

CITATION: Surace v. Reis, 2026 ONSC 2251
COURT FILE NO.: CV-24-00726047-00CL
DATE: 20260415

ONTARIO SUPERIOR COURT OF JUSTICE

RE: NICOLA SURACE also known as NICK SURACE,
Applicant

-and-

JASON REIS, V.G.A. CARPENTRY LIMITED, 1905247
ONTARIO INC ., and V.G.A. CARPENTRY (2023) LTD. now
known as DUPONT CARPENTRY LIMITED,
Respondents

BEFORE: FL Myers J

COUNSEL: *Craig Mills and Mark A. De Sanctis*, for the Applicant

Paul Stern and Margot Davis, for the Respondents

George Benchetrit, for Dodick Landau Inc., the Interim
Receiver

HEARD: April 8 and 9, 2026

ENDORSEMENT

- [1] The Applicant Mr. Surace seeks relief for oppression and breach of duties allegedly committed by Mr. Reis.
- [2] Mr. Surace alleges that due to oppression and other wrongdoing committed by Mr. Reis, their business, V.G.A. Carpentry Limited, failed in April, 2024. Mr. Surace seeks a variety of relief as a result in damages, disgorgement of profits, indemnity, and injunctions.

VGA needs a Succession Plan

- [3] Mr. Surace was the founder of V.G.A. Carpentry Limited and predecessor companies. Through them, he carried on business as a

contractor in the construction industry providing trim and finish carpentry services.

- [4] Mr. Reis is many years younger than Mr. Surace. VGA hired Mr. Reis as an employee initially in 2001. Over time, Mr. Surace sold or granted shares in the business to various employees. By February, 2019, Mr. Surace held 51% of the shares of the business and Mr. Reis owned the other 49% through his holding company 1905247 Ontario Inc.
- [5] Mr. Surace is now 82 years old. He has not been active in the business for several years. Mr. Reis has been managing the company exclusively for the past few years.
- [6] As is often the case, the younger active shareholder tired of sharing income with a less productive older partner. Mr. Reis believed that Mr. Surace had agreed to sell him the business some years ago. He never acted on that belief, however.
- [7] One can debate the length of time that the founder of the business remains fairly entitled to share in ongoing revenues. This is particularly the case for a small, hands-on business in which revenue is earned by dint of hard work and time.
- [8] In 2022, Mr. Reis became even more concerned on discovering that Mr. Surace had been removing funds from the business. Some of the funds were ostensibly removed for purposes that were not proper at least from a tax perspective. Mr. Reis demanded a return of funds and an end to the parties' ongoing business association.
- [9] While there is no particularized proof of the impropriety of Mr. Surace's withdrawal of funds in evidence, the outcome is clear. As discussed below, Mr. Surace agreed that VGA would make a number of payments to Mr. Reis's holding company. I make no finding on issues that may relate to tax liability. But there is no question that Mr. Reis had a basis for being upset and he acted accordingly.

The Succession Plan – a Unanimous Shareholders' Agreement

- [10] Rather than litigating or taking improper steps for self-help, the parties did a very clever thing. They entered into a shareholders' agreement to govern their respective rights and obligations to end Mr. Surace's involvement in the business and to allow Mr. Reis to take the business in a new company of his own.

[11] The parties negotiated and entered into a unanimous shareholders' agreement dated as of October 1, 2022.

- [12] The unanimous shareholders' agreement provides that:
- a. the parties will remain as the two directors until dissolution. All contracts and documents binding on the corporation require signatures of both;
 - b. The books shall record all transactions in accordance with GAAP and each of the parties shall provide the other with correct statements "concerning all transactions pertaining to the Corporation without concealment or suppression;"
 - c. All cheques require signatures of both parties;
 - d. To the greatest extent possible, funds for the business shall be obtained by borrowing from a bank or other lender. Each shareholder agrees to provide all information to lenders as necessary and to provide joint and several personal guarantees for borrowing if required;
 - e. If attempts to borrow on behalf of the corporation fail, either shareholder may make a cash call on the other. Shareholder loans will be advanced in respective amounts proportionate to their shareholdings and will be on such terms and security as the board sets. If one of the shareholders refuses to make a shareholder loan, the other may make it and be paid a high interest rate by the other;
 - f. Schedule "A" to the unanimous shareholders' agreement lists 15 jobs to be completed by the company. No other jobs are to be accepted by the company. Once the company completed the Schedule "A" jobs, the company will be dissolved;
 - g. The parties acknowledge that they have loaned money and/or have taken advances from the company that are to be repaid before dissolution. The parties will act reasonably during the winding down period to reduce the loans and advances so that upon dissolution no amounts are owed by or to them. The loans and advances as at the date of the agreement are set out in Schedule "B;"
 - h. Mr. Reis is entitled to incorporate a new company to be competitive with VGA. After dissolution of VGA, the new company will be entitled to take VGA's name. (Factually, Mr. Reis's new company is Dupont Carpentry Limited.)

Article 9.1 of the agreement provides:

1905247 Ontario Inc., Jason Reis and [Dupont Carpentry Limited] will not solicit, interfere with or endeavour to entice away from the Corporation any jobs listed on Schedule "A" attached hereto. 1905247 Ontario Inc., Jason Reis and [Dupont Carpentry Limited] shall be entitled to solicit any customer, client or any person in the habit of dealing with the Corporation **for any new trim and finish carpentry work not listed on Schedule "A"** and shall be entitled to employ [sic] any employees, independent contractors or others currently employed by the Corporation. [Emphasis added.];

- i. Mr. Surace and Mr. Reis each guarantee the due performance of the unanimous shareholders' agreement or any instrument or agreement delivered pursuant to or contemplated by the agreement and each will personally indemnify each other for, "all liability, harm, loss, costs, charges, damages and expenses of any nature whatsoever (including legal fees on a solicitor and client basis)" caused by breach of any covenants and obligations;
 - j. All prior agreements relating to the company are terminated except an agreement between Mr. Surace, Mr. Reis, and Anna Surace dated October 18, 2019;
- [13] The unanimous shareholders' agreement is clear and concise. VGA will complete the Schedule "A" jobs and then dissolve. Factually, the jobs listed in Schedule "A" represented over \$26 million in available revenue for VGA. Shareholder loans and advances will be repaid prior to dissolution. If the company needs funding to complete its work, it will borrow from a third-party lender if possible. Otherwise, the parties will fund it by advances on terms to be agreed.
- [14] The parties did an excellent job fixing their covenants and their commensurate expectations. I do not need to look beyond the parties' own agreement and the general law of managers' fiduciary duties to understand the parties' reasonable expectations in this case. See: *BCE Inc. v 1976 Debentureholders*, 2008 SCC 69, at para. 79.

- [15] The parties agreed to resolve Mr. Reis’s concerns by transitioning the business to him. Mr. Surace will be fully removed from the remaining business. Mr. Reis agreed to continue to manage the business to complete the listed jobs and no others. On completion of the Schedule “A” jobs, VGA would be dissolved. The ongoing business and goodwill, including its name, will be available to Mr. Reis alone in Dupont.
- [16] Schedule “B” to the agreement represents the parties’ negotiated outcome of Mr. Reis’s allegations concerning Mr. Surace’s illicit drawings. Schedule “B” says:

	Item	Amount
1	SHAREHOLDERS LOAN PAYABLE TO 1905247 ONTARIO INC	\$203,000.00
2	MANAGEMENT FEE PAYABLE TO 1905247 ONTARIO INC.	\$188,000.00
3	OUTSTANDING FEES PAYABLE TO 1905247 ONTARIO INC. (TO BE PAID WEEKLY IN THE SUM OF \$1,500.00 PLUS HST)	\$250,000.00 plus HST
4	CORPORATION TO PAY 1905247 ONTARIO INC. AS REIMBURSEMENT FOR MISCELLANEOUS ITEMS	\$88,000.00

- [17] These amounts, which Mr. Reis says represented a significant compromise by him, are to be repaid before dissolution of VGA.
- [18] Mr. Reis advises that the weekly payments identified in row #3 were made for some time but ceased. Reasons for the cessation are not clear. The parties agreed to make reasonable efforts to reduce the other amounts prior to dissolution. None of the other amounts have been paid to Mr. Reis’s numbered company yet. There is no explicit evidence as to why this is so. But it seems apparent that the company never had available funds sufficient to do so as discussed below.
- [19] On an ongoing basis, Mr. Reis continued to be the sole active manager. As one of the two members of the board of directors, Mr. Surace continued to have signing authority for cheques and binding documents.

He was entitled to full transparency into the financial books and records of the business.

The October 18, 2019 Agreement

- [20] The unanimous shareholders' agreement specifically recognizes the ongoing validity of the parties' agreement with Anna Surace dated October 18, 2019. Anna Surace is Mr. Surace's spouse.
- [21] In 2019, Mr. and Mrs. Surace arranged a credit facility from CIBC to fund VGA, Maximum drawings were capped at \$550,000. To obtain the loan facility, the Suraces had to grant the bank a mortgage on their residence. In the October 18, 2019 agreement, the parties agreed that VGA would pay all costs associated with the loan. Should VGA default, Mr. Reis agreed to guarantee payment of 50% of the loan and to grant a mortgage on his residence in favour of Mr. and Mrs. Surace to secure the guarantee.
- [22] With VGA having failed, CIBC is enforcing its loan against Mr. and Mrs. Surace. Mr. Reis refuses to grant the mortgage provided in the October 18, 2019 agreement.

The Problems from October, 2022 to April, 2024

- [23] Mr. Reis's new company, Dupont, began billing customers for new jobs in late 2022. It billed for projects in December, 2022 and February, 2023 even though, according to its books and records, it incurred no expenses to pay for workers during those months. It is apparent in retrospect that Mr. Reis was using VGA employees, billing employee time to VGA, and taking the revenue into Dupont.
- [24] There was only one employee pool available to Mr. Reis. They were VGA's employees who were supposed to be committed to the 15 jobs listed in Schedule "A" to the shareholders' agreement. While Dupont was entitled to take on new work and to employ VGA's employees, it was not entitled to interfere with VGA's existing work.
- [25] Mr. Reis put himself in an irreconcilable conflict of interest by choosing to assign VGA employees to new projects for Dupont before VGA had completed its Schedule "A" work.
- [26] Mr. Reis admits to some "cross-pollination" between the books of VGA and Dupont. That is not a financial term with meaning. What he means is that Mr. Reis had VGA pay expenses for Dupont and, at times, Dupont

paid some expenses on behalf of VGA. That is, Mr. Reis comingled the businesses and he did not maintain clear records to keep the affairs of each company straight.

- [27] Mr. Reis denies systemic or surreptitiously charging VGA for employee time spent on Dupont projects. But for 2023 and 2024, Dupont's financial statements show that it obtained 40%-50% gross profit. That was exceptionally high compared to VGA historically for doing the same work with the same employees. At the same time, Dupont incurred exceptionally low payroll expenses as a percentage of billings. Both measures normalized after VGA ceased operations when all employee time spent on Dupont's projects was billed properly to Dupont alone. It is undeniable and I find that Dupont was using VGA employees while charging their time to VGA from December, 2022 through to April, 2024 when VGA shut down as discussed below.¹
- [28] The Interim Receiver has made some calculations to approximate the proper sharing of payroll expenses based on normalized ratios of billings to revenues. It could not determine Dupont's actual payroll expenses, however. Mr. Reis's evidence was that there was no contemporaneous reporting of employee time allocated to specific projects (i.e. as between VGA projects and Dupont projects). He said the site foremen did not submit timesheets to him showing employee hours allocated by job. Rather, he said they called him on Fridays and he would create spreadsheets as best as he could.
- [29] Mr. Reis was not truthful in this evidence, however. VGA has been compelled to produce weekly timesheets submitted by site foreman that do indeed include allocations of employee time by job.
- [30] In addition, after signing the unanimous shareholder agreement, Mr. Surace also found that he could not get good financial information from Mr. Reis. Mr. Reis says he was too busy to attend to the books as he should have. Postings to QuickBooks and therefore ledgers were very inaccurate. VGA stopped posting bank reconciliations in the summer of 2023.
- [31] Mr. Surace retained an accountant to assist him in obtaining correct financial information for VGA and Mr. Reis. Commencing in the summer

¹ This is not a finding that Dupont billed all its employees time to VGA. The Interim Receiver calculates that about \$1 million in time was likely usurped. For reasons discussed below, I do not make an explicit finding on this fact. Findings on damages suffered by VGA are not necessary to the outcome.

of 2023, Mr. Surace's accountant made numerous documentary demands on Mr. Reis for up-to-date financial information.

- [32] Mr. Reis says he found the documentation requests overwhelming.
- [33] I do not need to decide if Mr. Reis was just too busy, as he alleges, or whether he was deliberately covering up systemic efforts to loot the company, as Mr. Surace alleges. In either case, Mr. Reis does not deny that although VGA had bookkeeping staff and its external accountants available, he failed to maintain the financial records of the company as required. Whether under the unanimous shareholders' agreement or simply as part of his management duties, Mr. Reis failed to maintain adequate books and records for the business after October, 2022. This has already been the subject of a finding by Penny J. in this matter as discussed below.
- [34] In February, 2023 Mr. Surace injected \$25,000 into the business and then a further \$193,000 to meet financial needs identified by Mr. Reis. Mr. Surace did not know that Mr. Reis had used VGA funds to pay employees for work performed for Dupont that ought to have been available for VGA's needs that month.
- [35] In April, 2023, VGA did no work on one of the Schedule "A" projects (Gillam). When Gillam management complained, Mr. Reis agreed that it could use third-party contractors to complete the work.
- [36] As a result, without Mr. Surace's involvement, Mr. Reis walked away from a project that had about \$500,000 in projected revenue remaining available. Yet, in April, 2023, timesheets show that Mr. Reis was using VGA employees to perform jobs for Dupont while leaving Gillam unserved.
- [37] Mr. Reis was obliged to have VGA complete Gillam. He had no authority to unilaterally terminate the Schedule "A" project. I find that Mr. Reis interfered with the completion of the Gillam project by usurping VGA employees to Dupont and terminating the Gillam project in breach of the unanimous shareholders' agreement and his fiduciary duties to VGA. He put himself in a position of conflicting interests and then favoured Dupont over VGA.
- [38] The cost of third-party work back charged by Gillam to VGA exceeded the amount remaining due under its contract. Accordingly, Mr. Reis submits that VGA incurred no damages by walking away from this contract.

- [39] In June, 2023, due to needs identified by Mr. Reis, Mr. Surace injected another \$250,000 and then another \$100,000 into VGA.
- [40] The Interim Receiver reports that over the period of September 22, 2023 to February 17, 2024 alone, VGA employees spent 4,175.5 hours working for Dupont.
- [41] In mid-2023, Mr. Surace and his accountant discovered that VGA had amassed very substantial arrears for employee withholdings and employment taxes. There was no evidence to support the suggestion by Mr. Reis's counsel that the arrears were amassed from an earlier time. Mr. Reis inexplicably simply stopped having VGA pay employee withholdings, HST, Employer Health Tax, and WSIB premiums. There were also irregularities in delayed billings and delayed collections.
- [42] Once again, Mr. Reis says he was just too busy to tend to these financial matters. That cannot in any way forgive or adequately explain a failure to pay taxes and especially employee withholdings. The deductions from employee wages are not just deemed trust mounts; they are actual trust funds. To calculate employee wages each month, employers must work through the withholdings and their own portions of CPP and UI payments required among other things. Failing to remit trust funds and taxes are serious breaches of the law and management's duties.
- [43] Due to Mr. Reis's neglect, VGA amassed almost \$1 million in outstanding withholdings and another \$1 million liability for unremitted HST. But that is not benign neglect. It is actionable mismanagement or non-management. It plainly violates the parties' reasonable expectations that Mr. Reis would manage VGA through to dissolution as agreed in the unanimous shareholders' agreement. Implicit in the agreement was that Mr. Reis would fulfill management's most basic statutory and common law duties.
- [44] In August, 2023, Mr. Reis sent Dupont's banking particulars to a customer who wanted to pay an amount owing to VGA. Instead of VGA funds being paid to VGA and deposited in VGA's bank account as required by the unanimous shareholder agreement, Mr. Reis directed almost \$125,000 of VGA's money to Dupont.
- [45] On January 4, 2024, Mr. Reis agreed to terminate another Schedule "A" project referred to by counsel as "Westbank." Approximately \$5 million remained available for VGA had it completed that project. It represented the single largest project by revenue outstanding on Schedule "A."

- [46] As was the case with the Gillam project, Mr. Reis did not tell Mr. Surace that he had signed documents binding VGA to terminate the project. This was another breach of the unanimous shareholder agreement requiring two signatures to bind the company. It was a breach of the obligation to have VGA complete the Schedule “A” jobs. And, to the extent that VGA employees were assigned to Dupont projects by Mr. Reis while Westbank languished, Mr. Reis was in conflict of interest and acting in breach of his fiduciary duties.
- [47] Mr. Reis submits that the Westbank project was in difficulty at the time. But there is only the baldest evidence given at an earlier case conference to support that submission. In any event, it is not a lawful basis for Mr. Reis to decide to walk away from the project and its \$5 million in potential revenue without notice to and the agreement of Mr. Surace.
- [48] From October, 2022 to March, 2024, Dupont billed more than \$2.1 million but recorded payroll of just \$254,000. Not surprisingly, by late March and into April, 2024 VGA’s financial circumstances became extreme and urgent.
- [49] Mr. Reis told Mr. Surace and his accountant that VGA would not be able to meet payroll on April 24, 2024 unless Mr. Surace funded the company further. Mr. Surace was not willing to fund further at that time because, among other things, his repeated efforts to obtain correct and complete financial information from Mr. Reis since the prior summer were still unsuccessful.
- [50] On April 24, 2024, without input from Mr. Surace, Mr. Reis terminated the employment of all employees of VGA. He then hired them all in Dupont.
- [51] VGA provided Records of Employment to VGA’s employees dated April 12, 2024. This suggests that Mr. Reis spent some time planning for the transition of VGA’s active employees to Dupont.
- [52] VGA has not operated after April 24, 2024.
- [53] Discussions quickly ensued between the parties regarding three Schedule “A” jobs that remained ongoing as at April 24, 2024. They agreed, with ILA, that Dupont would take an assignment of VGA’s contracts if the customers agreed. In return Dupont would pay VGA 10% of the profit (on the assumption that Dupont would split its expected 20% profit on the remaining work).

- [54] Mr. Surace submits that he had no choice but to agree to the assignments given that Mr. Reis had usurped all VGA's employees. I do not agree. Duress involves pressure that vitiates free will. Mr. Surace had counsel. He could have sued. He could have sought interim relief on an urgent basis. He could have terminated the unanimous shareholder agreement and sued. He could have run VGA to complete the jobs. He could have provided some funding for VGA to hire management or sought a receiver to complete the Schedule "A" jobs. He could have proposed any number of permutations and combinations of the foregoing.
- [55] I would not vitiate the assignment agreements based on commercial duress. Ultimately, given the view I take of the appropriate remedy, this issue does not really matter. Neither does it matter that one of the customers refused to agree to an assignment of its contract from VGA to Dupont. Instead, it terminated VGA's contract and entered into a new deal with Dupont. This will all be subsumed in the remedy discussed below.
- [56] Mr. Reis injected capital into Dupont shortly after VGA ceased operations. He mortgaged his house to do so. He could have funded VGA a few weeks earlier had he been so minded.
- [57] In June, 2024, Mr. Reis tried to pay himself \$136,000 from VGA. Mr. Surace had the payment stopped before the funds flowed.

The Interim Receiver's Numbers

- [58] In the fall of 2024, Mr. Surace sought the appointment of a receiver for VGA. On October 22, 2024, Penny J. appointed an interim receiver essentially to clarify the books and records of the business. Penny J. found that even at that late date there was, "*a total lack of accurate, up to date and reliable information about the business and affairs of the companies.*" That is a damning finding. It does not bespeak a little technical compliance issue. Penny J. found a total lack of proper information persisting more than 15 months after Mr. Surace started to ask for transparency and at least six months after Mr. Reis offered to provide all financial information. I agree with Penny J. on the evidence before me.
- [59] The Interim Receiver conducted an extensive investigation of the books and records of VGA and Dupont. As a result, it has opined that Dupont owes VGA a gross amount of \$2,900,947 which nets to \$2,428,507 after

allowing for two specific setoff amounts that the Interim Receiver finds due from VGA to Dupont.

[60] The Interim Receiver's findings are as follows:

Dupont Payroll Understatement (inclusive of vacation pay, EI, CPP and union dues)	\$971,155
Strachan Project	900,000
Reunion Crossing Project	124,507
The Thornhill Project	506,925
Block 8 Project	<u>398,360</u>
Total Payable by Dupont to VGA	\$2,900,947
Less: Centrecourt and Daniels' wages funded by Dupont	(278,772)
Less: Doorland supplier obligation funded by Dupont	<u>(193,668)</u>
Net Payable by Dupont to VGA	\$2,428,507

- [61] The difficulty I have with the Interim Receiver's findings is that at least the top line "Payroll Understatement" amount is really an untested valuation opinion based on likely billings-to-revenue ratios adopted by the Interim Receiver to replace gaps in the financial documentation kept or produced by Mr. Reis. On the Strachan project, it assumed that a 25% profit margin was expected. The other entries are premised on legal findings that the amounts quantified as received by Dupont are due to VGA. Similarly, with the setoff amounts, Dupont has claimed larger amounts. The Interim Receiver accepted only two of them.
- [62] But this is not a claims process with a Claims Officer or the Interim Receiver empowered to make findings on disputed evidence after some fair hearing process and subject to appeals. Rather, Mr. Surace is relying on the Interim Receiver's legal and factual investigatory findings as evidence in this oppression proceeding.
- [63] But Mr. Reis has factual responses.

Potential Project-by-Project Disputes

- [64] Mr. Reis says, for example, that the project referred to as “Strachan” was listed on Schedule “A” by mistake. Mr. Reis says that the customer approached him after deciding it would not continue with VGA. In addition, in his written interrogatories (which are not evidence) Mr. Reis said that his cost on this project was approximately \$2.8 million. He challenges the Interim Receiver’s assumption of a 25% profit margin being expected by VGA or earned by Dupont.
- [65] Mr. Reis notes that his holding company, 1905247 Ontario Inc., has yet to be paid the various amounts agreed in Schedule “B” of the unanimous shareholders’ agreement. It is unclear to me whether Mr. Reis is asserting that this was a breach of the unanimous shareholders’ agreement that he acted upon in some manner.
- [66] Mr. Reis also points to his note of August 26, 2024 offering to provide all information that Mr. Surace may still wish to receive. He made a similar offer months before on April 3, 2024.
- [67] Mr. Stern and Ms. Davis submit that the documentation shows that Mr. Reis had no intention of misappropriating funds or business. He was doing the best he could in real time faced with daunting tasks.
- [68] Mr. Reis’s holding company borrowed from a friend of Mr. Reis and also injected \$500,000 into VGA. With this is added to the items in Schedule “B” of the unanimous shareholders’ agreement, the Interim Receiver calculated that total claims by or indirectly on behalf of Mr. Reis against VGA amount to approximately \$1.227 million. This compares to Mr. Surace’s claims on shareholder loans of approximately \$788,000. That is, Mr. Reis has more capital at risk in VGA than does Mr. Surace.
- [69] Mr. Reis submits that the assignment agreements entered into for two projects were a commercially sound way to resolve outstanding issues.
- [70] Mr. Reis also points to efforts he made to have Mr. Reis agree to pay off a lien claim on one project. Mr. Surace disagreed. He also refused to agree to Mr. Reis’s efforts to pay two amounts to CRA. Mr. Surace disagreed with the proposed payments to CRA based on advice received from the company’s accountant that there were insufficient funds on hand.

- [71] Mr. Reis says he failed to bill customers in the crucial April, 2024 time period due to an oversight. Mr. Surace has a different view. Mr. Reis notes that he did bill some customers and he did collect some accounts at various stages through the October, 2022 to April, 2024 period. His managerial failings, he submits, were just a product of being overburdened and were not an effort to cause the company to run out of cash or fail in April, 2024.
- [72] Mr. Reis says that as early as July, 2023, he invited Mr. Surace to bring his accountant to review the books. Mr. Surace notes that the books were neither up to date nor accurate at the time. So, in his view, the offer lacked substance.
- [73] Ms. Davis submits that the Interim Receiver's numbers above double-count the Strachan project. Mr. Surace seeks \$900,000 for loss of profit on the project overall and Strachan is also included in the claim for "Payroll Understatement."
- [74] On the project referred to as "Thornhill," there is significant confusion as to whether any of the time billed by Dupont preceded April, 24, 2024. The contemporaneous timesheets and invoices need review and explanation. Dupont purported to correct the contemporaneous record with a new invoice in March, 2025 – a year later.
- [75] The job referred to as "Block 8" was the third customer contract that was to be assigned except the client disagreed. Ms. Davis submits that the loss to VGA, if any, has to be limited to the 10% of profit that it agreed to take.
- [76] I agree with Mr. Stern's submission that resolution of many of the specifics related to the losses attributed by the Interim Receiver to each project can be a mini-trial of its own. In this summary application on a paper record, I do not feel confident in making findings on a project-by-project basis as to the entitlement or quantum of damages claimed.
- [77] Neither am I willing to accept the Interim Receiver's findings for this purpose. It is not a trier of fact or law. I accept unreservedly its accounting expertise and its business acumen. I would have little hesitation relying on its reports for appropriate purposes as part of the receivership. But this is an application seeking damages or compensation under the oppression remedy. But for the explicit recognition in the *Business Corporations Act*, RSO 1990, c B.16 that monetary compensation can be ordered in oppression applications, normally damages cannot be claimed in a Rule 14.05 application

proceeding. A trial of an issue or a reference is often required. But here, the Interim Receiver is not an expert witness who can be cross-examined on the reasonableness of its assumptions. It is not entitled to decide whether one side owes money to the other for tort or oppression. I do not accept that the Interim Receiver's reports can stand as unchallengeable proof of either facts or liability in this proceeding.

Oppression and Breach of Fiduciary Duties Findings

- [78] I am fully satisfied that the Applicant has made out a case of oppression and for breach of fiduciary duty by Mr. Reis. Mr. Reis repeatedly breached the unanimous shareholders' agreement by acting unilaterally to the prejudice of VGA while usurping its employees for Dupont. He failed to take reasonable steps as management to maintain the books and record of VGA as agreed. He failed to manage its affairs prudently in respect of payment of mandatory governmental remissions including mis-using trust funds withheld from employees' paycheques. He hopelessly comingled the affairs of VGA and Dupont in conflict of interest. He interfered with VGA's completion of the Schedule "A" projects by failing to instruct employees to finish the jobs while allocating the employees to Dupont.
- [79] Doing these things violated the reasonable expectations of Mr. Surace that Mr. Reis would fulfil his agreement to manage VGA through to dissolution. Instead, he wrongfully usurped VGAs remaining business on April 24, 2024.
- [80] The unanimous shareholders' agreement expressly allowed Mr. Reis to incorporate Dupont for new business and to hire employees of VGA. But it forbade interference with VGA's completion of the Schedule "A" projects. Had Mr. Reis kept VGA people on the VGA projects and deferred his new projects until VGA was dissolved or had he used VGA employees only when not needed for Schedule "A" projects, conflict of interest was not inevitable. In my view, the "no interference" clause precludes a conflict of interest by ensuring that Dupont could not take steps that negatively impacted VGA's ability to complete its Schedule "A" jobs.
- [81] I would not interpret the unanimous shareholder agreement as implicitly allowing Mr. Reis to act in conflict of interest. This is prohibited by s. 134 (3) of the *OBCA*.

- [82] I do not need to find that Mr. Reis acted in bad faith or actively tried to usurp the business. It is tempting to do so given that it is very difficult to attribute an innocent explanation to the confluence of missteps he took in management of VGA under the unanimous shareholders' agreement. There is no innocent explanation for the failure to pay employee withholdings and taxes. Being busy is not an excuse for management to fail to instruct bookkeepers and the company's accountants to get the books in order for more than a year right through to the hearing before Penny J. When coupled with Mr. Reis ignoring multiple written demands for disclosure of financial information from Mr. Surace and his accountant, Mr. Reis's conduct sheds light on the rationale for the inclusion of the obligation to make disclosure "without concealment or suppression" set out in the unanimous shareholder agreement.
- [83] I find Mr. Reis liable therefore for oppression and breach of his fiduciary duties. He violated Mr. Surace's reasonable expectations effecting a result that unfairly prejudiced Mr. Surace. Instead of VGA having \$26 million in revenue and winding up, Mr. Surace faces a failed company and personal liability to the tax man due to Mr. Reis's mismanagement and violation of the agreement designed to assure both sides a smooth succession of the business.

Remedy

- [84] I am not prepared to grant damages on a project-by-project basis in this proceeding based on the Interim Receiver's assumptions about payroll and profit margins. Neither do I think that doing so is an appropriate manner of compensating Mr. Surace for the prejudicial effects caused to him by Mr. Reis.
- [85] The parties entered into what appears to be a very sensible agreement to transmit the business to Mr. Reis. There was \$26 million in revenue available to VGA and Mr. Reis agreed that to be freed from sharing the business with Mr. Surace, he would cause VGA to finish those jobs.
- [86] Instead of doing what he agreed to do, Mr. Reis managed Dupont to interfere with VGA's ability to finish the Schedule "A" jobs. He comingled their employees and books and records. At the same time, he took steps like running up tax arrears and failing to keep proper accounts that ultimately led to VGA failing and precluding the unravelling of its losses.

- [87] There is no realistic, affordable way to conduct a separate assessment of loss of profit on each project while trying to figure out (without detailed records) which employees of VGA ought to have been working on each project rather than working on Dupont work at the same time.
- [88] The nature of Mr. Reis's wrongdoing precludes an efficient and affordable approach to assessing damages for VGA's loss of profit in my view.
- [89] At its most basic level, what Mr. Reis did was accelerate the development of Dupont to the prejudice of VGA. As discussed above, for example, Dupont's gross profit margin for its first two financial statements periods is so out of whack to lead inexorably to the conclusion that it was billing employee time to VGA. I note that the Receiver adopted a 25% expectation of profit on the Strachan project based on historic records. Mr. Reis objects to even that amount as too high. The parties agreed that 20% was the profit expectation on VGA's three remaining contracts assigned to Dupont. Yet the gross profit of Dupont in its first two reporting periods of 40% and 50% lay bare its usurpation of labour at the expense of VGA to obtain results to which it was not entitled in those periods.
- [90] Drawing an analogy from the law equitable breach of confidence, Mr. De Sanctis submits that Mr. Reis obtained an illicit springboard for Dupont by breach of his fiduciary duties to VGA. I agree. Dupont started earlier than it ought to have started and obtained massive profit margins by using VGA labour and funding, all while interfering with VGA's ability to complete the Schedule "A" jobs.
- [91] In my view, the remedy that best compensates Mr. Surace for the oppression he suffered and the breaches of fiduciary duties that VGA suffered is for Dupont and Mr. Reis to be ordered to disgorge the profits made during the time period in which Mr. Reis was acting in conflict of interest to benefit Dupont.
- [92] Dupont's financial statements show that for the eight-month period ending June 30, 2023, Dupont reported net income of \$180,399. For the year ending June 30, 2024, its profit was \$2,067,929. Mr. De Sanctis relied on these numbers in his submissions on disgorgement. No one for Mr. Reis suggested that Dupont's compilation financial statements were inaccurate or required adjustment to account for GAAP accruals that might not otherwise fairly be considered as part of profit for disgorgement purposes.

- [93] This is a fitting case for the remedy of prophylactic disgorgement. *Extreme Venture Partners Fund I LP v. Varma*, 2021 ONCA 853 (CanLII) at paras. 111 to 113. The focus is not on Mr. Surace’s losses but on Mr. Reis’s gains.
- [94] The law takes a strict view that a fiduciary should not profit from his or her breach of duty even if the beneficiary suffers no loss. Here the fact is that VGA (and therefore each of Messrs. Surace and Reis indirectly) suffered loss by Mr. Reis’s oppressive acts and breaches of fiduciary duties. The quantum is hidden and perhaps unknowable due again to Mr. Reis’s failure to fulfil his fiduciary duties to VGA and his contractual duty of transparency to Mr. Surace.
- [95] By extending the date for disgorgement past April 24, 2024 to Dupont’s fiscal year end of June 30, 2024, I also provide a very brief period in which Dupont ought to have been ramping up rather than billing on Schedule “A” jobs and billing on its own behalf for the labour of all VGA’s former employees.
- [96] It is important that the court deter breaches of fiduciary duties. The law requires fiduciaries to protect loyally those under their charge. It is not enough to require a faithless fiduciary to give back some of their gains. While I want to ensure that the relief granted addresses only the oppression committed under cases like *Nanef v. Con-Crete Holdings Ltd.*, 1995 CanLII 959 (ON CA), once the nature of the harm and remedy are decided upon, I would not measure the boundaries of disgorgement too finely.
- [97] In my view there is a clear causal relationship between the wrongdoing and the profits to be disgorged. Dupont should not have been operating at a 40% or 50% gross profit by misallocating payroll expenses to VGA. Neither should Mr. Reis have been taking VGA employees to do profitable work for Dupont while leaving VGA to abandon two projects and leave others unfinished. Moreover, Mr. Reis ought to have kept proper records as required generally by law and specifically by the unanimous shareholders’ agreement to avoid the quagmire of overlap and comingling of the two companies.
- [98] It is also appropriate and fit that both Mr. Reis and Dupont be jointly and severally liable. Mr. Reis is the principal actor who violated his fiduciary duties, the parties’ unanimous shareholders’ agreement, and their reasonable expectations that he would manage VGA to dissolution.

Dupont was the direct beneficiary of his breaches. It was wholly controlled by Mr. Reis and acted in concert with him as he committed the various wrongdoing found above.

- [99] Dupont is the vehicle where Mr. Reis chose to put the profits harvested because of his wrongdoing. Moreover, to the extent that Mr. Reis may have taken profits out of Dupont since June 30, 2024, the disgorgement should be enforced against him in any event.
- [100] While Mr. Surace moves for oppression relief, it is open to the court to rectify the oppression by granting relief essentially in favour of VGA without requiring a derivative action. *Royal Bank of Canada v. Hi-Tech Tool and Die Inc.*, 2012 ONSC 6979 (CanLII), at paras. 133 to 136.
- [101] I do not accept Mr. Surace's request that I remove him as a director of VGA *nunc pro tunc*. Mr. Surace does not wish to be personally liable for the failure of VGA to pay taxes and other government remittances.
- [102] Neither side has terminated the unanimous shareholders' agreement. Mr. Surace agreed to remain a member of the board of directors to oversee management as the business was wound down. Mr. Surace now faces the potential of significant liability to the government due to the misconduct of Mr. Reis running up arrears and failing to make transparent disclosure of the books. But Mr. Surace moved at a leisurely pace for someone concerned about financial suppression and concealment. He learned about tax and withholding arrears in mid-2023. He commenced this proceeding in August, 2024. He plainly did not want to take part in the day-to-day management of the business at this stage in his life. As a member of the board of directors, he was content to make repeated unanswered demands for information after knowing there was a potentially very serious problem.
- [103] Assuming that I could remove Mr. Surace as a director *nunc pro tunc*, I am not persuaded that doing so is appropriate to remedy the breaches of his reasonable expectations. He has his remedy in disgorgement. If Dupont and/or Mr. Reis pay the amounts ordered, there may well be enough funds in VGA to meet its liabilities in any event. If it cannot do so, I leave to other proceedings whether Mr. Surace engaged in sufficient due diligence as a director of VGA and whether he might have liability to the government.
- [104] Moreover, I would not consider making an order removing director to absolve him or her of accrued liability without giving notice to the CRA and other relevant taxation or regulatory authorities.

[105] I would not order punitive damages as now sought by Mr. Surace. They are not claimed in the Notice of Application. Mr. Reis had no fair opportunity to respond to the claim.

Two Very Late Affidavits Struck Out

[106] Mr. Reis delivered two late affidavits shortly before the date of the hearing. They were delivered after cross-examinations and beyond the time set in a scheduling order.

[107] At the hearing, I ruled that the two affidavits were struck out for reasons to be contained in this endorsement.

[108] Mr. Reis did not schedule a case conference to seek to extend the time for him to deliver material in the scheduling order. He just ignored it. Scheduling orders are orders of the court. They are not to be ignored. *UHA Research Society v. Canada (Attorney General)*, 2014 FCA 134 (CanLII).

[109] Mr. Reis did not bring a motion for leave to admit the evidence after cross-examination as required by Rule 39.02 (2). Mr. Stern submitted that it was in the interests of justice to admit the affidavits but with no evidence whatsoever of why that might be so.

[110] Under Rule 39.02 (2), the court may grant leave to deliver evidence after cross-examination, “where it is satisfied that the party ought to be permitted to respond to any matter raised on the cross-examination with evidence.” I was not shown any matter raised in cross-examination for which Mr. Reis sought to respond with his new evidence.

[111] It is not fair or proper for a party to just plunk last-minute material before the parties opposite and the court ignoring the *Rules* and a court order. I do not comment on the substance of the affidavits on purpose. If they are innocuous, then Mr. Reis does not need them. If they are consequential, then he ought to have followed the requirements for adducing late evidence.

It is Premature to Recognize Claims against VGA

[112] Mr. Reis argues for setoff and equitable setoff of numerous claims against VGA made by himself, his holding company, Dupont, and Mr. Reis’s spouse. I do not accept that it would be fundamentally unjust to require Mr. Reis and Dupont to disgorge their profits to VGA before

allowing them to make creditor claims back against the insolvent company.

- [113] The claims all relate to the ultimate distribution of funds in the dissolution of VGA. They are not answers to disgorgement. As noted above, if the payments are made and are sufficient, it may well be that VGA will be solvent and will be able to make not just debt but equity distributions to Mr. Reis and Mr. Surace. But if VGA is insolvent, I see no justice in allowing setoffs to be brought prematurely by the people who profited by wrongdoing that caused or contributed to the insolvency. Rather the priority and quantum available for their claims should be determined with all other claimants in the liquidation of VGA.
- [114] Mr. Reis submits that the failure of VGA and Mr. Surace to prioritize payments to him under Schedule “B” of the unanimous shareholders’ agreement establishes wrongdoing by Mr. Surace or an additional equitable consideration for Mr. Reis. I do not agree. The terms of the relevant clauses provide for payment of the sums acknowledged in Schedule “B” before dissolution of the company. The parties agreed to act reasonably to try to reduce the sums before then. Apart from the \$1,500 per week referred to in the schedule, there is no securitization or specific prioritization of the agreed payments. Mr. Reis has not identified a time when VGA had funds available to pay him. He will claim debt and then equity as part of a liquidation as he agreed and expected under the unanimous shareholders’ agreement.

Outcome

- [115] Accordingly, I order Mr. Reis and Dupont jointly and severally to pay the aggregate sum of \$2,248,328 to VGA as disgorgement of profits for oppression and breach of fiduciary duties.
- [116] The Interim Receiver will then report and seek to proceed with a liquidation in the normal course of a receivership proceeding.
- [117] If there are sufficient funds in the receivership to pay CIBC in full on the loan secured against the residence of Mr. and Mrs. Surace, no further relief is required. But, if the Interim Receiver advises that there are insufficient funds in VGA to pay CIBC in respect of the \$502,000 currently outstanding on the secured line of credit, then Mr. Reis is ordered to indemnify and pay to Mr. Surace 50% of any shortfall that he

and Mrs. Surace suffer on the loan and, if necessary, to raise the funds to do so by mortgaging his residence as he agreed to do.

- [118] Mr. Surace may issue a Certificate of Pending Litigation against Mr. Reis's residence to prevent him from selling or depleting his equity before the facts are known. I note that it will be Mr. Reis's own disgorgement payments with Dupont that will effectively determine then need for further security on Mr. Reis's house.
- [119] The parties may deliver written submissions on prejudgment and post-judgment interest, the costs of this proceeding, and the allocation of the costs ordered by Penny J. on October 22, 2024.
- [120] Costs submissions shall be no longer than 1,250 words. Pages shall be double-spaced with normal margins printed in at least 12-point type (including footnotes, if any). The parties shall each deliver Costs Outlines with their submissions. They may also deliver copies of any offers to settle on which they rely for costs purposes.
- [121] The Applicant's submissions shall be delivered on or before April 24, 2026. The Respondents' submissions shall be delivered on or before May 8, 2026.

FL Myers J

Date: April 15, 2026