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The Oppression Remedy: Can it be used by a terminated employee who is also a shareholder?

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Terminating any employee can have serious repercussions if not done correctly from a legal standpoint. Employers must recognize that terminating an employee who is also a shareholder of the corporation can be even more complex and that an oppression remedy is available to the employee/shareholder. If terminated, an employee/ shareholder can bring an action that deems the termination to be oppressive. A cautionary approach is always advised when determining the future of an employee/shareholder; in particular, the circumstances revolving around the termination because said circumstances could be perceived to be a pattern of oppressive conduct. One must also be aware of the limited circumstances in which the Court will find oppression.

Alberta's Business Corporations Act permits a shareholder to apply to a Court for an oppression remedy in the face of oppressive or harmful conduct by the corporation or by its other shareholders. Recent case law from various jurisdictions across Canada shows that the oppression remedy is available to a terminated employee/shareholder in certain circumstances where the act of oppression was a continual pattern or where the employment was unique. Furthermore, in recent case law the Courts have reached their respective decisions pursuant to the facts. In other words, the Court's determination is fact-specific.

The following are recent cases that exemplify the oppression remedy:

In Naneff v. Con-Crete Holdings Ltd., the Defendant Corporation, Con-Crete Holdings Ltd., was a closely held corporation run by a father and his sons. The Plaintiff, Naneff, was a manager, director, and shareholder in the business, and had worked in the business all of his life. The trial judge found that this unique employment was closely connected with Naneff's shareholder rights, and that the dismissal was part of an overall pattern of oppression. The trial judge ordered damages similar to those that would have been awarded if the Plaintiff had been successful in a wrongful dismissal claim.

In Clitheroe v. Hydro One Inc., the Plaintiff, Clitheroe, was the CEO of the Defendant Corporation, Hydro One Inc. Clitheroe also was a shareholder in Hydro One Inc. Clitheroe was allegedly terminated for just cause. Instead of commencing a legal action based on wrongful dismissal, Clitheroe commenced an action under the oppression remedy provisions as contained in the Ontario Business Corporations Act. The Court struck out Clitheroe's claim because she failed to allege a pattern of oppressive conduct by Hydro One Inc.

In 2082825 Alberta Inc. v. Platinum Wood Finishing Inc., the Plaintiff, incorporated under 2082825 Alberta Inc., agreed to be a minority shareholder in the Defendant Corporation, Platinum Wood Finishing, on the condition that he would be the President of the Corporation. The Plaintiff was terminated from the Defendant Corporation when he fell ill. Furthermore, this was done in contravention to the Unanimous Shareholder's Agreement ("USA") executed by the parties in the action. The Court determined that there was an intimate connection between the employment contract and the USA. As such, the wrongful dismissal was sufficient ground to find oppression.

In Hawkes v. Levelton Consultants Ltd. the Plaintiff, Hawkes, was terminated as an employee who also happened to be a shareholder of the Defendant Corporation, Levelton Consultants. The Court found that Hawkes had been wrongfully terminated by Levelton. The Court also found that the actions of the Defendant Corporation were oppressive in their conduct towards the Plaintiff. This was based on the Plaintiff's assertion that he was terminated because he blocked a shareholder resolution that would have benefitted the retiring shareholders.

In Luebke v. Manluk Industries Inc., Luebke was a shareholder and director of Manluk Industries. Manluk was a successful family business. Luebke's father and brother decided to remove him as a director and an employee. The Court noted that the oppression remedy is a broad remedial discretion that is only to be used when trying to rectify the oppression and must protect the applicant's interests as a shareholder or director. As such, said remedy is not to be used as a means to redress wrongs that may have occurred within the family. (It is interesting to note the Plaintiff commenced a separate action based on wrongful dismissal, which the Court thought would be the better of the two actions to redress his wrongful dismissal.) The Court concluded that even though the steps taken to remove Luebke as a shareholder and director were harsh, said steps were not oppressive. Furthermore, the Court concluded that these steps were taken to protect the best interests of the company because of the irreconcilable differences between the parties.

Employers must be aware of the options available to them and to employees/shareholders during a termination and the circumstances in which a Court would deem oppression has been a factor in the termination.

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