favour of Ferguson.

[3] For the reasons that follow, Ferguson’s motion for an interlocutory injunction is dismissed.

The Facts

[4] 221 owns pits from which sand is extracted and sold to the mining industry. 221 was incorporated by the Sutherland family in 2009. In 2010, both Ferguson and Sutherland were appointed as directors.

[5] Ferguson alleges that in 2017 Sutherland and his mother, also a shareholder of 221, wrongly received funds resulting in Sutherland’s removal as officer and director of 221 and Ferguson’s appointment as president of 221.

[6] That is background explaining Ferguson’s appointment as president. The events giving rise to this injunction application begin in May 2025.

[7] Prior to May 2025 the voting structure based on share ownership was:

Paul Ferguson	34 votes
Christopher Rantanen	10 votes
Diane Sutherland ¹	40 votes

¹ Sean Sutherland’s mother.

Sean Sutherland 16 votes

[8] According to Sutherland, he met with Ferguson and Rantanen in April 2025 to discuss the need for significant investment in one of the pits to increase production. According to Sutherland, Ferguson and Rantanen were not interested in investing further and then discussions followed about Sutherland purchasing the Ferguson and Rantanen shares.

[9] Sutherland alleges that a shareholders meeting was held on May 15, 2025, with Ferguson, Rantanen, and Sutherland with Sutherland acting in his personal capacity and as proxy for his mother. Sutherland alleges that share purchases agreements (“SPA”) were negotiated and signed for Sutherlands acquisition of Rantanen and Ferguson’s shares.

[10] The Rantanen SPA provided for a purchase price of \$125,000 with a closing date of September 1, 2025. The SPA specified, at clause 7.11, that Rantanen would resign as an officer and director effective May 15, 2025. That clause had originally provided that the resignation would be effective on closing but was amended by handwriting and initialled. It appears that Ferguson was a witness to the signing of this SPA.

[11] The Ferguson SPA provided for a purchase price of \$408,000, 50% payable October 1, 2025, and the balance payable January 15, 2026. Clause 7.10 provided that Ferguson resigned as officer and director effective as of the closing date. It appears that Rantanen was a witness to the signing of this SPA.

[12] Sutherland deposed that he met with Ferguson and Rantanen on May 29, 2025, and that Ferguson and Rantanen signed the resignation and appointment documents then. Although dated May 15, 2025, Ferguson signed documents tendering his resignation as president and as director

“forthwith” and Rantanen signed documents tendering his resignation as secretary and director “forthwith”. All signed a resolution accepting the resignations of Ferguson and Rantanen and electing Sutherland as the sole director of the corporation. Sutherland then appointed himself president and secretary.

[13] By August 2025 a dispute had arisen concerning whether Ferguson had resigned as president and director of 221 and steps were taken on behalf of Ferguson to restrict 221’s bank account to deposit only.

[14] These developments led to Sutherland commencing an application against Ferguson and 221 on September 2, 2025 seeking orders:

- a. Restraining Ferguson from holding himself out as an officer or director of 221;
- b. Directing Ferguson to deliver all records and property of 221; and
- c. Appointing Sutherland as sole director of 221, if required.

[15] Two days later, the parties through counsel entered into Minutes of Settlement settling the application.

The Minutes of Settlement

[16] The Minutes executed May 4, 2025, provided that:

- a. Ferguson sign an irrevocable acknowledgement confirming his resignation as president and director of 221 and Sutherland’s appointment as president and sole director of 221 as of May 15, 2025;
- b. Ferguson write to a major customer and the bank of 221 confirming that Sutherland is sole officer and director of 221;

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- c. Ferguson deliver all records of 221 within 10 days; and
 - d. The SPA was amended to provide for a purchase price of \$450,000 to be paid by a payment of \$225,000 on September 17, 2025, and the balance on closing on December 1, 2025.

[17] Ferguson signed the Acknowledgment “irrevocably” acknowledging and confirming his resignation and the appointment of Sutherland effective May 15, 2025.

SPA Does not Close

[18] Sutherland alleges that Ferguson did not produce full and complete records within 10 days and that, while he had transferred funds to his counsel to pay the first installment on September 17, 2025, he was not able to complete his “due diligence” prior to September 17, 2025.

[19] Through counsel, Sutherland requested an extension for payment of the first installment and requested information with respect to 221’s obligations. Additional information was provided by Ferguson’s counsel on September 25, 2025, but there was no position communicated from Ferguson’s counsel on the request for an extension on payment of the first instalment. Sutherland did not pay the first installment.

[20] By correspondence dated November 11, 2025, counsel for Sutherland advised counsel for Ferguson that Sutherland had committed his review of 221’s finances and had determined that there were undisclosed liabilities of 221 and over \$450,000 due to 221 from Ferguson. Sutherland asserts that Ferguson has not responded to these concerns.

[21] On December 2, 2025, new counsel for Ferguson advised counsel for Sutherland that Ferguson regarded the failure to pay the first installment as repudiation of the SPA and that Ferguson sought reinstatement as director and president of 221.

[22] By statement of claim issued December 11, 2025, Ferguson sued Sutherland and 221 claiming:

- a. A declaration that the SPA was “at an end, without legal effect or force”;
- b. A declaration that Sutherland breached the SPA and that Ferguson accepted the repudiation of the SPA;
- c. An order setting aside Ferguson’s resignation as officer and director;
- d. Injunctions relating to the forgoing; and
- e. Damages and other relief.

[23] The next day, December 12, 2025, Sutherland caused a Notice of Meeting to be delivered to Sutherland. The Notice provided that a meeting would be held on December 23, 2025, to affirm the election of Sutherland as director. Counsel for Ferguson demanded that the meeting not proceed. The meeting was held and Sutherland’s election as director effective May 15, 2025, was affirmed.

The Law

The parties do not dispute that the test for granting an injunction like this is that Ferguson must:

-
- a. Establish that there is a “strong *prima facie* case, that there is a “strong likelihood” that he will succeed in the proceeding²;
 - b. Show that Ferguson will suffer irreparable harm if the injunction is not granted; and
 - c. Show that the balance of convenience favours granting the injunction, that is, that Ferguson will suffer greater harm than Sutherland if the injunction is granted.

Position of the Parties

[24] Ferguson argues that this is a strong *prima facie* case because Sutherland has breached the SPA by failing to pay the first installment when due. Ferguson argues that the terms of the Minutes of Settlement regarding his resignation were implicitly conditional upon the completion of the SPA.

[25] Ferguson says that he will suffer irreparable harm because Sutherland has a history of not acting in the 221’s interest and that Sutherland is in conflict as an involved party who contracts with 221.

[26] Ferguson submits that granting the injunction will maintain the *status quo* and thus there will be no irreparable harm to Sutherland.

[27] Sutherland argues that this is not a strong *prima facie* case arguing that he did not repudiate the contract, or that Ferguson did not accept repudiation within a reasonable time, and that Ferguson’s resignation as director and president was clear, irrevocable and not conditional upon the completion of the SPA.

² Ferguson relies upon *Penelas v. Cruise*, 2024 ONSC 6679 at paras. 45 -47. Sutherland relies upon *R. v. Canadian Broadcasting Corp.*, 2018 SCC 5 at paras.15-17.(“CBC”).

[28] Sutherland submits that Ferguson has failed to establish that he will suffer irreparable harm as 221 is being operated in the usual course and Ferguson has the protection of the *Business Corporation Act*³.

[29] Finally, Sutherland argues that the balance of convenience greatly favours Sutherland who is director and president in accordance with the wishes of the majority of the shareholders and who is seeking to continue and expand the business of 221.

Analysis and Disposition

Strong *Prima Facie* Case?

[30] By the terms of the Minutes of Settlement Ferguson irrevocably resigned effective May 15, 2025. The acknowledgement of the resignation was not conditional upon completion of the SPA. The acknowledgement could have stipulated that condition, but it did not. By September 2025, Sutherland and his mother controlled the majority of the shares and votes of 221. Since May 15, 2025, Sutherland was operating 221 in accordance with the wishes of the majority of the shareholders.

[31] As the Supreme Court of Canada note in *CBC*:

A mandatory injunction directs the defendant to undertake a positive course of action, such as taking steps to restore the status quo, or to otherwise “put the situation back to what it should be”, which is often costly or burdensome for the defendant and which equity has long been reluctant to compel. Such an order is also (generally speaking) difficult to justify at the interlocutory stage, since restorative relief can usually be obtained at trial. Or, as Justice Sharpe (writing extrajudicially) puts it, “the risk of harm to the defendant will [rarely] be less significant than the risk to the plaintiff resulting

³ R.S.O. 1990, C. B. 16. See for example s. 132 dealing with conflict of interest.

from the court staying its hand until trial”. The potentially severe consequences for a defendant which can result from a mandatory interlocutory injunction, including the effective final determination of the action in favour of the plaintiff, further demand what the Court described in *RJR — MacDonald* as “extensive review of the merits” at the interlocutory stage.⁴

[32] In this case, Ferguson has his protections and remedies under the *Business Corporations Act*.

[33] Based on the Minutes of Settlement, I am not satisfied that there is a “strong likelihood” that Ferguson will be successful in resiling from his irrevocable acknowledgement of his resignation effective May 15, 2025.

Irreparable Harm?

[34] I acknowledge that irreparable refers to the nature of the harm rather than its magnitude⁵. As noted, Ferguson has his protections and remedies under the *Business Corporations Act*. What he seeks is re-instatement as director and president and the harm that he identifies is speculative at this point.

Balance of Convenience?

[35] Ferguson seeks, as a minority shareholder, to constrain the operation of 221 by adding restrictions⁶ on the governance of 221 such that Ferguson and Sutherland would “jointly and severally” run the business, negotiate and sign contracts, and appoint a “shadow board” in the event of disagreement.

⁴ *R. v. Canadian Broadcasting Corp.*, 2018 SCC 5 at para.16.

⁵ *RJR-MacDonald Inc. v. Canada (attorney General)*, 1994 CanLII 117 (SCC) at para 59

⁶ As set out in the proposed draft order filed by counsel for Ferguson during submissions.

[36] In the circumstances of this case, the balance of convenience does not favour the injunction that Ferguson seeks.

Conclusion

[37] Ferguson has not established that the injunction he seeks is appropriate in the circumstances of this case and the motion is dismissed.

[38] Sutherland is entitled to his costs of this motion and, within 15 days, may deliver written submissions on costs limited to four pages plus costs outline and any other necessary attachments. Within ten days thereafter, Ferguson may deliver his submissions subject to the same limitations.

The Hon. Justice D. Newton R.S.J.

Released: January 23, 2026

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B E T W E E N:

Paul Ferguson

Plaintiff

- and -

Sean Sutherland and 22210985 Ontario Limited

Defendants

DECISION ON MOTION

Newton J.

Released: January 23, 2026