CITATION: Wegmart Ltd. v. Meier, 2026 ONSC 2012
DIVISIONAL COURT FILE NO.: 853/25
DATE: 20260414

2026 ONSC 2012 (CanLII)

ONTARIO

SUPERIOR COURT OF JUSTICE

DIVISIONAL COURT

MATHESON, LEMAY & SCHRECK JJ.

BETWEEN:	)	
WEGMART LTD., WALTER LIBBY AND GORDON LIBBY Appellants	)	*Kyle C. Armagon*, for the Appellants
– and –	)	
LEEANNA MEIER AND JOANNE LIBBY Respondents	)	*Patrick J. Monaghan and Emily Lum*, for the Respondents
	)	**HEARD at Toronto:** April 2, 2026

REASONS FOR DECISION

Matheson J.:

[1] Walter and Gordon Libby appeal from the decision of Schabas J. dated September 9, 2025 (the Oppression Decision) and the related decision dated November 13, 2025 (the Costs Decision). The application judge granted the oppression application brought by the appellants' sisters Leeanna Meier and Joanne Libby to enforce their rights as shareholders of Wegmart Ltd. under the Ontario *Business Corporations Act*, R.S.O. 1990, c. B.16 (the "*OBCA*").

[2] The application judge removed Walter and Gordon as directors of Wegmart, appointed Leeanna and Joanne as directors, and appointed auditors to prepare audited financial statements for the 2018 financial year onward. The application judge dismissed Walter and Gordon's cross-application seeking a winding-up of Wegmart and granted Leeanna and Joanne costs on a substantial indemnity basis.

[3] The findings of oppression against the appellants are not challenged on this appeal. The appellants challenge the denial of a winding up, the Costs Decision, and they also seek to raise a limitation period defence that was not raised below. The appellants seek to rely on the limitations defence to reduce, by two years, the years for which audited financial statements must be prepared.

Background

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[4] The application judge summarized the background succinctly as follows:

> [1] Leeanna Meier and Joanne Libby are sisters. …Walter Libby and Gordon Libby, are their brothers. Together, they have each owned 25% of … Wegmart Ltd. since January 4, 2018, when their father, Walter Libby Senior, died.
>
> [2] Walter Libby Senior built a successful HVAC and sheet metal business, Southern Supplies Ltd., which he operated with his sons, Walter and Gordon. The sons were also minority shareholders of Southern Supplies, each with a 10% interest. Southern Supplies operated, and continues to operate, out of two properties owned by Wegmart, located in Oshawa and Belleville.
>
> [3] When Walter died, he left Wegmart to his four children in equal parts. However, he left Southern Supplies to his two sons alone.
>
> [4] Since January 4, 2018, Walter and Gordon have been the only directors and officers of Wegmart. Leeanna and Joanne bring this application pursuant to the [*OBCA*] to enforce their rights as shareholders of Wegmart, alleging that their brothers have breached their duties as directors and have engaged in oppressive and unfairly prejudicial conduct towards them.
>
> [5] The gist of the allegations is that Walter and Gordon have failed to declare and avoid conflicts of interest arising from being shareholders, directors and officers of Wegmart's tenant, Southern Supplies, that they have failed to call shareholders meetings of Wegmart on notice to [Leeanna and Joanne], that they have concocted self-serving resolutions and minutes concerning the business of Wegmart, and that they have failed to obtain annual audited financial statements. [Leeanna and Joanne] also claim that the Respondents have breached their fiduciary obligations owed to Wegmart by preferring their own interests by failing to obtain market rent for the Wegmart properties and by instructing Wegmart's accountants to prepare financial statements that are incorrect and unfairly benefit [Walter and Gordon].

> [6] [Leeanna and Joanne] seek, therefore, an order removing [Walter and Gordon] as directors and appointing them as directors of Wegmart, and an order appointing auditors to prepare audited financial statements to ensure the accounting of Wegmart is regularized, accurate and reliable.
>
> [7] [Walter and Gordon] do not contest many of the allegations of unfair and oppressive conduct, although they assert that their sisters have been represented by counsel for much of the time since 2018 when their father died. Additionally, they assert that Southern Supplies has agreed to pay rent, which has been booked as a receivable on Wegmart's financial statements (though not every year), although no rent has been paid. Instead, [Walter and Gordon] have commenced an Application against Joanne and Leeanna… seeking an order to wind up Wegmart pursuant to s. 207(1)(b)(iv) of the *OBCA*. The brothers assert that the animosity between the siblings is irreparable and that Wegmart cannot continue under its present ownership structure.

[5] The oppression application by Leeanna and Joanne was commenced in 2023, and the cross-application for a winding up in 2024. Considerable evidence was put forward including expert evidence. Although Walter and Gordon did not admit the allegations, by the time of the hearing in 2025, the application judge noted that they ultimately did not seriously dispute the allegations of oppression.

Oppression Decision

[6] The application judge found oppression under s. 248(2) of the *OBCA*, as follows:

(1) Walter and Gordon acted as directors of Wegmart while failing to declare conflicts of interest arising from their ownership of Southern Supplies. By not collecting rent from Southern Supplies, they preferred Southern Supplies' interests over the interests of Wegmart in breach of ss. 132(1)(b) and 132(5) of the *OBCA*.

(2) Walter and Gordon prevented Leeanna and Joanne from being involved in the affairs of Wegmart by failing to call annual shareholders meetings as required by s. 94 of the *OBCA*. They ignored requests by Leeanna and Joanne to call meetings or provide information about Wegmart.

(3) Instead, Walter and Gordon created Minutes of shareholders meetings that did not take place and prepared resolutions purporting to have been passed by all the shareholders. There were also issues in the financial statements which Leeanna and Joanne questioned and had not been subject to approval.

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(4) Walter and Gordon failed to obtain audited financial statements for Wegmart, which, in the absence of a waiver by Leeanna and Joanne, were required under ss. 148-149 of the *OBCA*.

[7] The application judge granted the relief sought by Leeanna and Joanne and refused to order a winding up of Wegmart. On the winding up issue, the application judge considered relevant cases and noted that Walter and Gordon had created the circumstances that they relied on to say that there were irreconcilable differences. They ran Wegmart while in a conflict and failed to abide by the requirements of the *OBCA*. The application judge noted that wind ups are generally a last resort and found that "[i]nstalling new directors and obtaining audited financial statements… may provide a path forward."

[8] **Costs Decision:** The application judge agreed with Leeanne and Joanne's request for substantial indemnity costs and, having regard for the objectives of costs and the factors to be considered in the exercise of his discretion, found costs payable of $231,878, all inclusive.

Issues and Standard of Review

[9] The appellate standard of review applies to this appeal under s. 255 of the *OBCA*. As set out in *Housen v. Nikolaisen*, 2002 SCC 33, the standard of review is correctness for questions of law, palpable and overriding error for questions of fact and palpable and overriding error for questions of mixed fact and law except that extricable questions of law are reviewed for correctness.

[10] The appellants submit that the application judge erred as follows:

(i) in refusing to order the winding up of Wegmart; and,

(ii) in granting substantial indemnity costs.

[11] The appellants also submit that paragraph 9 of the order, requiring the preparation of auditing financial statements commencing with the 2018 financial year, should be changed to commence with 2020 to account for a two-year limitation period. The limitation period argument was not raised before the application judge.

Winding Up

[12] There is no issue that the remedy of a winding up is discretionary, as set out in s. 207 of the *OBCA*. The appellants submit that the application judge erred in failing to order a winding up due to the animosity between them and their sisters. More specifically, they submit that the application judge erred in relying on the decision in *Animal House Investments Inc. v. Lisgar Development Ltd.* (2007), 87 O.R. (3d) 529 (S.C.), aff'd (2008) 237 O.A.C. 261 (Div. Ct.).

[13] The application judge cited the above decision for the proposition that "quarrelling and incompatibility even to the point of a breakdown of the personal relationships between the

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shareholders of a private company, are not, by themselves sufficient grounds for an equitable winding-up of the corporation."

[14] The appellants submit that *Animal House* is distinguishable. Yet *Animal House* also arose from a dispute among family members who were the shareholders of two corporations. Further, it was the family member who precipitated the conflict between them who then applied for the winding up. It was in that similar context that Justice Wilton-Siegel addressed the role of irreconcilable differences. The factual differences do not justify a conclusion that the application judge improperly applied the reasoning in *Animal House*.

[15] The application judge not only relied on the above principle from *Animal House* but also considered other relevant principles and authorities regarding the remedy of a winding up, including the following:

(i) The "court is to use a scalpel to tailor carefully the relief ordered to do no more than is necessary to remedy the oppressive conduct. The court is not wielding a battle axe to cleave the parties": *Basegmez v. Akman*, 2018 ONSC 812 (Div. Ct.), at para. 8;

(ii) A winding up is an equitable remedy and the court will not reward those who come to court with unclean hands: *790668 Ontario Inc. v. D'Andrea Management Inc.*, 2017 ONCA 1019, at para. 14.

(iii) The remedy of a winding up is only considered as a last resort when other less drastic remedies will not suffice: *Basegmez*, at para. 8.

[16] The application judge made no appealable error in the exercise of his discretion to refuse a winding up. The application judge found that the sisters reasonably expected to see Wegmart operated in a fair and business-like manner and that the remedies they sought may assist in moving to that result. The appellants are attempting to reargue the facts to seek a winding up, without showing either a legal error or palpable and overriding error in the application judge's exercise of his discretion. This ground of appeal fails.

Costs

[17] The appellants submit that the award of costs is simply too high to be reasonable because they were awarded on a substantial indemnity basis, because the time spent was excessive, and because the disbursement for expert evidence should not have been permitted.

[18] The appellants submit that substantial indemnity costs were not warranted because the only contentious issue was the winding up and there was no evidence that the application for a winding up was brought with malice or ill intent despite the application judge's findings.

[19] The application judge considered the failed request for a winding up when determining costs and also properly considered the sisters' application. The appellants have not pointed to a legal error in the application judge's review of the relevant legal principles.

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[20] The application judge recognized that substantial indemnity costs are exceptional but can arise from conduct that rises to the level of being worthy of sanction, citing *Davies v. Clarington*, 2009 ONCA 722. The application judge found that the conduct of the brothers was reprehensible. He noted that although the allegations of oppression were not seriously disputed at the hearing, the sisters were forced to bring their application and litigate it through to the hearing. Further, the sisters' attempts to settle were rebuffed. The application judge found that the brothers opposed everything, effectively stonewalled, and even made their unwarranted cross-application for a winding up. The appellants have not shown a basis to interfere with these findings of fact or to interfere with the decision to award costs on a substantial indemnity basis.

[21] Moving to the other issues raised regarding the quantum, the appellants point to the time spent and the amount of the disbursement permitted for the expert evidence, repeating submissions made to the application judge.

[22] The application judge addressed these issues in his reasons for decision, including the time spent and the onus on the sisters to prove their oppression claim. He took into account the brothers' lower bill of costs. He noted the complexity of the matter and the length of the litigation. He made no appealable error in doing so.

[23] With respect to the disbursement for experts, the appellants submit that the expert evidence was irrelevant as shown by the lack of any reference to it in the Oppression Decision. However, its significance was explained in the Costs Decision. The application judge found that the expert evidence was a necessary part of the sisters' investigation, identifying irregularities in the financial records, including incomplete information and the failure to record rent, among other facts, all of which informed the application judge's finding of oppression.

[24] This ground of appeal fails.

Limitation Period Defence

[25] The appellants seek to raise a two-year limitation period argument for the first time on appeal. The respondents object.

[26] This new argument relates to one remedy only – the order to produce audited Wegmart financial statements for the financial years ending December 31, 2018, and forward. The oppression application was commenced in 2023. The appellants submit that the time period for audited statements should begin with the 2020 financial year, for which audited statements should have been prepared in 2021, not the 2018 financial year.

[27] The appellants submit that they meets the test for this Court to consider a new issue on appeal, as set out in *R. v. Reid*, 2016 ONCA 524.

[28] As set out in *Reid*, at para. 39, the general rule is that courts of appeal will not permit an issue to be raised for the first time on appeal. The decision regarding whether to grant leave is discretionary. The appellants submit that we should grant leave because the failure to raise the

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issue at the application hearing was not tactical, the evidentiary record is sufficient, and that it would not result in a miscarriage of justice.

[29] To explain their timing, the appellants point to the decision of the Court of Appeal in *Lagana v. 2324965 Ontario Inc.*, 2025 ONCA 607, released shortly after the hearing before the application judge in August 2025 (although before the Oppression Decision). However, the appellants' argument overlooks a key aspect of the timing. In the above appellate decision, the Court of Appeal upheld the decision of the Divisional Court, 2024 ONSC 953, released more than a year earlier. It was plain from the Divisional Court decision that the two-year limitation period applied to a claim for compliance with the obligation in the *OBCA* to produce audited financial statements. The appellants' timing explanation is not persuasive.

[30] On the adequacy of the evidentiary record, the appellants submit that all that is needed in the fact that the audited financial statements were not prepared. I disagree. First, the record before this Court does not even indicate when the sisters' status as shareholders of Wegmart was actually registered after the death of their father in 2018. The record only shows that when they were registered as shareholders, which was effective the date of death. Nor does the record have evidence of when the audited financial statements for 2018 ought to have been completed, resulting in the breach that would become the presumptive date for the commencement of the limitation period.

[31] The respondents also raise discoverability, submitting that they would have put forward evidence to displace the presumptive date, as permitted by s. 5(1) of the *Limitation Act*, *2002*, S.O. 2002, c. 24, Sch. B. In response, the appellants submit that the Court of Appeal in *Lagana* decided that discoverability does not apply. The appellants could not point to any reasons of the Court of Appeal that make that significant decision. The reasons for decision say nothing about discoverability, nor does the decision of the Divisional Court. Furthermore, the Superior Court decision under appeal in *Lagana* expressly noted that the limitation period commenced on the date on which the claim was discovered: 2022 ONSC 7286, at para. 25. So it appears that discoverability was before the court at that level. I am not persuaded that *Lagana* rules out the possibility that discoverability may apply.

[32] Nor am I persuaded that the evidence in the appeal record before this Court is sufficient or that granting leave would not result in a miscarriage of justice. Having regard for all the relevant principles, I would not exercise my discretion to permit this new issue to be raised in this appeal.

Appeal Decision

[33] I would therefore dismiss this appeal, with costs to the respondents in the agreed amount of $35,000, all inclusive.

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Justice Matheson

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I agree ____________________________________

Justice LeMay

I agree ____________________________________

Justice Schreck

Date: April 14, 2026

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