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Shareholder Remedies – Evidence Matters

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Shareholder disputes are inherently fact-driven. A recent decision of the Ontario Court of Appeal, *Hrvoic v. Hrvoic*, [2023 ONCA 508](#) (Feldman, Benotto

and Roberts JJ.A.), emphasizes the importance of the evidentiary record where the division of shares and share valuation are at issue. Other issues the Court considered include whether the equitable “clean hands” doctrine automatically disentitled a party from obtaining relief, and whether it was an error for the trial judge not to explicitly address a counterclaim in their reasons if that omission did not affect the outcome (spoiler on both fronts, it does not).

The appellant appealed from the disposition of his application to compel the sale of the common shares held by his ex-spouse in the company that they co-founded. The trial judge had found that the parties held equal shareholdings, determined the share value at \$10,800,000, and ordered the appellant to purchase the respondent’s common shares for \$5,400,000.¹

The Court of Appeal considered whether the trial judge erred:

- In holding that the parties held equal shareholdings pursuant to an agreement;
- In their valuation of the shareholdings of the company;
- By misinterpreting and misapplying the “clean hands” doctrine in granting the respondent any remedy;
- By misinterpreting and misapplying the test for commencement of the applicable limitation period; or
- In failing to address the appellant’s counterclaim.

¹ [Para. 1.](#)

The Court dismissed all grounds of appeal, finding that:

- There was evidence that the appellant had agreed to give the respondent 50% of the common shares. The Court held that in light of evidence supporting that position, the corporate records of the original shareholdings division alone were not dispositive of this issue.²
- The trial judge was entitled to accept some but not all evidence of each party's expert. While they generally preferred the approach of the appellant's expert, the trial judge did not reject the respondent's expert's opinion. The Court of Appeal found that it was open to the trial judge to conclude that the share value was more than the appellant's expert's opinion of value but less than the opinion of the respondent's expert.³
- There was no basis to interfere with the trial judge's decision regarding the "clean hands" doctrine. The doctrine comes from the "maxim that 'he who comes to equity must come with clean hands'".⁴ The Court found that the trial judge did not grant equitable relief but instead found that the parties had an agreement that the respondent's common shareholdings would be increased to 50%.⁵ The Court also held that the respondent's withdrawals from the company from the appellant's line of credit were unrelated to the proper division of shares and, thus, the respondent's conduct did not fall within the application of the "clean hands" doctrine.⁶
 - The Court also held that "the 'clean hands' doctrine does not automatically disentitle a party with 'unclean hands' from obtaining any relief. Equitable principles are not based on the application of strict rules but are applied at the judge's discretion and are 'crafted in accordance with the specific circumstances of each case'".⁷
 - In this case, the Court found that the trial judge had carefully considered the circumstances surrounding the withdrawals upon which the appellant relied to support his submissions. While the trial judge did not condone an unauthorized

² [Para. 9.](#)

³ [Para. 13.](#)

⁴ [Para. 14.](#)

⁵ [Para. 16.](#)

⁶ [Para. 17.](#)

⁷ [Para. 18.](#)

withdrawal from the appellant's line of credit (which the appellant repaid), the trial judge was entitled to exercise their discretion to grant relief to the respondent.⁸

- The trial judge properly referenced and applied the provisions of section 5 of the *Limitations Act, 2002*. Their decision was also in keeping with the applicable governing principles that the Supreme Court of Canada set out in *Grant Thornton LLP v. New Brunswick*, [2021 SCC 31](#).⁹
- The trial judge's failure to explicitly address the appellant's counterclaim did not affect the outcome. The appellant had not proven any loss and his counterclaim was without merit.¹⁰

⁸ [Para. 20.](#)

⁹ [Para. 23.](#)

¹⁰ [Para. 28.](#)