

**CITATION:** Proshow Homes Inc. v. 2823363 Ontario Inc., 2025 ONSC 739

**COURT FILE NO.:** CV-24-1971

**DATE:** 2025 02 04

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** Proshow Homes Inc. and Jordan Salman Inc., Applicants/Moving Parties

**AND:**

2823363 Ontario Inc. and MYSJ Properties Inc., Respondents

**BEFORE:** M.T. Doi J.

**COUNSEL:** Diane Salman and Jordon Salman, self-represented Applicants and Moving Parties

Mark Klaiman, for the Respondents

**HEARD:** December 13, 2024

**ENDORSEMENT**

**Overview**

[1] The applicants Proshow Homes Inc. (“Proshow”) and Jordan Salman Inc. (“JSI”) brought an unopposed motion for leave to be represented by non-lawyers. In addition, both applicants moved to enforce L. Shaw J.’s order dated August 1, 2024 (the “Order”) that required Shaffiq Dar and RealCorp Law Professional Corporation (“RealCorp”) to release \$146,688.02 in trust funds to the respondent 2823363 Ontario Inc. (“282”) to implement the prior direction of 282’s sole director and instructing party, Diane Salman. Proshow and JSI are minority shareholders of 282. MYSJ Properties Inc. (“MYSJ”), 282’s majority shareholder, submits that the Order is now defunct and should no longer stand because MYSJ purported to appoint two new directors to reconstitute 282’s board and displace Ms. Salman’s instructing authority for the corporation.

[2] As set out below, I am satisfied that Proshow and JSI should be allowed to be represented by non-lawyers in this litigation.

[3] For the reasons that follow, I find that the Order should be enforced to give effect to Ms. Salman's instructions made on behalf of 282 to have the disputed funds released to the corporation. I am satisfied that MYSJ improperly reconstituted 282's board by failing to comply with the terms of 282's unanimous shareholder agreement. That agreement expressly provided for its board to have just one (1) director, who is Ms. Salman, with sole and absolute authority to manage the venture project that 282 was established to perform. MYSJ's effort to take control of 282's affairs from Ms. Salman (i.e., by purportedly appointing new directors to outvote her) breached the unanimous shareholder agreement and was improper. 282's resolutions to add two more directors were made without authority and are invalid. Ms. Salman continues to be 282's sole director with proper authority to instruct Mr. Dar and RealCorp on the release of the subject funds to 282.

[4] Accordingly, both motions are granted.

### **Background**

[5] The applicants, Proshow and JSI, are 282's minority shareholders. Each holds about a 16.66% stake in the company. The respondent, MYSJ, is the majority shareholder for 282. MYSJ has about a 66.66% stake in the corporation.

[6] Shaffiq Dar is a lawyer in Ontario who practices law with RealCorp. He is a director of MYSJ that is owned by his wife and father-in-law. He negotiated a pre-incorporation arrangement with Ms. Salman and drafted a unanimous shareholder agreement for 282 that its shareholders signed on July 20, 2021. 282 was established as a special purpose corporation to buy, renovate, and re-sell or "flip" a property on Rogers Road in Burlington. The unanimous shareholder agreement explicitly confers "*sole and absolute responsibility over day-to-day management of the [venture] project*" on Ms. Salman to make all decisions relating to the management of the venture project underlying the agreement.

[7] Before entering into the unanimous shareholder agreement, Ms. Salman and Mr. Dar had prior business dealings involving various real estate matters, including other property-flip projects.

[8] When 282 was established on March 12, 2021, Ms. Salman was appointed as the first and only director for the corporation under its articles of incorporation.<sup>1</sup> In addition, the parties agreed to appoint Ms. Salman as 282's president: article 5.12 of the unanimous shareholder agreement.

[9] Notably, the unanimous shareholder agreement for 282 provides as follows:

**ARTICLE 2  
PURPOSE AND SCOPE**

**2.1 Unanimous Shareholder Agreement**

This Agreement shall be deemed to be a unanimous shareholder agreement within the meaning of the [Business Corporations Act (Ontario)].

...

**2.2 Compliance with Agreement**

Each Shareholder agrees to vote and act as a shareholder of the Corporation to fulfil the provisions of this Agreement and in all other respects to comply with , and use all reasonable efforts to cause the Corporation to comply with, this Agreement, and to the extent, if any, which may be permitted by law, shall cause its respective nominee(s) as directors of the Corporation to act in accordance with this Agreement.

...

**ARTICLE 5  
MANAGEMENT OF THE CORPORATION**

**5.1 Board of Directors**

The Board shall is to (sic) be composed of one (1) director.

...

**5.12 Officers and Management**

The Corporation Board shall initially appoint the following Persons to hold the offices opposite their respective names in respect of the Corporation:

**CORPORATION**

NAME	OFFICE HELD
Diane Salman	President
Jordan Salman	Secretary

**ARTICLE 6  
MANAGEMENT OF PROJECT**

6.4 Notwithstanding any other provision of this Agreement and further notwithstanding the number of Shares held by the Parties, each of the Shareholders of the Corporation hereby expressly confirm that the day-to-day management of the Project will be the sole and absolute responsibility of Diane Salman. Without limiting the generality of the foregoing, Diane Salman shall have the authority to make all decisions relating to the management of the Project, including but not limited to, the value and extent of renovations to be carried out, the contractors retained by the Corporation for the purposes of the renovations, the fixtures and chattels to be installed in the Property, the staging of the Property for sale and the price at which the Property is to be listed for sale.

...

**ARTICLE 13  
GENERAL**

**13.4 Entire Agreement**

This Agreement constitutes the entire agreement between the parties to this Agreement with respect to the subject matter of this Agreement and cancels, and supersedes any prior understandings and agreements between the parties with respect to such subject matter. There are no representations, warranties, terms, conditions, undertakings or collateral agreements, express, implied or statutory, between the parties other than those expressly set forth in this Agreement.

**13.5 Amendments and Waivers**

No amendment to this Agreement shall be valid or binding unless set forth in writing and duly executed by all of the parties to this Agreement. No waiver of any breach of any provision of this Agreement shall be effective or binding unless made in writing and signed by the Party purporting to give the same and, unless otherwise provided in the written waiver, shall be limited to the specific breach waived.

...

**14.9 Miscellaneous**

...

C. This Agreement shall superseded any prior unanimous shareholders' agreement made between the Shareholders of the Corporation, if any. [Emphasis added]

[10] Mr. Dar acted as the real estate solicitor for the re-sale of the venture property. In a separate action (CV-23-1633) commenced on May 16, 2023 against Mr. Dar and RealCorp, Ms. Salman and 282 claim that Mr. Dar paid \$899,080.06 to MYSJ without any direction or instruction from Ms. Salman as 282's authorized decision-maker. In addition, the claim alleges that Mr. Dar withheld \$146,755.06 belonging to 282 because his wife, acting on behalf of MYSJ, purportedly instructed him to withhold the funds.

[11] On May 23, 2023, MYSJ brought a separate action (CV-23-1717) against Ms. Salman, 282, and a third-party general contractor. In this action, MYSJ alleges that Ms. Salman failed to have the venture property renovated in timely fashion and surreptitiously rendered inflated invoices to fraudulently claim for work and services over and above their actual cost by acting in concert with the general contractor. The action claims \$300,000.00 in damages and seeks to pay into court \$146,688.02 from the re-sale of the property that Mr. Dar had been holding in trust.

[12] On April 24, 2024, Shaw J. heard MYSJ's interpleader motion for the \$146,688.02 to be paid into court together with a cross-motion brought by 282 and Ms. Salman for the funds to be released to 282. After hearing the motions, Shaw J. reserved her decision.

[13] Before the motions were heard, MYSJ served Ms. Salman on April 12, 2024 with notice to requisition a shareholders meeting for the purpose of increasing the number of directors for 282. Subsequently, on April 23, 2024, MYSJ re-served its requisition notice for a shareholders meeting to increase the number of 282's directors.

[14] On April 25, 2024, Ms. Salman wrote to MYSJ through counsel to advise that 282 would not be calling a shareholders meeting. As 282's sole director, she advised that the corporation was relying on ss. 105(3)(c) and 99(5)(b) and (b.1) of the *Business Corporations Act*, RSO, 1990, c. B.16 ("*OBCA*") as the basis for not calling the meeting to transact the business set out in the requisition. Subsections 105(1)-(3) and 99(2)-(3) and (5)(b)-(b.1) of the *OBCA* read as follows:

**Requisition for shareholders meeting**

**105** (1) The holders of not less than 5 per cent of the issued shares of a corporation that carry the right to vote at a meeting sought to be held may requisition the directors to call a meeting of shareholders for the purposes stated in the requisition.

**Idem**

(2) The requisition referred to in subsection (1) shall state the business to be transacted at the meeting and shall be sent to the registered office of the corporation.

**Duty of directors to call meeting**

(3) Upon receiving the requisition referred to in subsection (1), the directors shall call a meeting of shareholders to transact the business stated in the requisition unless,

- (a) a record date has been fixed under subsection 95 (2) and notice thereof has been given under subsection 95 (4);
- (b) the directors have called a meeting of shareholders and have given notice thereof under section 96; or
- (c) the business of the meeting as stated in the requisition includes matters described in clauses 99 (5) (b) to (d).

...

**Circulating proposal**

(2) Where a corporation receives notice of a proposal,

- (a) if the corporation provides a management information circular, it shall set out the proposal in the management information circular or attach the proposal to that circular; or

(b) if the corporation does not provide a management information circular, it shall set out the proposal in the notice of meeting for the shareholders' meeting at which the matter is proposed to be raised or shall attach the proposal to such notice of meeting.

**Statement in support of proposal**

(3) At the request of a person who submits notice of a proposal, the corporation shall include in the management information circular referred to in clause (2) (a) or the notice of meeting referred to in clause (2) (b), or shall attach to it, the person's statement in support of the proposal and the person's name and address.

...

(5) A corporation is not required to comply with subsections (2) and (3) where,

...

(b) it clearly appears that the primary purpose of the proposal is to enforce a personal claim or redress a personal grievance against the corporation or its directors, officers or security holders;

(b.1) it clearly appears that the proposal does not relate in a significant way to the business or affairs of the corporation; [Emphasis added]

[15] On May 26, 2024, while Shaw J.'s decision on the motions was under reserve, MYSJ issued a notice of special meeting of shareholders for June 7, 2024 to enlarge 282's board complement from 1 to 3 directors and fix the number of board members at 3 directors.<sup>2</sup> MYSJ did this instead of bringing court proceedings under the *OBCA* to resolve the requisition dispute.<sup>3</sup>

[16] On June 7, 2024, a special meeting of 282's shareholders was held. Although notified, Ms. Salman did not attend the meeting. During the meeting, MYSJ purported to appoint two additional directors for 282, being Peter Walsh and Humayun Rizwan.<sup>4</sup>

[17] On July 26, 2024, a notice of directors meeting was delivered to schedule a meeting for July 30, 2024 to pass resolutions to: a) terminate the retainer of 282's lawyer of record; b) appoint new counsel for 282; and c) appoint Mr. Rizwan as a signing officer on any bank account for 282 with authority to sign any corporate documents with the bank. The directors meeting was held on July 30, 2024 and all three resolutions passed.<sup>5</sup> Ms. Salman was notified of the meeting but did not attend.

[18] On September 26, 2024, Mr. Rizwan, in his purported capacity as a 282 director, went to the TD Bank branch where 282 had its bank account and gave bank staff the resolution with his

purported appointment and signing authority for the corporation. Bank staff advised that 282 had closed the account on March 31, 2023.

[19] On October 1, 2024, Mr. Rizwan wrote to RealCorp on behalf of 282 to ostensibly seek the payment of funds owed to the company. Later that day, RealCorp provided a draft for the amount of \$146,688.02. Mr. Rizwan reattended the TD branch to open a new account for 282, learned that he needed an online appointment to open a commercial bank account, and booked an appointment for October 10, 2024 to open the account. After the appointment to open the account had to be rescheduled, Mr. Rizwan opened a new account for 282 at a BMO branch on October 10, 2024 and deposited the \$146,688.02 draft into that BMO account. He emailed Ms. Salman to advise her of the new account and the deposit.

[20] On August 1, 2024, Shaw J. released her decision on the motions and directed Mr. Dar and RealCorp to release the \$146,688.02 in disputed funds pursuant to Ms. Salman's instructions: *2823373 Ontario Inc. et al. v. Dar et al.*, 2024 ONSC 4313. Her decision included (at paras 130-131) the following findings and directions:

[130] 282 instructed the defendants to hold the disputed funds in trust. Those instructions were provided by Ms. Salman, a director of 282. Ms. Salman has now instructed Mr. Dar to release those funds. She was the instructing party on behalf of 282. Mr. Dar, as counsel for 282, must follow those instructions. Accordingly, the defendants are to release the disputed funds to 282 by September 30, 2024.

[131] If MYSJ as a disputing shareholder does not agree with the release of the disputed funds to 282, it can seek whatever relief it considers appropriate regarding those finds in the action it has commenced. [Emphasis added]

## Analysis

### a. Leave for the Applicant Corporations to be Represented by Non-Lawyers

[21] I am satisfied that leave should be granted, *nunc pro tunc*, to allow Ms. Salman to represent Proshow and Mr. Salman to represent JSI, respectively.

[22] Rule 15.01(2) of the *Rules of Civil Procedure* provides:

15.01(2) A party to a proceeding that is a corporation shall be represented by a lawyer, except with leave of the court.

[23] The moving corporations bear the onus of satisfying the court that leave to be represented by a non-lawyer should be granted: *Ward v. 1121720 Ontario Ltd. o/a Havcare Investments Inc.*, 2015 ONSC 3873 at para 5. On this motion, the court is to ensure that the interests of justice are served by, among other things, construing the rules in a manner to secure the just, most expeditious and least expensive determination of every civil proceeding on its merits: Rule 1.04.

[24] In exercising the discretion for granting leave under Rule 15.01(2), courts have considered the following factors:

- a. whether the proposed representative has been duly authorized by the corporation to act as its legal representative;
- b. whether the proposed representative has a connection to the corporation;
- c. the structure of the corporation in terms of shareholders, officers and directors and whether it is a closely held corporation;
- d. whether the interests of shareholders, officers, directors, employees, creditors and other potential stakeholders are adequately protected by the granting of leave;
- e. whether the proposed representative is reasonably capable of comprehending the issues in the litigation and advocating on behalf of the corporation. The Court should not impose too high a threshold at this stage, given that the courts abound with self-represented litigants of varying skills. The proposed representative should, however, be reasonably capable of comprehending the issues and articulating the case on behalf of the corporation; and
- f. whether the corporation is financially capable of retaining counsel. Access to justice has been a concern troubling courts at all levels in Canada for some considerable time. It is fundamental to integrity of the courts and the reputation of the administration of justice that the parties have reasonable access to our courts. If the refusal to grant leave would effectively bar a corporation from access to justice, this factor should be given considerable weight.

*De La Rocha v. Markham Endoscopy Diagnostics Inc.*, 2010 ONSC 5100 at para 2, citing *Extend-a-Call v. Granovski*, 2009 CanLII 33047 (ONSC) at para 19; *Glycobiosciences v. Amosey*, 2020 ONSC 2566 at para 10.

[25] Factors that may justify a refusal to grant leave under Rule 15.01(2) include, a) inadequate materials filed, b) a failure to follow court directions, and c) evasive answers in prior court matters: *Ward* at para 6.

[26] Proshow and JSI are closely-held corporations owned by Ms. Salman and Mr. Salman, respectively. From the materials and submissions on the motions, I accept that there are no other interests at stake other than those that Ms. Salman and Mr. Salman each have in their respective corporations. I accept that both are able to reasonably comprehend the factual and legal issues in this and related litigation, and that both are able to reasonably advocate for Proshow and JSI while protecting the interests of their corporations. Ms. Salman and Mr. Salman prepared for the motions by filing organized materials that were largely compliant with applicable requirements. Although this leave motion was brought well after the application was started on or about April 26, 2024, I am persuaded that this oversight was not deliberate nor intended to disrespect the court's process. Ms. Salman and Mr. Salman have advised that Proshow and JSI are currently without funds and cannot afford counsel. In the circumstances, I accept that a refusal to grant the leave motion would effectively bar Proshow and JSI from having access to justice.

[27] Based on all of the foregoing, I find that it would be in the interests of justice to grant leave, *nunc pro tunc*, for Proshow and JSI to be represented by Ms. Salman and Mr. Salman, respectively.

**b. Improper Appointment of Additional Directors**

[28] For the reasons that follow, I am satisfied that MYSJ acted improperly by purporting to appoint additional directors for 282 to increase its board complement.

[29] As set out above, article 5.1 to the unanimous shareholder agreement expressly provides that 282's board, "*is to be composed of one (1) director.*" In addition, article 6.4 of the agreement clearly states that, "*notwithstanding the number of [s]hares held by the [p]arties ... the day-to-day management of the Project will be the sole and absolute responsibility of Diane Salman,*" who has express authority to make, "*all decision relating to the management of the Project.*"

[30] A shareholder agreement to have a company managed by a certain person in a certain manner will give rise to a contract that is well-known, normal, and legal: *Ringuet v. Bergeron*, [1960] SCR 672 per Judson J. at 684. The shareholders were free to agree upon whatever voting arrangements for 282 they wished: *Melflor Investments Ltd. v. Naim Investments Ltd.*, 2013 ONSC 6538 at para 73. A written agreement between shareholders may provide that, "*in exercising voting rights the shares held by them shall be voted as therein provided*": ss. 108(1) and (5.1) of the

*OBCA*.<sup>6</sup> Furthermore, every director and officer of a corporation must comply with a unanimous shareholder agreement, among other requirements at law: ss. 134(2) of the *OBCA*.<sup>7</sup>

[31] Having regard to articles 5.1 and 6.4 of 282's unanimous shareholder agreement, I am satisfied that MYSJ improperly requisitioned a meeting and passed a resolution to enlarge 282's board from one to three directors in breach of the shareholder's express and unanimous agreement for the corporation to have only one director. These efforts to increase the number of directors and expand the board for 282 were clearly inconsistent with the unanimous shareholder agreement and contrary to the reasonable expectations of the parties to the agreement.

[32] 282's articles of incorporation and by-laws are permissively worded and ostensibly could accommodate a complement of between one and ten directors for the corporation. However, I am satisfied that the terms of the unanimous shareholder agreement that the parties executed should govern 282's establishment and the conduct of its activities and affairs as the shareholders agreed through the exercise of their respective rights of ownership. In turn, I find that it is just and fair to uphold the operative terms of the unanimous shareholder agreement to give effect to the reasonable expectations of the parties to the agreement: *BCE Inc., Re*, 2008 SCC 69 at para 63. Doing otherwise would, in my judgment, unfairly disregard and unreasonably violate the parties' bargain.

[33] Taking everything into account, I find that the disputed funds should appropriately be released to 282 pursuant to instructions from Ms. Salman who, as 282's sole director and the person properly authorized to make all decisions for the management of the venture project, is authorized and entrusted to hold the disputed funds for the corporation pending a resolution or determination of the various claims and proceedings currently before the court.

### **Outcome**

[34] Accordingly, I make the following orders:

- a. leave is granted, *nunc pro tunc*, for Diane Salman, a non-lawyer, to represent the applicant Proshow Homes Inc., and for Jordan Salman, a non-lawyer, to represent the applicant Jordan Salman Inc. in this proceeding; and

- b. Peter Welsh, Humayun Rizwan, and/or any other person purporting to be acting for or on behalf of 2823373 Ontario Inc. and who received a certified cheque, bank draft, or payment from Shafiq Dar and/or RealCorp Law Professional Corporation to 2823373 Ontario Inc. for the amount of \$146,688.02 shall immediately provide the said cheque, draft, or funds to Diane Salman or otherwise transfer that amount to 2823373 Ontario Inc.'s bank account as instructed by Diane Salman forthwith.

[35] If the parties are unable to resolve the issue of costs for this motion, the moving applicants may deliver written costs submissions of up to 2 pages (excluding any costs outline or offer(s) to settle) within 15 days, and the respondents may deliver submissions on the same terms within a further 15 days. Reply submissions shall not be delivered without leave.

**Date:** February 4, 2025

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M.T. Doi J.

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**COURT FILE NO.:** CV-24-1971  
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**BEFORE:** M.T. Doi J.

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**ENDORSEMENT**

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M.T. Doi J.

DATE: February 4, 2025

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<sup>1</sup> See Case Centre B-1-104.

<sup>2</sup> See Case Centre B-1-179 to 180.

<sup>3</sup> Subsections 106(2)-(3) (*Requisition by court*) and 107(1)-(2) (*Determination of controversy*) of the *OBCA* provide as follows:

**Requisition by court**

**106** (1) If for any reason it is impracticable to call a meeting of shareholders of a corporation in the manner in which meetings of those shareholders may be called or to conduct the meeting in the manner prescribed by the by-laws, the articles and this Act, or if for any other reason the court thinks fit, the court, upon the application of a director or a shareholder entitled to vote at the meeting, may

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order a meeting to be called, held and conducted in such manner as the court directs and upon such terms as to security for the costs of holding the meeting or otherwise as the court deems fit.

**Power of court**

(2) Without restricting the generality of subsection (1), the court may order that the quorum required by the by-laws, the articles or this Act be varied or dispensed with at a meeting called, held and conducted under this section.

**Effect of meeting**

(3) A meeting called, held and conducted under this section is for all purposes a meeting of shareholders of the corporation duly called, held and conducted.

**Determination of controversy**

**107** (1) A corporation, shareholder or director may apply to the court to determine any controversy with respect to an election or appointment of a director or auditor of the corporation.

**Court order**

(2) Upon an application under this section, the court may make any order it thinks fit including, without limiting the generality of the foregoing,

- (a) an order restraining a director or auditor whose election or appointment is challenged from acting pending determination of the dispute;
- (b) an order declaring the result of the disputed election or appointment;
- (c) an order requiring a new election or appointment and including in the order directions for the management of the business and affairs of the corporation until a new election is held or appointment made; and
- (d) an order determining the voting rights of shareholders and of persons claiming to own shares.

<sup>4</sup> See Case Centre B-1-187.

<sup>5</sup> See Case Centre B-1-190 to 191.

<sup>6</sup> Subsections 108(1) (*Agreement between shareholders*) and (5.1) (*Unanimous shareholder agreement*) of the *OBCA* provide as follows:

**Agreement between shareholders**

**108** (1) A written agreement between two or more shareholders may provide that in exercising voting rights the shares held by them shall be voted as therein provided. ...

**Unanimous shareholder agreement**

(5.1) Nothing in this section prevents shareholders from fettering their discretion when exercising the powers of directors under a unanimous shareholder agreement.

<sup>7</sup> Subsection 134(2) (*Duty to comply with Act, etc.*) of the *OBCA* provides as follows:

**Duty to comply with Act, etc.**

(2) Every director and officer of a corporation shall comply with this Act, the regulations, articles, by-laws and any unanimous shareholder agreement.