CITATION: Dhaliwal v. Cheema, 2025 ONSC 382
COURT FILE NO.: CV-24-00713514-00CL and CV-24-00718363-00CL
DATE: 20250121

ONTARIO

SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST)

BETWEEN:

SUKHDEV DHALIWAL Applicant	)	*Rahool Agarwal, Philip Underwood and Annecy Pang*, for Sukhdev Dhaliwal (Applicant/Respondent)
– and –	)	
PARAMJIT CHEEMA, also known as PARAMJEET CHEEMA, HARCHAND DHALIWAL, SWARANJIT JHAJJ, WORLD WIDE CARRIERS LTD., WORLD WIDE ASG LOGISTICS INC., WORLD WIDE CARRIERS GROUP OF COMPANIES INC., 2029037 ONTARIO INC., WORLD WIDE ATLANTIC FREIGHT INC., WORLD WIDE TRANSPORT INC., WORLD WIDE TRUCK & TRAILER SERVICE LTD., WORLD WIDE CARRIERS PRIVATE LTD., WORLD WIDE CARRIERS US INC., POPULAR FREIGHT SYSTEMS INC., 87 MOUNTAINVIEW ROAD HOLDINGS INC., 90 GAYLORD ROAD HOLDINGS INC ., 200 EDWARD STREET HOLDINGS INC., JCD CARTAGE INC., 2613853 ONTARIO LTD., JCD UNIVERSAL PRODUCTIONS INC., JCD UNIVERSAL PRODUCTIONS PRIVATE LIMITED, JDC FINANCING INC., JDC LOGISTICS INC., JDC TRUCK & TRAILER SALES INC., WINNIPEG FAST FREIGHT LOGISTICS INC., WORLD WIDE TRUCK TRAINING ACADEMY INC., WORLD WIDE TRUCKLINE INC., WORLD WIDE LOGISTICS INC. and WORLD WIDE EQUIPMENT SALES INC. Respondents	)	*Max Muñoz, Josh Suttner and Sanj Sood*, for Paramjit Cheema, a.k.a. Paramjeet Cheema, Harchand Dhaliwal, Swaranjit Jhajj (Respondents/Applicants)

	)	
AND BETWEEN:	)	
	)	
PARAMJIT CHEEMA, also known as PARAMJEET CHEEMA, HARCHAND DHALIWAL and SWARANJIT JHAJJ	)	
Applicants	)	
	)	
– and –	)	
	)	
SUKHDEV DHALIWAL and WORLD WIDE CARRIERS LTD.	)	
Respondents	)	**HEARD:** October 30 and 31, 2024

KIMMEL J.

The Applications

[1] These two applications were heard one after the other. They involve a dispute between brothers and brothers-in-law regarding a successful trucking and logistics business operated through various private and closely held companies, which also have significant real estate holdings. This business was operated under the umbrella of the "World Wide Group of Companies", the primary operating company being World Wide Carriers Ltd. ("WWC" or the "Company" or "Corporation).

[2] The ownership application (CV-24-00718363-00CL) was heard first, over the first day and a half of the hearing. It is an oppression application in which Paramjit Cheema, also known as Paramjeet Cheema ("Paramjit"[1]), Harchand Dhaliwal ("Harchand"), and Swaranjit Jhajj ("Swaranjit") seek, among other things:

a. a declaration that the respondent, Sukhdev Dhaliwal ("Sukhdev"), is exercising, and/or is threatening to exercise, his powers as a director of the respondent WWC in a manner that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of the Applicants as directors, officers, and security holders of the Corporation;

[1] The parties are identified throughout this endorsement by their first names to avoid confusion between the two Dhaliwal brothers, Harchand and Sukhdev.

b. a declaration that the Special Meeting held on August 29, 2023, removing them as directors of the Corporation, was not lawfully convened and was not a properly called special meeting of the shareholders of the Corporation, and seeking certain interim (previously addressed by the court) and final orders, including:

    i. that any and all resolutions passed at the Special Meeting, and any measures taken by Sukhdev to implement those resolutions, are null, void and/or of no force or effect;

    ii. unwinding any measures taken by Sukhdev to implement the aforementioned resolutions;

    iii. restraining and/or enjoining Sukhdev from acting in accordance with any resolutions passed at the Special Meeting; and

    iv. an order restraining and/or enjoining Sukhdev from acting outside of the ordinary course of the Corporation's business,

c. a final order restraining and/or enjoining Sukhdev from taking any actions with respect to the ownership, business, or operation of the Corporation that are prejudicial to the rights and interests of the Applicants, including removing any or all of the Applicants as directors of the Corporation;

d. a declaration that they are each the beneficial owner of 25% of the issued and outstanding common shares of the WWC; and

e. an order directing WWC to forthwith issue share certificates to each of them, and to rectify the WWC shareholder register, to reflect them to each be holding 25% of the Corporation's issued and outstanding common shares.

[3] The original Notice of Application sought other relief, some of which has been rendered moot and is no longer being sought (e.g., the interlocutory relief and the request for the court to order the parties to enter into a Unanimous Shareholders' Agreement, which has been overtaken by the protocol that the parties have since entered into in connection with the buy-out application, discussed below).

[4] The buy-out application (CV-24-00713514-00CL) was heard second, over the second half-day of the hearing. It is an oppression application in which Sukhdev Dhaliwal ("Sukhdev") seeks an order (including related ancillary relief) requiring the others to buy him out of any companies in the World Wide Group in which he holds less than a 50% ownership, and that he buy the others out of any companies in which he owns 50% or more of the shares, to effect a complete separation of his interests from the others. A "counter" application was brought by Harchand, Paramjit, and Swaranjit in response to Sukhdev’s buy-out application (CV-24-00726084-00CL).

[5] Subject to the court’s determination of whether there should be a buy-out of five specific real estate holding companies that are the subject of the buy-out application that remain in dispute, the

parties have reached an agreement in the course of these (and other) ongoing proceedings on a protocol that will govern the separation and buy-out of their respective interests in the companies comprising the World Wide Group (the "Protocol"). The parties seek the court's determination in the buy-out application of whether there should be a buy-out of the following five real estate companies (in which event, they have agreed that the Protocol will apply to these companies as well, with certain provisions in place to allow for properties to be sold or refinanced, if needed to fund the buy-out):

a. 2029037 Ontario Inc. ("202 Ontario"), which owns properties in Etobicoke and Bolton, Ontario;

b. 87 Mountainview Road Holdings Inc. ("87 Mountainview"), which owns a property in Winnipeg;

c. 90 Gaylord Road Holdings Inc. ("90 Gaylord"), which owns a property in St. Thomas, Ontario;

d. 200 Edward Street Holdings Inc. ("200 Edward"), which also owns a property in St. Thomas; and

e. World Wide Atlantic Freight Inc. ("World Wide Atlantic"), which owns a property in New Brunswick and carries on a trucking business in that province.

[6] The determination of the above issues in the ownership application and buy-out application are described as the Immediate Dispute in the Protocol, that the parties agreed would be determined by the court at the October 30 and 31, 2024 hearing.

Summary of Outcome

[7] For the reasons that follow, the ownership application is granted. The buy-out application is also granted, but only insofar as the specific relief detailed above and at the end of this endorsement. The order is limited to the Immediate Issues that the parties agreed in the Protocol they would ask the court to determine.

The Evidence and Findings of Fact

[8] The relief sought in both applications is dependent upon disputed facts. The parties confirmed at the hearing that they are asking the court to make findings of fact and, if necessary, of credibility, based on the written record that they have developed. They have taken the time to develop this record and prepare their written and oral submissions over a lengthy period of litigation and are all desirous of the finality of decisions from the court now on the matters that were argued. I agreed to hear the applications on the basis of this joint request. I am satisfied that the necessary findings of fact can be made based on the evidentiary record before the court, even on points of controversy, and that it is in the best interests of all involved that I do so rather than insisting upon the presentation of *viva voce* evidence and the further delays that would entail.

[9] The records are voluminous and the written and oral submissions were detailed. All that was presented by the parties has been considered, even if not specifically mentioned in this endorsement. This background section contains the findings of fact derived from the record. Points of controversy are addressed in more detail where they are relevant to the ultimate findings and determinations, either in the general fact finding or in the later sections of this endorsement where they arise in the analysis.

The Start of the Business

[10] Harchand and Sukhdev are brothers. The Applicants Paramjit and Swaranjit are their brothers-in-law. The two brothers, Harchand and Sukhdev, began working together in a trucking business with another individual through a company that Sukhdev had incorporated in the spring of 2003 called ASG Carriers Ltd. ("ASG"). The Dhaliwal brothers parted ways with the other individual after about a year and invited their brother-in-law Paramjit to join them in business. The other brother-in-law, Swaranjit, was invited to join the business in 2005.

[11] All of these individuals are immigrants, and none have any post-secondary education. Only one of them finished high school. They have done well in their trucking and logistics business over the years, but they are not sophisticated business people.

Initial Capital Contributions to the Business

[12] Sukhdev has always been listed as the 100% shareholder of ASG (a company that still exists today, under a different name).

[13] Sukhdev testified that he established WWC in April of 2005 to hold the trucking business and he testified that the trucking business was transferred from ASG to WWC over the course of the next year. No transfer or purchase documents have been produced by any party. There is no evidence about whether there ever were any documents that recorded the transfer of the business to WWC. Sukhdev was the incorporator of both ASG and WWC and was the one who primarily instructed the lawyers who prepared the incorporating documents and the corporate records for these and other companies.

[14] Sukhdev acknowledges that when WWC was established in 2005, half of WWC's common shares were issued to Harchand, and Harchand was named as a director. WWC's corporate records reflect this. In 2005, Sukhdev and Harchand executed share certificates issuing them each half the shares; no share certificates were issued to either Paramjit or Swaranjit and they were not appointed as directors or officers of WWC at that time.

[15] Sukhdev says the shares of WWC issued to Harchand in 2005 were not reflective of any capital contribution Harchand had made. Sukhdev says he gave half the shares to his brother in 2005 and that his brother gave the shares back to him in 2010. The corporate share register currently shows Sukhdev as the 100% shareholder of WWC and he maintains that the corporate records accurately reflect the shareholdings of WWC and of each of the other companies in the World Wide Group. He

maintains that he contributed all of the capital in both ASG and WWC and denies that the others made any capital contributions to the business.

[16] The others disagree. They say that they each contributed cash and a truck that they owned to the business when they joined. Harchand says he does not know why shares in WWC were issued only to him and not to the others. Harchand, Paramjit, and Swaranjit all consistently attest in their affidavits that their contributions were for a beneficial ownership interest in ASG that they understood was carried over into WWC after it was incorporated in 2005 when the business was transferred over, even though this was not documented in writing. They no longer have any historic records of their cash or in-kind contributions to the business dating back to 2003 and 2005. However, their evidence about having made these contributions to the business was not challenged or contradicted.

[17] Sukhdev acknowledged when he was cross-examined that trucks owned by the others might have been used in the business and that they might have provided funds when they joined (and later), but he cannot recall any of the specifics of these contributions. He offers no plausible explanation for why they would have made these contributions of cash and assets if they were not equity buy-ins to the business. The evidence of Harchand, Paramjit, and Swaranjit that they made these contributions of cash and in kind in exchange for an equity interest in the business is the most plausible of possible explanations. They further attest that it was understood and agreed among them and with Sukhdev that, upon each of them joining the family business and making their respective contributions of cash and in kind, they would become an equal shareholder and partner in the business.

[18] The trucks they contributed continued to be used in the business while they remained operational. One of their trucks was in an accident after the transfer of the business to WWC in 2005 and the insurance proceeds were paid to WWC.

[19] Harchand, Paramjit and Swaranjit were not concerned about whether their interests were properly reflected in the legal paperwork and corporate records prepared at the time of WWC's incorporation or subsequently. This only became an issue in the spring and summer of 2023 when the relationship between them and Sukhdev started to fracture.

[20] I find, on a balance of probabilities, that Harchand, Paramjit, and Swaranjit did make contributions of equity to ASG at the times and in the manner that they have each attested to in their affidavits. No plausible explanation has been proffered for why they would have made these contributions if not for the beneficial ownership interests that they claim to have.

[21] In the absence of any independent evidence about the value of the business at the time of their respective contributions, about the precise value of their respective contributions, or about the value of what Sukhdev contributed, since these were four brothers/brothers-in-law starting out in a trucking business together and each making cash and in-kind contributions when they joined, I find that their contributions represented their respective buy-ins for an equal beneficial share of the business. In the absence of any evidence that they were bought out when the ASG business and assets were transferred over to WWC in 2005 (including the trucks that they each contributed and that continued to be used

in the business), I further find that all four of their equal beneficial interests in the ASG business were carried over into WWC at that time.

Registered and Beneficial Shareholdings

[22] The trucking and logistics business was expanded into at least fifteen other service and trucking companies in Canada and India as well as real estate holding companies, all operating under the umbrella of the World Wide Group of Companies (the "World Wide Group"). On paper, and over time, the shareholdings of these companies were not always reflected as 25% to each of the brothers and brothers-in-law.

[23] According to the corporate books and records, the current ownership structure of some of the companies relevant to this dispute is as follows:

a. WWC: owned 100% by Sukhdev;

b. 202 Ontario: owned 25% by each brother/brother-in-law;

c. World Wide Transport Inc.: owned 50% each by Swaranjit and Paramjit;

d. World Wide Atlantic Freight Inc.: majority-owned by Sukhdev with smaller shares held by the others;

e. World Wide Carriers US Inc.: owned by Swaranjit through another company;

f. JCD Cartage Inc.: owned by Swaranjit; and

g. World Wide Truck & Trailer Service Ltd.: owned 50% each by Harchand and Sukhdev.

[24] Sukhdev maintains that the current corporate books and records reflect and are determinative of the legal and beneficial shareholdings and interests of all parties in each of the companies within the World Wide Group; he does not claim to be or seek to be a shareholder of any company in which he is not recorded as such.

[25] The others maintain that they are all equal beneficial 25% shareholders of all of the World Wide Group companies, irrespective of what the corporate share registers may reflect today or may have reflected from time to time.

[26] When faced with an inconsistency between their own versions of events and what is recorded in the corporate records and formal share registers, each side attributes these inconsistencies or gaps to mistakes or oversights. These oversights or mistakes are attributed to the fact that this fairly large and complex business was being run by relatively unsophisticated principals.

[27] For example, Sukhdev and Harchand were identified as the two registered shareholders of WWC when it was incorporated. Their brothers-in-law were not identified on the share registry, despite having by that time made contributions in cash and in kind to the business, just as both Sukhdev and Harchand had done. Harchand, Paramjit, and Swaranjit say this was a mistake or oversight.

[28] The share register continued to identify Sukhdev and Harchand as the two 50% shareholders of WWC until 2015, even though documents were prepared by the Corporation's lawyers and signed by Sukhdev and Harchand in 2010 by which Harchand purported to transfer 50% of the shares in WWC to Sukhdev and to resign as a director and officer of WWC. Sukhdev says that this delay of approximately five years in updating the corporate records and minute books to reflect him as the 100% shareholder was a mistake or oversight.

[29] When Harchand and Sukhdev signed the paperwork for the transfer of shares in 2010, WWC had revenues of $10.2 million, gross profits of almost $3 million and shareholder equity of $2.65 million, according to its unaudited financial statements for 2010. There is no evidence that a valuation was done or that any money changed hands at the time of this share transfer, beyond the consideration of $10 reflected in the share purchase agreement that the Corporation's lawyers prepared and both Sukhdev and Harchand signed at that time.

[30] The lawyers prepared the paperwork to effect this transfer of shares and a purported release of all claims by Harchand. Harchand acknowledges that he signed the legal documents that he was given to sign even though he did not necessarily fully understand the rationale for them at the time (just as he did not understand the reason for the original 50/50 shareholding when he and Sukhdev were issued shares in WWC at the time that the Company was established). Harchand's signature on these documents was not witnessed or commissioned. Nonetheless, Mr. Gosel (the Company lawyer who prepared them) says that the documents were translated and explained to Harchand and that Harchand was told to get independent legal advice ("ILA"), but chose not to. This advice was not documented.

[31] While the authenticity of Harchand's signature on the documents is not challenged, I accept his testimony that he did not understand that he was giving up his beneficial ownership of the business (which had grown since his initial contributions were made) for no consideration by signing these documents. The understanding and agreement regarding the continued beneficial ownership of the four brothers/brothers-in-law existed before and continued after these documents were signed, regardless of whose name the shares of WWC were in.

[32] According to Sam Gill, an external consultant who served as the operations manager of WWC and the World Wide Group starting in 2008, this transfer was part of an elaborate scheme to manage a risk that had materialized at that time regarding the Ministry of Transportation ("MTO") licensing of plates for certain trucks that were essential to the World Wide Group's business. Mr. Gill explains in his affidavit that the common control and ownership of the more than 50 affiliates within the World Wide Group had put the MTO licences in jeopardy.

[33] Following a successful show cause hearing to avoid the cancellation of certain licences, Mr. Gill testified that he recommended that the Company, which owned the licenced trucks, have different ownership and management than the other companies, at least on paper. Mr. Gosal testified that he was unaware of the scheme that Mr. Gill described as being the rationale for this transfer.

[34] Harchand, Paramjit and Swaranjit did not refer to this scheme described by Mr. Gill in their Notice of Application for the ownership application issued in August of 2023, in which they asserted that they only discovered that the corporate records did not accurately reflect their shareholdings in the Company in 2023. However, when they filed their evidence in support of this application, the scheme was cross-referenced in Harchand's affidavit and Swaranjit's reply affidavit, both sworn in September 2023.

[35] They point to this scheme as one among many examples of situations in which the corporate records and share register of companies within the World Wide Group do not reflect the true equal beneficial ownership among the four of them. While this scheme may have been the original rationale for the formal transfer of shares from Harchand to Sukhdev, it does not appear that the scheme was ever fully implemented or relied upon to avoid future cancellations of trucking licences. The corporate records continued to reflect some common control and ownership of many of the companies within the World Wide Group.

[36] Sukhdev challenges the entire rationale for this scheme but also argues that it is illegal and therefore unenforceable, based on the rationale adopted by this court in *Modopoulos v. Hershberg*, 2021 ONSC 2025, at paras. 50-51. However, the others are not seeking to enforce the illegal scheme – but rather they are seeking to enforce a pre-existing oral agreement that the scheme purported to obfuscate.

[37] Sukhdev also relies upon a corporate resolution that was prepared by the lawyers and signed in 2020 by the four brothers/brothers-in-law as directors and Sukhdev as the only shareholder of WWC, and notarial certificates signed by the lawyer in 2021, to further reinforce the veracity of the corporate minute book and share register.

[38] The lawyer Mr. Gosal confirmed in his testimony that the corporate records he prepared and maintained reflected what he understood the ownership of WWC to be, and it was on that basis that he prepared and signed notarial certificates in 2021 for a potential transaction that was never completed, also indicating Sukhdev to be the 100% shareholder of WWC. Mr. Sharma, the Corporation's external accountant, similarly testified that he understood from these same corporate records and share register (prepared and maintained by the lawyers) that Sukhdev was the sole shareholder of WWC in 2019 when he was dealing with BMO, the Corporation's bank. The Corporation's records and share register that are the source of the information contained in these documents prepared in and after 2019.

[39] It is not surprising that the lawyers and other professionals engaged by the Corporation would rely upon the corporate records and share register of WWC for purposes of preparing legal

documents. No one is challenging that the corporate records and share register have, since 2015, identified Sukhdev as the sole shareholder of WWC.

[40] The issue that the court must contend with is the inconsistency between the oral agreement and understanding between the four brothers/brothers-in-law regarding their equal beneficial ownership and what was recorded in the Company's books and records and share register.

Oral Agreement and Understanding Regarding Beneficial Ownership of the World Wide Group

[41] Share certificates and entries in securities registers are presumptive proof of share ownership: *Ontario Business Corporations Act*, R.S.O. 1990, c. B.16 ("OBCA"), s. 266(3); see also *Glass v. 618717 Ontario Inc*., 2012 ONSC 535, 100 B.L.R. (4th) 35, at para 111. The presumption under s. 266(3) of the OBCA that the information recorded in the minute book of a corporation is evidence of the facts stated therein may be rebutted by evidence to the contrary.

[42] Corporate records play an important role in governance, are subject to a statutory obligation of accuracy, and are presumed to be accurate, absent compelling evidence to the contrary: see *Glass*, at paras. 109-112. An oral agreement and understanding regarding the beneficial share ownership is the type of compelling evidence that can rebut the presumption of share ownership.

[43] The court reviewed the jurisprudence on what "facts to the contrary" meant in 2012 in *Glass*. That jurisprudence remains instructive today as there are only a few cases that have considered this issue directly. Examples of evidence found to be sufficient to displace the presumption include:

a. Where it was admitted that no monies had been received from any of the original subscribing shareholders for their treasury shares: *Dunham and Apollo Tours Ltd. (No. 1)* (1978), 20 O.R. (2d) 3 (H.C.J.), at para. 14.

b. Where a minute book had been reconstructed and contained fabricated documents such that it could not be relied upon: *Beaudry c. 9050-8151 Quebec Inc.*, 2002 CarswellQue 2280 (C.S.), at para. 24. *Per* the Quebec court in *Beaudry*, "*Le Tribunal n'a aucun doute à l'effet que ce livre est un faux monté de toutes pièces suivant les instructions de Prince*", the person who was relying on the information in the minute book: at para. 24.

[44] Examples of evidence that was not found to be sufficient to rebut the presumption include:

a. Where there was evidence that the amount of consideration for the shares recorded in the company's financial statements was incorrect, but there was other evidence that sufficient consideration had been paid: *Hermans v. Three County Recycling & Composting Inc.*, 2000 CarswellOnt 3642 (S.C.J.), at paras. 99-110.

b. Evidence of an intention that a person would become a shareholder was not enough where the acts of that person were also consistent with explanations other than being

a shareholder and there was no record of them as a shareholder: *Anor Management Ltd. c. Brooklo Industries Ltd.*, [1978] C.S. 731 (Que. S.C.), at paras. 46-55.

[45] The issue in this case is whether there was an unwritten agreement and understanding between the four brothers/brothers-in-law that they would continue to be equal beneficial owners of WWC and its business that rebuts the presumption of the veracity of what is stated in the minute book and share register about the share ownership.

[46] Sukhdev acknowledges that there was an oral agreement and understanding that the four brothers/brothers-in-law were equal shareholders of 202 Ontario, even though the shareholdings in 202 Ontario were not always recorded as equal in the corporate records and share register of that company. Sukhdev says he incorporated 202 Ontario in 2003. The first property was purchased in 2005 for approximately $1.4 million at a time when Sukhdev was the sole shareholder.

[47] The others were not issued shares reflecting their 25% ownership interests in 202 Ontario until 2015. Sukhdev acknowledges that there was an oral agreement that they were all equal 25% beneficial shareholders. He instructed the corporate lawyer Mr. Gosal to update the corporate records in 2015 to reflect this in the context of the transaction that was being undertaken at that time by 202 Ontario to purchase a new property. There is a precedent between these parties and within the same World Wide Group of companies for the parties having an oral agreement about beneficial shareholdings that is not reflected in the corporate records or share register.

[48] 202 Ontario is a significant real estate holding company. The current estimated value of its holdings is in excess of $40 million. The properties held by 202 Ontario were purchased with funds advanced by the four brothers/brothers-in-law and funds from WWC's bank account. Sukhdev says these were funds from the individuals that simply flowed through WWC's bank account whereas the others say that WWC contributed to the purchase and its contribution was credited to the four of them because they were all equal beneficial shareholders of both companies, WWC and 202 Ontario, pursuant to the same understanding and agreement.

[49] Sukhdev says that the oral agreement of equal shareholdings was specific to 202 Ontario and the discrepancy in the corporate books and records was eventually rectified in 2015, which he contrasts with the situation for WWC where he says there was no such oral agreement and nothing to rectify.

[50] In contrast, Sukhdev points to legal documents that were prepared on three separate occasions between 2015 and 2019 that, if implemented, would have changed the ownership structure of WWC, as follows:

a. In April 2015, Sukhdev instructed WWC's lawyer, Mr. Gosal, to prepare a draft shareholders' agreement, to be signed if the Applicants later became shareholders. Mr. Gosal has confirmed the shares were never transferred and the draft agreement was never signed.

b. In August 2016, the parties asked WWC's accountant to prepare a proposed structure for joint ownership of the whole Group. He sent a slide deck to the parties showing the "current structure", under which Sukhdev is shown as the sole owner of WWC, and a proposed "new structure", under which an equally-owned company would own all the companies in the Group, including WWC. This plan progressed as far as the incorporation of the new holding company, but no further.

c. In 2018-19, Sukhdev consulted counsel at Miller Thomson to develop a plan for a potential restructuring. Miller Thomson prepared a chart reflecting the structure of the businesses, which showed Sukhdev as the sole shareholder of WWC. WWC's internal accountant (Mr. Bhatti) circulated it to the parties and asked them to write back if they wished to restructure its ownership. The Applicants never did.

[51] Sukhdev testified that he asked the others to contribute capital into WWC to participate in the various restructuring proposals that were considered, but they never agreed to do so and these restructurings were never implemented. He suggests that the fact that these restructuring proposals were prepared and never implemented is evidence that the others never became shareholders of WWC.

[52] The others maintain that they were already equal beneficial shareholders. They say that the same oral agreement applied to both 202 Ontario and WWC and the records were just never rectified for WWC. On their evidence, a further capital contribution from them would not have been required for any of the restructuring proposals. I agree. Contrary to what Sukhdev asserts, it was not inconsistent with the beneficial ownership of the others for them to have declined his later offers to them in 2015 and 2019 to make additional contributions to buy an ownership interest that they already held. The parties are not sophisticated and were, until the events that precipitated this litigation, close family members who conducted their business collectively in an informal manner. All of them testified to not reading or paying attention or understanding documents they signed or received at various times.

[53] Sukhdev argues this case is analogous to *Glass*, a case in which the court found that the presumption of the accuracy of the corporate minute book and share register was not rebutted; however, the similarities between the cases only go so far:

a. In both cases, the minute book containing the share register had been maintained by outside corporate counsel and the recorded shareholdings were consistent with signed corporate resolutions. However, in *Glass*, there was also a shareholders' agreement that corresponded with the shareholdings recorded in the share register. Moreover, the parties represented to outsiders that their shareholdings were as reflected in that agreement and in the corporate records to their advantage (e.g. for tax and matrimonial law purposes). There is no signed shareholders' agreement in this case and there is no evidence in this case of any direct third-party reliance upon the shareholdings reflected in the share register. While the scheme described by Mr. Gill might, if implemented, have closed the gap on this analogy (e.g., that it was intended that representations

would be made to third parties such as licensing authorities based on what was recorded in the share registers), there is no evidence about if, when or how that scheme was implemented. To the contrary, one of Sukhdev's challenges to the very existence of the scheme is that it was not implemented.

b. In *Glass*, the plaintiff asserted for the first time during a cross-examination in the course of the litigation that the corporate records were a façade maintained for tax purposes. The court did not find that late-breaking assertion to be credible or sufficient to rebut the presumption that the shareholdings were as indicated in the corporate records and share register in large measure because of its timing. Sukhdev analogizes this to the scheme that was described by Mr. Gill for the first time during this litigation to explain why in 2010 shares in the name of Harchand were transferred to Sukhdev. The delay in this case in mentioning the scheme was only between the notice of application in August 2023 and delivery of supporting affidavits in September 2023. It was part of the originating evidence and was not disclosed as an afterthought for the first time in cross-examination.

c. Other evidence in *Glass* about the proportions in which the parties held other jointly owned assets (some properties being held equally and some in the disproportionate shares contended for) and about the fluctuations and inconsistencies in the draws and management fees received by the parties over the years was found to be ambiguous and thus also not sufficient to rebut the presumption. Similarly, in this case the proportionate shareholdings of the four brothers/brothers-in-law reflected in the corporate records are not always consistent with what the parties say their proportionate shareholders are in certain of the companies in the World Wide Group, even when the agree about their shareholdings. Further, the parties have never done a proper accounting and reconciliation of their net contributions to and withdrawals from the business (which they have now agreed will be determined through arbitration because both sides contend that there have been net withdrawals and contributions that do not correspond with their respective shareholdings). There is evidence that is both consistent and inconsistent with Harchand, Paramjit, and Swaranjit being beneficial shareholders in WWC. Like in *Glass*, this evidence, sometimes supporting Sukhdev's and sometimes supporting the others, is neutral to and not determinative of the outcome in either case. Unlike in *Glass*, there is other evidence that is not ambiguous that is available to rebut the presumption in this case, however.

[54] Ultimately, to succeed the applicants must establish on a balance of probabilities that the presumption of ownership established by the corporate records has been displaced. What distinguishes this case from *Glass* is that there is unchallenged evidence that Harchand, Paramjit, and Swaranjit made contributions of cash and in kind to the business when they joined. That established their beneficial interests in WWC from the outset.

[55] Earlier in this endorsement, the court found that Harchand, Paramjit, and Swaranjit became beneficial owners when they joined the business and made their early capital contributions in cash

and in kind. That established their beneficial interests from the outset. Those interests can be maintained even if they are not reflected in the corporate records: see *Maloney v. Maloney*, [1993] O.J. No. 2724, at paras. 48-59.

[56] There was a meeting of the minds that they were buying-in when they joined: see *Anor*, at paras. 51-52. This finding is based on the evidence about their up-front cash and in kind contributions that Sukhdev does not challenge or refute.

[57] Sukhdev's argument that the issue of the beneficial ownership interests was effectively already decided in his favour when the request for a mandatory interlocutory injunction by Harchand, Paramjit and Swaranjit was declined is misplaced.

a. First, while the court did not order a return to the *status quo*, a partial injunction order was made. In the preliminary endorsement on the interlocutory injunction dated October 3, 2023, the court concluded that: "Sukhdev shall continue to be the sole shareholder, a director, and an officer of the Corporation until the Application is determined but Sukhdev and the Corporation must not act in a manner that is prejudicial to the Applicants or not in the best interests of the Corporation."

b. Second, there has been some new evidence tendered since that motion was argued (including the evidence about the dividends paid by WWC and the guarantees). The evidence is stronger now than it was then, and the parties have had more time to review and present it.

c. Third, the burden of proof on the injunction was different than it is now. As Perell J. explained in his April 28, 2009 decision in *Quiznos Canada Restaurant Corp. v. 1450987 Ontario Corp.*, [2009] CarswellOnt 2280, at paras. 39, 42, when deciding whether to grant an injunction, the court is concerned with the likelihood of success at trial, which must be demonstrated with a higher level of assurance (almost but not absolute certainty) when a mandatory injunction is sought. By contrast, the burden of proof to be applied in this decision is the lower balance of probabilities standard.

[58] Returning to the question asked at the outset of this section of the endorsement, I find that there was an unwritten agreement and understanding between the four brothers/brothers-in-law that they would continue to be equal beneficial owners of WWC and its business that rebuts the presumption of the veracity of what is stated in the minute book and share register about the share ownership.

Additional Context: Subsequent Events and the Conduct of the Parties

[59] The court may consider the parties' conduct over the years and consider whether there is evidence that the shares of the company were beneficially owned in a manner different than what is recorded in the company's books. That beneficial ownership, if established, can displace the information in the share register. The information recorded in a company's share register may not

reflect the parties' true intentions as to who owns the shares of the company: see *Evans v. Facey*, [2000] O.J. No. 2276, at para. 99.

[60] The management of the World Wide Group of companies and the financial dealings between the companies and between the brothers/brothers-in-law provide some additional context and reinforce the conclusion that the presumption of ownership based on what is reflected in the Company's share register has been rebutted.

[61] Harchand, Paramjit, and Swaranjit were, until 2023, part of the management team for the World Wide Group of companies. They were listed as registered shareholders of some companies in the World Wide Group. There is no evidence that Harchand's role (or the role of any of the others) in the management and operation of WWC and the World Wide Group changed in 2010 or 2015, or at any time until the events that occurred in 2023.

[62] The parties did not rely on the corporate records or share register to define their roles in the business. Until August of 2023, they all had senior management titles, had access to the management email account, and met regularly with WWC's internal and external accountants. The responsibilities for different aspects of the business were divided among the four of them:

a. Harchand was the Assistant Maintenance Manager and General Manager;

b. Paramjit was the Vice President Safety and Maintenance Manager;

c. Swaranjit was the Dispatch Manager and in charge of customer relations; and

d. Sukhdev handled the accounting, with the assistance of the internal accountants, and provided other oversight and administrative functions.

[63] They all had titles and positions with WWC and carried out their roles and functions on behalf of the various corporate entities within the World Wide Group.

[64] In early 2015, Harchand, Paramjit, and Swaranjit were appointed (or in the case of Harchand, re-appointed) as directors and officers of WWC by a resolution signed by Sukhdev. The parties have provided various explanations for why this was done. Sukhdev says it was done because he was travelling a lot at the time. The others say it was formalizing the roles they were already playing, and consistent with their continuing understanding of their equal ownership and management of and control over the business. None of the explanations tie back the evidence of Mr. Gill dating back to the concerns that emerged in 2010. Mr. Gill was not consulted about the corporate formalities that were implemented in 2015.

[65] Each of Sukhdev, Harchand, Paramjit and Swaranjit were, until 2023, paid a salary of $100,000 plus benefits per year, but they were not all paid by WWC. Paramjit and Swaranjit were paid by 202 Ontario, a real estate holding company owned by all four of them, and Harchand was paid by World Wide Truck & Trailer, a company in which he and Sukhdev were the only registered shareholders.

[66] The evidence about the financial dealings between the brothers/brothers-in-law and between the various companies in the World Wide Group is not complete. There do not appear to have been strict financial controls and funds appear to have flowed through the WWC bank account even when originating from or destined for other companies within the World Wide Group.

[67] Sukhdev claims he has contributed more on a net basis than the others have to the capital of WWC and that any contributions made by the others have been repaid and excess funds have been taken out by them, whereas the others claim that their initial contributions establish their equity interests and the accounting of contributions to and withdrawals from the business since then will be subject to a final reconciliation. The parties have agreed to arbitrate their dispute about who owes what to whom in 2025. That final accounting and reconciliation will not change their ownership interests.

[68] Given the incomplete records before the court on these applications, and that there will be an accounting and reconciliation at a later time, the court is not being asked on these applications to make any findings about the relative net contributions to the business and who may owe or be owed money. What is important for purposes of these applications is the simple fact that contributions were made and funds were paid out from time to time by and to all four of the brothers/brothers-in-law, even if they do not agree on the total amounts contributed and withdrawn by each one. They all acted and were treated like they were owners.

[69] Funds and other benefits were received by all four brothers/brothers-in-law and their family members under informal arrangements that were not always recorded or precisely characterized at the time of receipt. For example, there was a payment to all of them in 2016 ($21,250 x 4 = $85,000) that was characterized as a dividend in the financial statements and books and records of WWC but never formally declared (by a directors' resolution) as such. Sukhdev says that this was a bonus to the directors over and above the other personal benefits they were receiving for car payments, gas, and insurance, and not a dividend to shareholders. He asserts that all of the references to it being a dividend were in error.

[70] The four brothers/brothers-in-law provided (or were asked to provide) guarantees of WWC's indebtedness to WWC's bank. In the case of the Bank of Montreal guarantees, some of the indebtedness being guaranteed was also in respect of amounts owed by 202 Ontario to the bank. However, the guarantees were explicitly for the indebtedness of both companies. Life insurance policies were also taken out for all four of them, based on applications dated in December of 2015 that identified them each to be 25% owners of WWC. These are further examples of financial dealings consistent with the assertion that the four brothers/brothers-in-law are equal beneficial owners of both WWC and 202 Ontario (and the other companies in the World Wide Group).

[71] Sukhdev says he did not read the insurance applications when they were prepared and signed and, like the dividend cheques and recording of dividends on the WWC financial statements and books and records, this was an error. He suggests that the guarantees that the others were asked to provide over WWC’s indebtedness to its banks was to protect their livelihood as employees. I do not find these explanations to be credible or plausible.

[72] In March 2023 when Sukhdev was travelling, Harchand, Paramjit, and Swaranjit were asked (by an email with the subject line "Shareholder Contribution") to deposit $1 million each into WWC's bank account to demonstrate, for financing purposes, that the Corporation had available funds. These amounts were included in the WWC internal Due to Shareholder ledger that was prepared and circulated in June 2023 to all four of the brothers/brothers-in-law, as well as in the "updated" versions of this ledger that were prepared and produced during the course of this litigation. Sukhdev's explanation for this is that the funds the others contributed in response to this request came from other sources and were later repaid. That begs the question of how or why these other three could or would have been asked, and agreed, to arrange for the deposit of these funds for the benefit of WWC if they were not beneficial shareholders.

[73] The financial records of the various companies and internal accounting documents generally referred to the four brothers/brothers-in-law as the "shareholders" and WWC's own records often referred to shareholders (not just a single shareholder).[2] Since they were each registered shareholders of at least some of the companies in the World Wide Group, Sukhdev says that the term shareholders was used generically without differentiating between the companies. However, this general use of the term "shareholders" is also consistent with the beneficial shareholdings that Harchand, Paramjit, and Swaranjit claim to have held since WWC was established.

[74] There are also a number of examples of emails and documents provided by or on behalf of WWC to various third-party lenders, insurance brokers, lawyers, and public authorities that identify Sukhdev as the sole shareholder of WWC. It is accurate that Sukhdev was the sole registered shareholder of WWC when these statements were made. These communications are aligned with the corporate records and share register; but insofar as Sukhdev seeks to rely on them and the absence of any objection to them by the others at the time, they have to be considered in the context of all of the other communications and dealings internally when the others were referred to and treated as shareholders and owners.

[75] There has been no suggestion that the ownership structure of WWC and the World Wide Group was important to anyone other than the parties to these proceedings. The internal references

[2] Some of the records relied upon by Harchand, Paramjit, and Swaranjit originated from Mr. Bhatti, an internal bookkeeper who was not ultimately called as a witness. Sukhdev objects to the court considering the truth of the contents of any of this non-witnesses' communications, which Sukhdev maintains are improper hearsay and have not been properly proven (for example, December 20, 2019 email to external counsel in which Mr. Bhatti refers to all directors as the shareholders of each company, which was written at a time they were all directors of WWC). Despite objecting to any reliance upon Mr. Bhatti's emails for the truth of their contents, Sukhdev himself relies on emails sent by Mr. Bhatti for his own purposes. In any event, the written communications from Mr. Bhatti that Sukhdev objected to have not been relied upon in the determination of ownership. There is enough other evidence that supports the existence and persistence of the oral agreement of equal beneficial ownership of WWC and the other companies in the World Wide Group to rebut the presumption of ownership based on the share registers.

to all of them as shareholders were consistent with the position of Harchand, Paramjit, and Swaranjit that they were the beneficial owners, irrespective of what the register said. None of the brothers/brothers-in-law were or are sophisticated business persons and they were dealing with family members in a closely held business. I do not find it remarkable that they did not verify that their understanding of their business relationship was reflected in the formal legal documents until Sukhdev started treating them differently.

[76] The totality of the evidence overall and on balance favours the position of Harchand, Paramjit, and Swaranjit. They have established their equal beneficial ownership interests in WWC, taking into account:

a. Their initial capital contributions of cash and in kind (including key assets such as trucks) when they joined the business;

b. Their willingness to provide guarantees of indebtedness and make arrangements for injections of funds when required (even if repaid);

c. The roles and responsibilities in the management of the business that are inconsistent with them being mere employees;

d. the value placed on their roles and contributions through the life insurance applications (that also reflected of their respective 25% beneficial ownership interests);

e. the payment of "dividends" to each of the four brothers/brothers-in-law; and

f. the use of "shareholder accounts" for all four brothers/brothers-in-law.

[77] Each case is fact specific. These are some of the more salient factors that have led to the findings in this case. Factors similar to these were considered in earlier cases, although no one case is the same: see e.g., *Chahine v. 2305136 Ontario Inc*., 46 B.L.R. (5th) 188, at paras. 101-109; *Seferovic v. Seferovic*, 2019 ONSC 5023, at paras. 43-45; *Hrvoic v. Hrvoic*, 2021 ONSC 7537, at paras. 30, 42, and 59).

The Litigation

[78] There have been various court appearances and decisions and agreements between the parties in the lead up to the hearing of these applications. The litigation history provides some additional important background and context to the oppression claims that are to be decided.

The Existing Proceedings

[79] According to Sukhdev, various withdrawals and receipts by Harchand, Paramjit, and/or Swaranjit were the catalyst for the events that led to the complete breakdown in the relationship between him and the others. After Sukhdev confronted the others about what he considered to be

unauthorized withdrawals by them from the Corporation in 2022 and 2023, tensions increased. They in turn confronted Sukhdev about his purchase of a Lamborghini car with corporate funds. Litigation then ensued. Harchand, Paramjit, and Swaranjit commenced the ownership application. Sukhdev commenced the buy-out application (and the others responded with a counter-application to the buy-out application).

[80] As referenced earlier in this endorsement, there is another entirely separate proceeding dedicated to dealing with the accusations that each side has made against the other about improper withdrawals and payments out of the business.

[81] This web of a multitude of protracted and expensive proceedings and motions is an unfortunate and not uncommon occurrence in circumstances such as these when there has been a breakdown in family relationships in closely held private corporations. In these situations, it is often the case, as here, that the corporate records and historical conduct of the parties do not accord entirely with either side's version of the facts.

The Ownership Application and Interim Injunction Motion

[82] After Harchand, Paramjit, and Swaranjit had threatened to commence litigation to assert that they were equal shareholders in WWC, but before they had done so, Sukhdev convened a shareholder's meeting to pass a resolution removing them as directors of the Corporation on August 29, 2023. As the sole director, Sukhdev then proceeded to remove them as officers of the Corporation. They issued their Notice of Application (in the ownership application) after the meeting had been called, just hours before the meeting was scheduled to take place.

[83] Harchand, Paramjit, and Swaranjit originally asserted in their notice of application in the ownership application issued in August 2023 that they became concerned in June 2023 about the fact that the corporate records did not reflect their beneficial ownership interests in WWC as a result of positions that Sukhdev was asserting at that time, regarding his sole ownership and control of WWC. They say that is what led them to commence the ownership application when they did, in which they assert that they were beneficial owners of WWC throughout regardless of what the corporate records and share register says.

[84] Shortly after commencing the ownership application, Harchand, Paramjit, and Swaranjit brought an urgent motion for an interlocutory injunction (the "injunction motion"). Originally, they sought to stop the meeting from happening. However, once the meeting had taken place and the resolutions passed, the injunction became focused on undoing what Sukhdev had done at and after the August 29 meeting pending the determination of the ownership application. The injunction motion was heard on September 25, 2023.

[85] A company-wide email was sent out on August 31, 2023, to all employees advising them that Harchand, Paramjit, and Swaranjit had been removed as directors of WWC.

[86] In the span of less than a month, the evidentiary record created for that injunction motion included eight affidavits and transcripts from nine cross-examinations, including the examination of

the lawyer Mr. Gosal under Rule 39.03 of the *Rules of Civil Procedure*. That evidence remains before the court now but has been supplemented since then. The court concluded on the injunction motion that the Applicants had not established a strong *prima facie* case to be reinstated as officers and directors or for the corporate actions undertaken by Sukhdev (to remove them as directors and officers) to be unwound. The *status quo* of corporate governance of WWC at that time was maintained on the basis that Sukhdev had, and continued to have, fiduciary duties to act in the best interests of the Corporation and carry on its business in the normal course pending the determination of the ownership application.

[87] The preliminary endorsement on the interlocutory injunction dated October 3, 2023, concluded that: "Sukhdev shall continue to be the sole shareholder, a director, and an officer of the Corporation until the Application is determined but Sukhdev and the Corporation must not act in a manner that is prejudicial to the Applicants or not in the best interests of the Corporation."

[88] In the more detailed reasons on the interlocutory injunction released on November 27, 2023, the court further explained, at para. 22:

> I conclude that the Applicants would suffer irreparable harm if the Respondents are not restrained from exercising their powers including taking any measures with respect to the ownership, management, business, or operation of the Corporation, that are prejudicial to the rights and interests of the Applicants. However, I do not find that the Applicants will suffer irreparable harm if Sukhdev remains the sole shareholder, officer, and director of the Corporation until the Application is determined provided that the actions of Sukhdev and the Corporation are restrained including that business continues in the ordinary course.

The Breach Motion and the Access Motion

[89] After this injunction order was made, the business of WWC and the World Wide Group did not carry on in the normal course. Sukhdev introduced constraints and obligations on the day-to-day activities of Harchand, Paramjit, and Swaranjit. Further, certain benefits they and their family members had previously enjoyed (for example, in connection with company cars) were cut off. Sukhdev also began transferring funds between the World Wide Group of companies, including transferring funds out of at least two companies that the others were listed as the controlling shareholders of. WWC delayed payments of monthly carrying costs and overhead expenses that it had previously covered for 202 Ontario and other holding companies, impacting their cash flows.

[90] The parties were unable to come to an agreement on an appropriate market rent for WWC to pay for its continued occupation of premises owned by 202 Ontario. WWC complained that 202 Ontario was demanding unreasonable rent for the premises. It eventually moved to new premises, after which 202 Ontario was able to lease the premises previously occupied by WWC to a third party for more rent than it had been asking WWC to pay.

[91] After WWC's move to new premises, Harchand, Paramjit, and Swaranjit were locked out of the WWC offices and denied access to the WWC management email account through which they had always conducted business.

[92] While all of this was going on, Sukhdev incorporated a new company in India (Peel Logistics Pvt Ltd., ("Peel Logistics")) and re-directed work previously undertaken in India for WWC by one of the companies owned by the others (World Wide Carriers Pvt. Ltd. ("World Wide India")), to his new company.

[93] As a result of all of this, Harchand, Paramjit, and Swaranjit brought a further motion in December 2023 (the "breach motion") asserting that Sukhdev had breached the injunction order and was not carrying on in the ordinary course of business.

[94] While the breach motion was pending, Harchand, Paramjit, and Swaranjit brought a separate motion dealing with access to WWC's premises and records, that was denied. The April 29, 2024 endorsement of Wilton-Siegel J., at para. 17. included the finding that: "The undisputed evidence is that the [Respondents'] presence in the workplace has been disruptive. [They] do not deny causing an incident that involved police attendance at the Corporation's premises. As mentioned, they are not performing any employment functions. Instead, [they] have used their access to the former premises to interact with employees and parties dealing with the Corporation with a view to supporting their confrontation with [Sukhdev]."

[95] The motion dealing with alleged breaches of the Injunction Order and a further request for access to the WWC premises was eventually heard by Steele J. in June 2024 with reasons released on July 31, 2024: see *Cheema et al v. Dhaliwal*, 2024 ONSC 4271. The court concluded that:

a. In the face of the Injunction Order, Sukhdev made significant changes to how WWC operated, including cutting ties with World Wide India, a company which provided 70% of dispatch and other services to WWC, and one majority-owned by the Applicants. As a result, Sukhdev was found to have breached the Injunction Order.

b. The ongoing litigation between the parties and various actions taken by both sides had amplified the animosity between them. Given the level of hostility between them, it would not be prudent or safe to require Sukhdev to permit Paramjit, Harchand, or Swaranjit to attend at WWC's premises at that time. Steele J. particularly noted an incident in which a WWC truck was blocked while travelling on a public highway.

The Buy-Out Application

[96] While all of this was going on, Harchand, Paramjit, and Swaranjit removed Sukhdev as an officer and director of five real estate companies that they are the registered controlling shareholders of. They also changed the authorized signatories on the bank accounts for these companies to remove Sukhdev. They say that this was done as a precautionary measure because Sukhdev had transferred

funds out of these other companies' bank accounts after the litigation or threat of litigation and generally because of how Sukhdev had been conducting himself. Sukhdev relies upon his removal as a director of the real estate companies to support his oppression claim in the buy-out application.

[97] As referred to above, the parties have in the course of these proceedings agreed to a litigation Protocol that contemplates the court's determination of the part of the buy-out application that relates to the real estate companies.

The Oppression Remedy

[98] Both the ownership application and the buy-out application are brought under the oppression remedy section of the OBCA (s. 248). The applicable law for these oppression claims is generally agreed; it is its application to the facts that the parties are at odds over.

[99] To assess a claim of oppression, the court must answer two questions. First, does the evidence support the reasonable expectation asserted by the claimant? Second, does the evidence establish that the reasonable expectation was violated by conduct falling within the terms "oppression," "unfair prejudice," or "unfair disregard" of a relevant interest? See *BCE Inc. v. 1976 Debentureholders*, 2008 SCC 69, [2008] 3 S.C.R. 560, at para. 68. The complainant has the onus to establish both of these on the evidence.

[100] In assessing the reasonable expectations of the parties, the Supreme Court of Canada provided further guidance in *BCE* regarding the useful factors to consider in assessing the reasonable expectations of the parties in a given case, that include:

a. Commercial practice (e.g., a departure from normal business practices): *BCE*, at para. 73.

b. The size, nature, and structure of the corporation (e.g., a court may accord more latitude to the directors of a small, closely held corporation to deviate from strict formalities than to the directors of a larger public company): *BCE*, at para. 74.

c. Relationships, beyond strict legal rights (e.g., relationships between shareholders based on ties of family or friendship may be governed by different standards than relationships between arm’s length shareholders in a widely held corporation): *BCE*, at para. 75.

d. Past practice, especially among shareholders of a closely held corporation on matters relating to participation of shareholders in the corporation’s profits and governance (although practices can change without undermining reasonable expectations if there are valid commercial reasons for the change): *BCE*, at paras. 76-77.

e. Preventative steps (e.g., the availability of other measures for the complainant to have protected against the harm to their reasonable expectations): *BCE*, at para. 78.

f. Representations and agreements (e.g., that may be viewed as reflecting the reasonable expectations of the parties): *BCE*, at paras. 79-80.

[101] The concept of reasonable expectations is objective and contextual. The actual expectation of a particular stakeholder is not conclusive. The question is whether the expectation is reasonable having regard to the facts of the specific case, the relationships at issue, and the entire context, including the fact that there may be conflicting claims and expectations.

[102] The remedy is focused on concepts of fairness and equity rather than on legal rights. In determining whether there is a reasonable expectation or interest to be considered, the court looks beyond legality to what is fair, given all of the interests at play: see *Glass*, at para. 132.

[103] According to the Supreme Court of Canada in *BCE*, at para. 67:

> "Oppression" carries the sense of conduct that is coercive and abusive, and suggests bad faith. "Unfair prejudice" may admit of a less culpable state of mind, that nevertheless has unfair consequences. Finally, "unfair disregard" of interests extends the remedy to ignoring an interest as being of no importance, contrary to the stakeholders' reasonable expectations: see *Koehnen*, at pp. 81-88. The phrases describe, in adjectival terms, ways in which corporate actors may fail to meet the reasonable expectations of stakeholders.

[104] These concepts are not always discrete and often overlap in a given case.

The Ownership Application – Oppression Analysis and Remedy

[105] The reasonable expectation that Harchand, Paramjit, and Swaranjit claim to have had was that they would be recognized and treated as equal beneficial owners of WWC and 202 Ontario (the two most significant companies in the World Wide Group of companies) with equivalent interests in all of the companies in the World Wide Group, and that they would continue as directors of WWC, the primary operating company, and continue to participate in the financial and managerial aspects of the business.

[106] The earlier finding in this endorsement that they were equal beneficial shareholders in WWC, together with Sukhdev, is aligned with this expectation, which I find to be reasonable having regard to the past conduct of the parties dating back to when Harchand, Paramjit, and Swaranjit joined the business and continuing over the ensuring twenty plus years. These findings are informed by the particular facts and context of this closely held family business that did not adhere to strict corporate or legal formalities and that was, until recent events starting in 2023, operated by the brothers and brothers-in-law based on the division of managerial responsibilities and mutual trust (all as discussed in more detail above).

[107] I further find that, as beneficial owners, Harchand, Paramjit, and Swaranjit had a reasonable expectation to remain as directors of WWC and a reasonable expectation to continue to participate in the management and operation of the business.

[108] The evidence further supports a finding that these reasonable expectations were violated by Sukhdev's conduct when he refused to acknowledge or recognize their beneficial interests in WWC, removed them as directors of the Corporation, restricted their roles, reduced their managerial functions, cut off the benefits that they and their family members had enjoyed, and eventually cut them out of internal management communications. These actions amount to a failure by Sukhdev to meet the reasonably held expectations of his brother and brothers-in-law in all three categories of: "oppression", in the sense of conduct that is coercive and abusive, and suggests bad faith; "unfair prejudice", because of the unfair consequences of that conduct on their interests; and "unfair disregard" of their interests by ignoring them and treating them as being of no importance.

[109] The remedies sought, of the reinstatement of Harchand, Paramjit, and Swaranjit as directors of WWC and rectification of the Corporation's share register to reflect their ownership interests fall within the scope of available remedies under s. 248 of the OBCA, and represent a fair and equitable outcome. The specific final relief sought in the ownership application as outlined in paragraph 2 above is granted. In their factum on this motion, Harchand, Paramjit, and Swaranjit sought a further declaration that Sukhdev is holding 75% of the shares of WWC in trust for them. If the share register is rectified then the trust is not needed. If for some reason there is an impediment to rectifying the WWC share register then the parties can return to make further submissions about the need for a declaration of trust or some other recourse.

[110] Sukhdev raised a limitations argument in his responding factum on the ownership application. It is based on a misconception about the claims in that application. The request to rectify the share register was made because of Sukhdev's conduct and his assertion (for the first time in 2023) that Harchand, Paramjit, and Swaranjit were not equal owners of WWC and the actions that he took to exclude them from the business in 2023.

[111] As a result of Sukhdev's assertions and actions in 2023, they determined that they needed to protect their interests by formalizing their interests and roles. Until their interests and roles were challenged by Sukhdev in 2023, they did not know that their interests were being oppressed, unfairly prejudiced, or unfairly disregarded, or that legal action would be necessary to protect their interests. Prior to that time, all four brothers/brothers-in-law had been contributing and carrying out their roles within this closely held group of private companies as the owners and operators of the business, without paying close attention to legal formalities or paperwork.

[112] Section 4 of the *Limitations Act, 2002*, S.O. 2002, c. 24, Sched. B prescribes that "a proceeding shall not be commenced in respect of a claim after the second anniversary of the day on which the claim was discovered." A claim is discovered on the day on which the claimant knew or ought to have known the four matters set out in s. 5(1)(a) of the Act. For purposes of ownership applications, emphasis is placed on the last matter, which is the date on which the party bringing the claim first knew or ought to have known that a legal proceeding would be an appropriate means to

remedy the loss. When a proceeding is "appropriate" is fact specific: See *407 ETR Concession Company Limited v. Day*, 2016 ONCA 709, at paras. 33-34. Their claim was discovered in 2023 and it is not statute barred by the *Limitations Act*.

The Buy-Out Application – Analysis and Remedy

[113] The parties agree that the properties held by the real estate companies are worth approximately $55.6 million. These companies were incorporated for the purpose of acquiring and holding real estate that is used in the World Wide Group trucking and logistics business. Four of them are just holding companies. World Wide Atlantic also carries on a trucking business in New Brunswick.

[114] There is no dispute that all four of the parties are direct or indirect shareholders of these five companies. The parties do not agree upon the relative financial and other contributions that each of them made towards the properties when they were acquired. The incomplete financial disclosure for purposes of this hearing makes it difficult to trace the ultimate source of the funding for the purchases, but it appears that funding for at least some of the purchases, or portions of them, came from a WWC bank account (which would trace back to all four of them given my earlier findings that they are all four equal beneficial shareholders of WWC). Presumably, this tracing of funds into and out of these real estate companies will be part of what the parties have agreed to arbitrate. In any event, it is beyond the scope of the record before me to make any final determination about that.

[115] Four of the real estate companies (202, 87 Mountainview, 90 Gaylord and 200 Edward) are shown in the corporate records and share registers to be 25% owned by each of the four parties. All four of the brothers/brothers-in-law were directors and officers of these four real estate companies until Harchand, Paramjit, and Swaranjit used their combined controlling share position to remove Sukhdev as a director of 202 in November 2023 and of the other companies, 87 Mountainview, 90 Gaylord, and 200 Edward, in April 2024. The fifth real estate company, World Wide Atlantic, is shown in the corporate records and share register to be owned 50% by Sukhdev personally and 50% by World Wide Carriers Group of Companies Inc. ("WWCGC"), which is in turn shown to be owned by all four of the brothers/brothers-in-law equally. Based on those records, Sukhdev would effectively own a 62.5% share of World Wide Atlantic and the others each own 12.5%. Sukhdev is named as the sole director and officer of World Wide Atlantic.

Oppression Remedy

[116] Sukhdev claims that he held the objectively reasonable expectation that he would remain as a director of all companies that he is a shareholder of. He maintains that the decision to remove him as a director of the four companies that the others are shown in the corporate records to be the controlling shareholders of was a misguided attempt at retribution for him having removed them as directors of WWC. He says this was misguided because they were not listed as shareholders of WWC, whereas he was listed as a shareholder of the four real estate companies at issue.

[117] The others have offered some general explanations for why they decided to remove Sukhdev as a director from these four real estate companies, but it was ultimately conceded by at least one of

them that the rationale for doing so was tied to his actions regarding their removal as directors of WWC. They also rely on some of Sukhdev's conduct that was the subject of the findings in the Breach Motion (described above), including that Sukhdev also began transferring funds between the World Wide Group of companies, including transferring funds out of at least two of the real estate companies that the others were listed as the controlling shareholders of. The bottom line is that they say they no longer trusted him because of his actions.

[118] I have already found that the act of removing Harchand, Paramjit, and Swaranjit as directors of WWC was oppressive, unfairly prejudicial to, and unfairly disregarded their interests as beneficial shareholders of WWC and their reasonable expectations that they would remain as directors and as part of the management of that Company. These reasonable expectations were grounded in their ownership interests in that Company and the manner in which the parties historically conducted the business of these closely held private companies. The same analysis applies to Sukhdev's interests and reasonable expectations regarding his continued position as a director of these other four real estate companies. His expectations are as reasonable and deserving of protection as theirs.

[119] Having regard to the nature of their longstanding personal and business relationships in this family business involving many interrelated closely held corporations that the others themselves assert was for all of them to be the owners, directors, and managers of, and the fact that he had always been a director of these companies (see *BCE*, at paras. 73-77), I find that Sukhdev had the same reasonable expectation, as the others did, to remain as a director of the four real estate companies from which he was removed, and a reasonable expectation to continue to participate in the governance, management, and operation of the business of those companies that are part of the World Wide Group of companies. The fact that the business of these four companies is to hold real estate that is ancillary to the primary business of trucking and logistics does not change the reasonableness of his expectations in this regard.

[120] The evidence further supports a finding that these reasonable expectations were violated by his removal as a director of these real estate companies and the subsequent restrictions on his role in the companies and the financial reporting he received. While the others have agreed to provide him with "director like" financial reporting during this litigation (and even afterwards if they are not ordered to buy him out), that is not the same as being involved in the decision making as it arises and even if it is not day to day as it would be an operating company like WWC. His removal as a director was "oppressive" in the sense that it was, at least in part, in retaliation for Sukhdev's removal of the others as directors of WWC. It was unfair because it unfairly affected his interest as a shareholder to be involved in the decision making and management of these companies.

[121] In terms of some of the other arguments made in support of this buy-out oppression application, Sukhdev asserts that he made proportionally greater financial contributions to the acquisitions of the properties and was equally or more involved than the others in identifying the properties for the acquisitions. The others deny this. However, those factual controversies do not need to be resolved for the purposes of this buy-out oppression application because it can be decided on the basis of his interests as a shareholder, consistent with the analysis and decision on the ownership oppression application.

[122] Similarly, Sukhdev's complaints about the disproportionate benefits that he claims have been paid out of these four real estate companies to the others and their family members (after WWC cut off their benefits, such as the funding of company cars, gas, and insurance for themselves and certain of their family members) is also not a complaint upon which the findings of oppression for purposes of the buy-out application need to be predicated. These may be issues that need to be decided in the arbitration when the accounting and reconciliation is done but I do not need to, and will not, make any findings about them now.

Buy-Out Remedy

[123] The real issue in the buy-out application is whether a buy-out is the appropriate remedy, either pursuant to s. 248(3)(f) or s. 207 of the OBCA.

[124] There has unquestionably been a breakdown in the relationship between Sukhdev and the others. There is a complete lack of trust between him and them and they are unable to work together. That is evident from the dealings of the parties starting in the summer of 2023 when the WWC dispute first arose and that has continued throughout this and other related litigation.

[125] The breakdown in the personal relationships between the parties has resulted in a fracture of the corporate relationships between the companies that they control, respectively. For example, a lease dispute between 202 Ontario and WWC led to WWC moving to new premises and the confrontation that required the involvement of police and determinations by two judges who heard earlier motions in these proceedings that the ongoing litigation between the parties and various actions taken by both sides has amplified the animosity between them and that the level of hostility between them rendered it imprudent and impractical for them to be working together in the same premises.

[126] Sukhdev appears to concede that both sides contributed to the breakdown in the personal and business relationship that has led them to become embroiled in this litigation. He says that they should not, in these circumstances, be forced to stay in any aspect of the business of the World Wide Group of companies together. He argues that toxic business relationships should not be forced to continue.

[127] Where the parties are completely unable to cooperate in the running of the business, it is not necessary to apportion blame or even find that there has been oppression for the court to determine that it is just and equitable to order a buy-out (although a finding of oppression has been made against both sides in this case, which simply reinforces the conclusion that a buy-out and complete separation of interests is the appropriate remedy. In circumstances where neither side will trust the other to account properly if one of them is left to run the business without the other, the only realistic solution is for one shareholder to buy out the other or for the business to be sold and the proceeds divided: see *Jansezian v. Hotoyan*, 1998 CanLII 14816 (Ont. S.C.J.), at para. 4. Here the parties have agreed to the Protocol that will govern what happens if a buy-out is ordered.

[128] This case is not dissimilar to the situation in *Castillo v. Xela Enterprises Ltd.*, 2015 ONSC 6671, at paras. 52-55, aff'd 2016 ONSC 6088 (Div. Ct.), in which Newbould J. found that the

applicant's reasonable expectations to remain as a director and be treated as an equal shareholder had been violated by her removal as a director and her exclusion from management by the others. In such circumstances, she could not expect to be treated fairly as a shareholder, and forcing her to remain in that position would leave her vulnerable to the other shareholders of the closely held family business, who had shown antipathy towards her. Where the other shareholders were found to have acted in an oppressive manner, the only fair and just remedy was to order a buy-out of shares (see *Castillo*, Div. Ct., at para. 46).

[129] Where one party is found to have caused the affairs of the corporation to be conducted in an oppressive manner by excluding the other from participating in the management and operations of the company, and that causes the parties to lose faith and trust in one another and renders them unable to get along as shareholders, maintaining the *status quo* is usually not viable since it would only lead to more litigation: see *Chahine v. 2305136 Ontario Inc.*, 2015 ONSC 4260 at paras. 118-126. For the same reasons as exist in this case, I find the *status quo* is not viable. The parties need a final separation so that they can get on with their separate lives and business undertakings. This requires one party to buy out the other and that is the appropriate remedy under s. 248(3)(f) of the OBCA.

[130] The court may consider fault in appropriate cases. For instance, in *Cocov v. Gorgiev*, 2011 ONSC 2778, at para. 9, Marrocco J. stated:

> When considering which remedy to order under sections 207 and 248 of the Ontario *Business Corporations Act*, a court may consider the conduct of the shareholders, including who caused the breakdown of the relationship (see: *Waxman v. Waxman*, 2005 CanLII 32566 (ON CA), [2005] O.J. No. 3777 at para. 8; *Liao v. Griffoen*, [2001] O.J. No. 5490 at para. 12). The court may also consider who can continue the business (see: *Liao*, *supra*, at para. 14). An order under sections 207 and 248 should not be made to punish a shareholder (see: *Liao*, *supra*, at para, 20).

[131] Harchand, Paramjit, and Swaranjit argue that Sukhdev should not benefit from the discord that he created: see *2235512 Ontario Inc. v. 2235541 Ontario Inc.*, 2016 ONSC 7812, at para. 54. They say his reasonable expectation to remain as a director of the real estate companies was no longer reasonable after he removed them as directors from WWC and froze them out of that Company and especially after Sukhdev breached the Injunction Order, all of which they say their actions were in response to.

[132] These types of disputes are very rarely as black and white as the parties perceive them to be. Where, as here, there has been no trial and many of the facts on key issues are in dispute, and not all of the disputes are before the court because the parties have agreed to ask the court to first determine the Immediate Dispute that this endorsement is concerned with, I am not in a position to make a final determination that all of this discord can be traced back to Sukhdev's actions in the summer of 2023. Both sides have been found to have acted in a manner that is oppressive, unfairly prejudicial to and that unfairly disregards the interests of the other. As Molloy J. concluded in *Jansezian*, at para. 3, "none of these actions can properly be viewed in isolation. They are steps along the path of a bitter

dispute between the parties, the root of which I am not in a position to determine" at this time and on this record.

[133] Harchand, Paramjit, and Swaranjit also argue that all the cases that Sukhdev relies upon involved operating companies and that it is not necessary for them to get along in order for these real estate holding companies to continue to be jointly owned by all of them, with Sukhdev receiving "director like" financial disclosure. That is not a pragmatic or realistic view. They are breaking up their business and going their separate ways. It is not fair or equitable that Sukhdev be required to keep his equity in these four real estate companies and remain as a passive shareholder while the others govern them and make decisions about, for example, whose salaries or benefits will be paid by these companies, for example in circumstances where the parties' relationship has changed from one of productive co-operation to destructive hostility.

[134] There is no evidence that ordering a buy-out would prejudice Harchand, Paramjit, and Swaranjit. It was suggested that they could not afford to buy Sukhdev out of these real estate companies. However, there is no evidence to support this contention. Further, it was briefly explained by counsel that there is a mechanism in the Protocol for dealing with that eventuality. I agree with counsel for Sukhdev that the concern raised about the real estate companies would "have to assume significant debt to fund a buy-out" is misplaced. It would be the other shareholders who would have to liquidate or leverage their holdings to fund the buy-out and that is the practical reality of the situation if the parties wish to avoid a liquidation and winding-up of the World Wide Group of companies.

[135] Even if I had not found that the conduct of Harchand, Paramjit, and Swaranjit was oppressive and unfairly prejudicial to Sukhdev's interests as a shareholder of the real estate companies under s. 248 of the OBCA (as I have found), I would still have ordered a buy-out for those companies under s. 207 of the OBCA. It is just and equitable to separate their interests given the complete loss of trust and confidence that has arisen which has manifested itself in both sides acting in a manner that was contrary to their original understanding that the four brothers/brothers-in-law would participate in the conduct and management of the companies' affairs that they collectively owned: see *Rogers v. Agincourt Holdings Ltd.* (1976), 14 O.R. (2d) 489 (C.A.), at paras. 28, 31, 34.

[136] Each of the four owners of this private closely held group of companies who are in substance partners or quasi-partners reasonably expected to be part of the decision making and share in the fruits of the business without the constant concern that the other(s) are acting out of spite or retribution, things that both sides have been accusing the other of doing since 2023: see *Animal House Investments Inc v. Lisgar Development Ltd.* (2007), 87 O.R. (3d) 529 (S.C.J.), at para. 49, aff d 237 O.A.C. 261 (Ont. Div. Ct.), citing *Ebrahimi v. Westbourne Galleries Ltd*., [1973] A.C. 360 (H.L.).

[137] The past and continuing conduct of the parties gives rise to a reasonable inference that they will continue to be in litigation with each other until their financial and business interests have been separated. However, quarrelling and incompatibility, even to the point of a breakdown in the personal relationships between shareholders of a private company, are not, by themselves, sufficient grounds for an equitable winding-up of a corporation. But in this case, it is not the acrimony itself, but the

failure of the expectation that the shareholder was to participate in the corporate governance, decision making and management of the relevant corporation, that triggered the entitlement to equitable relief: see *Animal House*, at paras. 56-58.

[138] The buy-out application is granted and the parties should proceed to deal with their respective shares in the real estate companies in accordance with their agreed-upon sale Protocol. The specific relief sought on the buy-out application set out in paragraph 4 of this endorsement is granted, and the following order is made: (i) declaring that Harchand, Paramjit, and Swaranjit have acted in a manner that is oppressive towards Sukhdev, (ii) requiring them to buy his shares of 202, 87 Mountainview, 90 Gaylord, and 200 Edward at fair value, (iii) requiring Sukhdev to acquire the shares of World Wide Atlantic held by WWCGC for fair value, and (iv) awarding Sukhdev the costs of this proceeding.

Final Disposition

[139] The orders sought in both the ownership application and the buy-out application summarized in paragraphs 2, 4, 107 and 136 above are granted.

Costs

[140] The parties exchanged their Bills of Costs for each of the applications after the hearing. They reached an agreement after the hearing that was communicated to the court by email on November 18, 2024, that:

a. the losing party shall pay $100,000 to the successful party in the ownership application (*Cheema et al. v. Dhaliwal et al*, CV-24-00718363-00CL); and

b. the losing party shall pay $55,000 to the successful party in the buy-out application (*Dhaliwal v. Cheema et al*, CV-24-00713514-00CL).

[141] The court so orders: Sukhdev shall pay all-inclusive costs of $100,000 to Harchand, Paramjit, and Swaranjit in the ownership application and Harchand, Paramjit, and Swaranjit shall pay $55,000 to Sukhdev in the buy-out application.

[142] This endorsement and the orders and directions contained in it shall have immediate effect without the necessity of a formal order being taken out.

Kimmel J.

Released: January 21, 2025

CITATION: Dhaliwal v. Cheema, 2025 ONSC 382
COURT FILE NO.: CV-24-00713514-00CL and CV-24-00718363-00CL
DATE: 20250121

ONTARIO

SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

SUKHDEV DHALIWAL

Applicant

– and –

PARAMJIT CHEEMA, also known as PARAMJEET CHEEMA, HARCHAND DHALIWAL, SWARANJIT JHAJJ, WORLD WIDE CARRIERS LTD., WORLD WIDE ASG LOGISTICS INC., WORLD WIDE CARRIERS GROUP OF COMPANIES INC., 2029037 ONTARIO INC., WORLD WIDE ATLANTIC FREIGHT INC., WORLD WIDE TRANSPORT INC., WORLD WIDE TRUCK & TRAILER SERVICE LTD., WORLD WIDE CARRIERS PRIVATE LTD., WORLD WIDE CARRIERS US INC., POPULAR FREIGHT SYSTEMS INC., 87 MOUNTAINVIEW ROAD HOLDINGS INC., 90 GAYLORD ROAD HOLDINGS INC ., 200 EDWARD STREET HOLDINGS INC., JCD CARTAGE INC., 2613853 ONTARIO LTD., JCD UNIVERSAL PRODUCTIONS INC., JCD UNIVERSAL PRODUCTIONS PRIVATE LIMITED, JDC FINANCING INC., JDC LOGISTICS INC., JDC TRUCK & TRAILER SALES INC., WINNIPEG FAST FREIGHT LOGISTICS INC., WORLD WIDE TRUCK TRAINING ACADEMY INC., WORLD WIDE TRUCKLINE INC., WORLD WIDE LOGISTICS INC. and WORLD WIDE EQUIPMENT SALES INC.

Respondents

AND BETWEEN:

PARAMJIT CHEEMA, also known as PARAMJEET CHEEMA, HARCHAND DHALIWAL and SWARANJIT JHAJJ

Applicants

– and –

SUKHDEV DHALIWAL and WORLD WIDE CARRIERS LTD.

REASONS FOR DECISION

KIMMEL J.

Released: January 21, 2025