

CITATION: Gholipour v. Rezaei, 2025 ONSC 245
COURT FILE NO.: CV-17-133382
DATE: 20250114

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:)
)
GASHTASEB GHOLIPOUR)
) *Hossein Niroomand* for the Plaintiff
Plaintiff)
)
– and –)
)
SAEID VAHID REZAEI and PERSIA)
BAKERY & KABOB) No one appearing for the Defendants
Defendants)
)
)
)
)
) **HEARD:** January 8, 2025

2025 ONSC 245 (CanLII)

REASONS FOR JUDGMENT

C. BOSWELL J.

[1] The plaintiff sues for damages for breach of a shareholder agreement. The trial was originally scheduled for the September 2024 Central East Civil Trial Sittings. The defendants sought and obtained an adjournment, on consent. The adjournment came with terms. First, the defendants were to deliver all of their affidavits in chief¹ by September 30, 2024. Second, the trial was to proceed in the January 2025 trial sittings, peremptory on the defendants. It was called to proceed January 8, 2025.

[2] The defendants did not deliver their affidavits in chief by September 30, 2024, or at all. They did not appear at the trial. Their lawyer advised that he has not been able to reach Mr. Rezaei for months and requested an order removing him as counsel of record. I granted his request. The trial proceeded in the absence of the defendants.

¹ At the judicial pre-trial on June 19, 2024, RSJ Edwards ordered that all evidence-in-chief would be given by affidavits. All affidavits were to be served by August 15, 2024. The defendants failed to meet that deadline.

[3] For the brief reasons that follow, I am satisfied that Mr. Rezaei breached the parties' shareholder agreement and that the plaintiff is entitled to damages in the amount of \$177,130.75 plus interest and costs.

Overview

[4] The plaintiff met the defendant, Mr. Rezaei, serendipitously. The plaintiff and his wife were out grocery shopping when they noticed a nearby bakery under construction. They walked over to take a look. In doing so, they met Mr. Rezaei and his wife, who were both visibly upset at the time. The cause of their upset, they said, was a lack of funding to complete the development of the bakery.

[5] Mr. Rezaei told the plaintiff that he had invested \$130,000 in the business and needed \$40,000 more to get it up and running. He had run out of funds, as had his business partner, Fatemeh Ghaffari.

[6] The plaintiff made some further inquiries of both Mr. Rezaei and Ms. Ghaffari and decided he would invest in the business. He bought Ms. Ghaffari's 50% shareholding interest in the company, then known as Tasty Café and Bakery Corp., for \$66,000. He then funded the balance of the leasehold improvements and equipment purchases needed to get the bakery operational. Contrary to Mr. Rezaei's representation, a good deal more than \$40,000 was required for that purpose. Indeed, the plaintiff paid out \$177,130.75 to cover a variety of expenses prior to the opening of the bakery.

[7] The plaintiff and Mr. Rezaei entered into a Shareholders' Agreement on November 23, 2016 (the "S.A."). It provided that the plaintiff would be the president and secretary of the company, renamed "Persia Bakery and Kabob Inc." Mr. Rezaei was to be the vice-president.

[8] Paragraph 4.2 of the S.A. provided as follows:

4.2 The parties hereto, save for the Corporation, agree that they will at all times be faithful and honest to each other and do their utmost to further the interests of the Corporation. It is distinctly understood and agreed that the parties hereto shall work in harmony and each will be responsible for any loss to the property of the Corporation resulting from his/her own negligence.

[9] Paragraphs 4.11 and 4.12 set out each of the parties' respective responsibilities. Mr. Rezaei was to be responsible for baking, quality control, recruitment and training of employees, and preparing daily, weekly and monthly sales reports. The plaintiff was to be responsible for review and payment of all of the Corporation's bills, as well as reporting to the Canada Revenue Agency.

[10] The plaintiff deposed, and I accept, that the \$177,130.75 he advanced to get the business up and running was treated as a shareholder loan. He was, pursuant to s. 5.2 of the S.A., entitled to be repaid that amount, with interest at 9.5% per annum.

[11] The bakery opened on March 17, 2017. The parties' relationship deteriorated quickly after that for reasons outlined in the plaintiff's affidavit sworn August 23, 2024. As a result of a concern that Mr. Rezaei was conducting cash transactions in an effort to direct an unfair portion of the bakery's income to his own pocket, the plaintiff proposed to install a security camera in the business. Mr. Rezaei initially agreed to the installation of a security camera, but later balked. For reasons best known to him, he locked the plaintiff out of the business premises on May 2, 2017 and reported him to the police. At or about the same time, he removed the plaintiff's access to the business bank account.

[12] The plaintiff was left with no means of monitoring or participating in the day-to-day operations of the business or to take steps to protect his investment.

[13] Mr. Rezaei proved to be a poor business manager. He ran the business into the ground. It ceased operations in October 2017. The assets of the business were sold for \$110,000, but roughly half of that went to the payment of outstanding debts, including rent that Mr. Rezaei failed to pay during the period after the plaintiff was locked out of the business. There is presently \$56,692.00 remaining from the sale proceeds, which is being held in trust by the plaintiff's counsel.

The Plaintiff's Position

[14] The Statement of Claim is not a model of clarity. It recites a narrative but is not clear about the nature of the legal wrong asserted and the manner in which damages are calculated.

[15] According to the claim, the plaintiff seeks general damages of \$250,000 and punitive damages of \$200,000, though the claim to punitive damages was not pressed at trial. The legal entitlement to damages is somewhat vague in the claim. During submissions at trial, the plaintiff's counsel raised an oppression remedy argument and referred the court to the decision in *Scullion v. Munro*, 2016 ONSC 116. In my view, the plaintiff's entitlement to damages, if any, cannot be based on the oppression remedy provisions of the *Ontario Business Corporations Act* R.S.O. 1990 c. B.16. Those provisions were not cited in the claim and the claim was not framed as an oppression remedy proceeding.

[16] Reading the claim generously, this action is for damages for breach of contract, specifically the S.A. The plaintiff asserts that his exclusion from the business as of May 2, 2017 was a breach of the S.A. The plaintiff was entitled by that agreement, he submits, to participate in the daily activities of the business and to monitor and manage its banking. He was entitled to 50% of the profits of the business, which were to be regularly accounted for by Mr. Rezaei. And Mr. Rezaei was expressly required to be faithful to and honest with him, which he was not.

[17] The claim arguably frames damages as the diminution of value of the business from \$350,000 to \$110,000. No valuation evidence was tendered at trial, however. Instead, the damages sought are equal to the amount the plaintiff paid to fund the start-up of the business. The plaintiff submits that he was deprived the opportunity to recover those expenses when he was excluded from the operation of the business.

Discussion

Breach

[18] In the absence of any evidence from Mr. Rezaei, I accept the plaintiff's evidence that he was wrongfully excluded by Mr. Rezaei from the operations of the bakery. I agree that the wrongful exclusion constitutes a breach of the S.A., in particular s. 4.2 thereof.

Damages

[19] The calculation of damages is a little tricky. I am satisfied that the plaintiff has suffered a loss as a result of Mr. Rezaei's breach of the requirement to deal with him honestly and faithfully. Ordinarily, those damages would be calculated on an expectation basis.

[20] The plaintiff's expectation, of course, was that the bakery was going to be profitable, that he was going to be repaid the amounts he invested to get the business up and running, and that he would have earned future income from it. It is difficult, if not impossible, to prove those expectation damages, however, because of Mr. Rezaei's actions. It is unknown whether the business would have been profitable had it not been for Mr. Rezaei's breach.

[21] Our law recognizes that in some breach of contract cases, the injured party cannot prove expectation damages, or a loss of profit. In such cases, the plaintiff may elect to claim reliance damages. Reliance damages are premised on the fact that the plaintiff changed its position in reliance on the contract. In the case at bar, the plaintiff incurred substantial expenses in reliance on the contract and his entitlement to participate in the operation of the bakery. Reliance damages here relate to wasted expenditures. In other words, expenses the plaintiff would not have incurred had he known that contract would be breached and he would be excluded from the company. *See PreMD Inc v. Ogilvy Renault LLP*, 2013 ONCA 412, at para. 66. See also *2505243 Ontario Limited (ByPeterandPaul.com) v. Princes Gates Hotel Limited Partnership*, 2022 ONCA 859, at paras. 30-31.

[22] The plaintiff purchased his shares in the company prior to the S.A. being entered into. He does not seek to recover the price of those shares. He seeks only to recover the amount paid to get the business up and running, which he invested in reliance on the S.A. and on Mr. Rezaei's various representations.

[23] I am satisfied that the plaintiff incurred \$177,130.75 in start-up costs in reliance on the S.A. and his reasonable expectation, based on the S.A., that he would be an integral part of the day-to-day functioning of the business. Mr. Rezaei's breach resulted in the loss of those funds. I accordingly fix the plaintiff's damages – on a reliance basis – at \$177,130.75.

[24] I find that the plaintiff is entitled to be paid the net proceeds of the sale of the business, in the amount of \$56,692.00 and any accumulated interest, presently being held in trust, to offset his damages.

Interest

[25] I do not accept the plaintiff's assertion that he is entitled to interest on the damage award, both pre-judgment and post-judgment, at the rate of 9.5%. The damages do not reflect the corporation's failure to repay a shareholder loan, which is what would have triggered that interest rate.

[26] Instead, I fix pre-judgment and post-judgment interest at the rates fixed by the *Courts of Justice Act*, R.S.O. 1990, c. C.43. The plaintiff's claim was issued November 8, 2017. Pre-judgment interest for actions commenced in the fourth quarter of 2017 was 1%. To today's date, the total interest payable is \$12,738.86. Post-judgment interest will be payable at 4% from and after today's date.

Winding Up the Company

[27] The plaintiff asks that the court order that all of Mr. Rezaei's shares are to be transferred to him so that he might wind up the company. I am not able to grant that relief because, again, it was not sought in the claim. I am prepared to order that Mr. Rezaie be removed as a director of the corporation and authorize the plaintiff to take any action or sign any document necessary to wind up the bakery business. Reading the pleadings generously, that relief was sought at paras. 24 and 25 of the Defence to Counterclaim.

The Counterclaim and Crossclaim

[28] No evidence was tendered on the Counterclaim or Crossclaim. Both are dismissed.

Costs

[29] The plaintiff seeks its costs of these proceedings fixed, on a partial indemnity scale, in the amount of \$61,218.00 plus HST, plus disbursements of \$1,818.97. Having reviewed the plaintiff's Costs Outline, I am satisfied that these costs fall within the range of what is fair, reasonable and proportionate and the plaintiff shall therefore be entitled to its costs, fixed at \$70,995.31, all inclusive.

C. Boswell J.