CITATION: Stickney v. Stickney, 2024 ONSC 3581
GUELPH COURT FILE NO.: FS-21-369
DATE: 2024/06/21

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:		
ANNE MARIE STICKNEY	Applicant	R. Brant & N. Persad-Manaraj, for the Applicant
– and –		
COREY STICKNEY	Respondent	P. Healy & D. Rappaport, for the Respondent
		HEARD: June 10, 2024

DECISION ON MOTIONS

PETERSEN J.

OVERVIEW

Background Information

[1] The parties were married for almost ten years and have four children. They separated on March 24, 2021. They have settled the issues concerning their children but continue to have disputes about the division or sale of their jointly owned assets, equalization of their net family properties, post-separation adjustments, child support and spousal support.

[2] Both parties' incomes are principally derived from their jointly owned farming businesses. They equally own a layer (egg) farm that they operate through a partnership called Stickney Poultry Farms ("the Partnership"). They also equally own a broiler (chicken) farm that they operate through a corporation called Stickney Poultry Farms Inc. ("the Corporation").

[3] Since their separation, the Respondent oversees the day-to-day operations of the broiler farm, and the Applicant oversees the day-to-day operations of the layer farm. The layer farm is more labour-intensive. Staff are hired to assist with egg picking and other tasks on that farm.

[4] The Applicant takes care of the bookkeeping and financial management of both farms. She did so during the marriage and continues to do so post-separation. The farms are effectively operated as one business, with money flowing between the Partnership and the Corporation. The Partnership is the primary vehicle for bill payments for both farms. It is also the vehicle for compensating the parties through draws.

[5] The Respondent claims that the Applicant has been mismanaging the businesses post-separation. He suspects that she is doing so deliberately to devalue the businesses so that her parents (who are also farmers) can purchase them at a "fire sale". The Respondent further claims that the Applicant has acted unilaterally and has excluded him from all business decisions. He asserts that she has made decisions for her own enrichment and to benefit her family members, rather than in the Corporation's and Partnership's best interests. He accuses her of violating her fiduciary obligations to the Corporation, to the Partnership, and to him as her business partner. He argues that she has done so without accountability. He claims that she has failed to produce records that would permit him to scrutinize her business decisions and to understand the financial health of the businesses that he co-owns.

[6] The Applicant denies all these claims. She argues that any outstanding disclosure is the subject of undertakings that she is in the process of answering.

[7] The parties jointly own several properties. The Applicant resides in the matrimonial home at one of the properties in Elora, Ontario. The layer farm operates at a property on Mitchell Drive in Arthur, Ontario ("the Mitchell Property"). The broiler farm operates at another property at 7739 Wellington Road 12 in Arthur, Ontario, where the Respondent resides.

[8] In addition to the three above-mentioned properties, the parties also jointly own two vacant pieces of farmland in Arthur Ontario: (i) 7353 Second Line (the "Second Line Property") and (ii) 7918 Wellington Road 12 (the "All Treat Property"). They recently agreed to list the All Treat Property for sale and a consent order has been issued with respect to that sale.

Relief Sought in the Motions

[9] Each of the parties has brought a motion for interim relief. The motions were heard together on June 11, 2024.

[10] In his motion, the Respondent seeks relief pursuant to the *Partnerships Act*, R.S.O. 1990, c. P.15 and oppression remedies pursuant to the *Business Corporations Act*, R.S.O. 1990, c. B.16 ("OBCA"). Specifically, he seeks: an order that primary financial management of the Corporation be entrusted to him; an order that the Applicant shall take no step in the financial management of the layer farm without consulting him and obtaining his consent to all business decisions; an order that the Applicant give the Respondent access to all online banking accounts for the Partnership and Corporation; an order that the Applicant give the Respondent access to all email accounts connected with the two farms, and that she take no steps to delete any emails in those accounts dating from March 1, 2021 to present; an order that the Applicant produce to the Respondent, at her own expense, all business records generated for the Partnership and the Corporation since Mach 1, 2021; an order that the Applicant produce to the Respondent all communications she has had with the farms' accountant John Broderick in respect of the Partnership and Corporation since March 1, 2021; an order that, henceforth, the Applicant shall not have communications with John Broderick about the Partnership or the Corporation that exclude the Respondent; an order that Mike Bossy (the Respondent's accountant) be appointed co-accountant with John Broderick for the two farms; an order that Mike Bossy shall conduct a forensic audit of the farming businesses at the Applicant's sole expense; an order that the Applicant shall provide an accounting and disgorgement of profits she has made as a result of breaches of fiduciary duty to the Partnership and Corporation; an order that the Applicant be personally liable to the Partnership and Corporation for any improper personal benefit she has received at the expense of the businesses; and an order granting the Respondent his reasonable expenses incurred as a result of the Applicant's mismanagement of the farm businesses.

[11] The Respondent also seeks an order for production of documents from John Broderick. Such relief cannot be granted because Mr. Broderick is not a party to this proceeding, and he was not served with notice of a motion for disclosure of third-party records in his possession.

[12] Finally, in his factum, the Respondent seeks an order requiring the Applicant to pay punitive damages to him, in trust for the broiler farm, of not less than $44,000. He did not plead such relief in his Notice of Motion, so I have not considered that remedial request.

[13] The Applicant opposes all the remedial orders sought by the Respondent. She submits that the Respondent's requests for production orders should properly be brought as an undertakings motion, which would be premature in circumstances where she is still working on delivering answers to undertakings. She argues that oppression has not been established by the Respondent and that, in any event, oppression remedies under OBCA are final and therefore ought not to be granted on an interim motion. In reply, the Respondent argues that the relief he seeks under the OBCA oppression remedy is not irreversible and can be ordered on an interim basis pending trial.

[14] In her motion, the Applicant seeks an order for the dissolution of the Partnership pursuant to s.35(1)(f) of the *Partnerships Act*; an order that the assets held by the Partnership be listed for sale and that the net proceeds of sale be used to repay all outstanding loans; and an order that the Corporation be wound up pursuant to s.207(1) of the *Business Corporations Act*, or in the alternative, an order for the Corporation's assets to be listed for sale.

[15] In the alternative, the Applicant seeks an order for bifurcation of the trial. She proposes that the issues in the first trial should be sale of the farm assets and the Applicant's option to purchase the farm operation pursuant to a Marriage Contract. She proposes that equalization, post-separation adjustments, and child and spousal support be decided at the second trial. Finally, she also seeks an order for the Second Line Property to be listed for sale.

[16] The Respondent opposes the relief sought by the Applicant. He recognizes that the parties need to disentangle their business interests. He agrees that the farm businesses and the jointly owned lands all need to be sold (or bought out by one of the parties), but he argues that it would be premature and prejudicial to him for the court to order those sales at this time. He opposes the winding up of the Corporation and dissolution of the Partnership on an interim basis, arguing that both are viable businesses that provide him with his only source of income.

[17] I will address each of the issues raised by the motions in turn.

SALE OF THE BUSINESSES

[18] The Applicant has indicated a desire to purchase the layer farm and the Respondent has expressed an interest in purchasing the broiler farm. In her motion, the Applicant requests orders for the immediate sale of all farm assets. She states that an appraisal of the farms is not required because the market will tell the parties what they are worth. She further states that if either party wishes to bid on the business assets, they may do so along with any other potential purchasers.

[19] The Respondent argues that an immediate sale of the business assets would be prejudicial to him because a reconciliation of post-separation adjustments needs to be completed before he can develop a clear understanding of his purchasing power. For the reasons that follow, I agree with his position.

[20] Despite the parties' agreement that they would each be entitled to a monthly $1,500 draw from the Partnership, the Applicant has paid herself sums far exceeding that amount. In 2021, her draws exceeded the agreed-upon amount by almost $23,000. In 2022, they exceeded the agreed-upon amount by more than $78,000. In 2023, her draws were almost $120,000 above the agreed-upon amount. The Applicant states that she took these extra draws to remunerate herself for work that she performed on the layer farm. She did not obtain the Respondent's consent to these surplus draws and her entitled to that compensation is disputed. The Respondent acknowledges that the layer farm is more labour-intensive than the broiler farm, but he disputes the Applicant’s entitlement to a greater draw because the Applicant hires staff to assist with the layer farm. The Applicant’s entitlement to retain these surplus draws will need to be determined at trial.

[21] Furthermore, the Applicant admits that she authorized partner draws on the Respondent's account for funds that were not actually paid to him. She explains that she credited certain monetary withdrawals to his partnership draw because the money was used to pay for work that he refused to perform post-separation, such as trucking feed. The Respondent denies agreeing to this arrangement. The payments in question were substantial: $28,003 in 2021, $71,639 in 2022, and $45,162 in 2023. The money was paid to the Applicant’s parents’ farming operation. The Respondent may be entitled to compensation from the Applicant if this accounting method is deemed improper at trial.

[22] The parties have both used business credit cards to pay for personal expenses post-separation. Both have given undertakings to account for these expenses, but those undertakings have not yet been satisfied. The Applicant has retained a Certified Business Valuator to complete a full reconciliation of the expenses. Notably, the Applicant admits that she took "equalization" payments for herself to "balance" the parties' draws whenever the Respondent used business funds for clearly personal expenses, such as to pay his lawyers. However, she did not similarly give extra payments to the Respondent to balance the draws when she used business funds for her own personal expenses. She acknowledges that such payments will need to be made as part of the reconciliation of post-separation adjustments.

[23] In addition, between November 2023 and February 2024, the Applicant wrote numerous cheques to herself and to "cash" drawn on the layer farm bank account, in amounts totalling approximately $43,000. To date, the Applicant has not furnished an explanation for these cheques and has not provided evidence of a business purpose for the funds expended.

[24] Moreover, business records show that the Applicant has paid herself substantial sums of money from the layer farm bank account for "custom work" without the Respondent's prior knowledge or consent (i.e., $4,987 in 2021, $37,572 in 2022, and $8,135 in 2023).

[25] The Applicant recognizes that a reconciliation of all post-separation adjustments is required, but she asserts that this issue does not need to be resolved before a sale of the businesses. Her counsel, however, conceded during the motion hearing that the Respondent cannot know his purchasing power until the calculation is done.

[26] Based on the evidence in the motion record, it appears that the Applicant may owe the Respondent a substantial reconciliation payment. It would therefore be inequitable to order a sale of business assets at this time, when the Respondent does not yet know the extent of his financial means to bid on the broiler farm.

[27] The Respondent's ability to ascertain his purchasing power is not only dependent upon the reconciliation of post-separation adjustments, but it is also dependent upon the sale of the All Treat Property, the current market value of which is unknown. This constitutes another reason why it would be premature and unfair to the Respondent to order the sale of the businesses at this time.

[28] Moreover, the Respondent requires access to information and records about the financial health of the businesses before he can properly evaluate their viability, profitability and worth. As set out below, the Applicant has been blocking his access to that information. The Respondent is therefore not in a position to make informed decisions about appropriate sale prices for the businesses, or about whether (and how much) to bid for the broiler farm.

[29] For all the above reasons, I have concluded that it would be premature and not in the interests of justice for the court to order sale of the business assets at this time. The Applicants' motion for such orders is dismissed.

DISSOLVING THE PARTNERSHIP AND WINDING UP THE CORPORATION

[30] With respect to the Applicant's request for dissolution of the Partnership and winding up of the Corporation, such remedies are not available on an interim family law motion. These are final orders that could not be undone. It would therefore not be appropriate to grant these orders prior to trial: *P.M.M. v. Y.W.M.*, 2019 ONSC 866, at para. 41.

[31] The Applicant's counsel conceded, during the motion hearing, that these remedies amount to final orders that would not ordinarily be granted at an interim step in a family law proceeding. Mr. Brant explained that the Applicant requested the relief "more as a shield than a sword", in response to the oppression remedies sought by the Respondent. In other words, she would prefer that the Partnership be dissolved, the Corporation wound up, and the business assets sold rather than being required to co-manage the farms with the Respondent.

[32] Even if I found that winding up the Corporation and dissolving the partnership were orders that could be made on an interim basis, I would not make such orders in the circumstances of this case. My reasons for this ruling are as follows.

[33] Under s. 207(1)(b)(iv) of the OBCA, the court may order the winding up of a corporation where it is "just and equitable" to do so. Similarly, under s. 35(1)(f) of the *Partnerships Act*, the court may order dissolution of a partnership when "circumstances have arisen that in the opinion of the court render it just and equitable" to do so.

[34] The Applicant argues that an equitable winding up of the Corporation and dissolution of the Partnership are necessary in this case because the alternative, namely co-management of the farms (as requested by the Respondent) "would be crippling" to the businesses. The parties do not get along. The Applicant notes that they have barely spoken to each for two years, apart from brief communications at parenting exchanges. She deposes that "it would be entirely impractical, and arguably impossible" for them to co-manage the farm operations given the conflict between them.

[35] In closely held corporations, it may be just and equitable to order a winding up where there is an irreparable mutual lack of confidence or trust between the parties. However, mere disagreement or disharmony between shareholders and directors will not trigger an equitable winding up, even in the context of a family business: *P.M.M.*, at paras. 49 and 41. The court should not exercise its discretion under s.207(1)(b)(iv) of the OBCA unless the moving party demonstrates that the conflict between the parties has resulted in a serious breach of reasonable expectations pertaining to the conduct of the family business. The breach must be such that it amounts to a termination or repudiation of the business arrangements among the family members: *Animal House Investments Inc. v. Lisgar Development Ltd.*, [2007] 87 O.R. (3d) 529 (ONSC), at para. 52-78, aff'd [2008] 237 O.A.C. 261 (Div. Ct.), at para. 7.

[36] To justify an equitable winding up, the acrimony between corporate stakeholders must result in a failure of the most basic expectation of the parties, namely a continuing ability to reach decisions on significant matters affecting the business. In such circumstances, it is reasonable to infer that had the parties turned their minds to it at the time that they started the business, they would have intended their business association to terminate. Consequently, it is not the acrimony itself but rather the resulting inability of the parties to make decisions affecting the business that triggers the equitable winding-up: *Animal House*, at paras. 59-61 (ONSC), at para. 7 (Div.Ct.).

[37] Similarly, for a Court to order dissolution of a partnership on equitable grounds, the moving party must establish "that there is … substantial disagreement on questions of the day to day management of the operation and such a lack of confidence or trust between the parties as to render it virtually impossible for the venture to continue": *Landford Greens Ltd. v. 746370 Ontario Inc.*, 1993 CarswellOnt 163, (Gen. Div.), at para. 22; *Libfeld v Libfeld*, 2021 ONSC 4670, at para. 253. Courts have recognized that mutual confidence between partners is the foundational bedrock of

every business partnership. If confidence is irretrievably lost, such that the partners can no longer work together in the way they originally contemplated, then the relationship should be ended: *Ebrahimi v. Westbourne Galleries Ltd.*, (1973) AC 350 (H.L.), at pp.383-384; *Libfeld*, at para. 450.

[38] I must therefore consider the extent to which the breakdown in the parties' personal relationship in this case hinders their ability to make fundamental decisions pertaining to their farming businesses. The Applicant provides two examples of irreconcilable differences between them.

[39] First, the parties were unable to resolve a parenting time dispute surrounding their son's recent first communion ceremony. I see no relevance to that fact. Unresolvable conflict on parenting decisions does not necessarily translate into an inability to make joint business decisions.

[40] Second, the parties have not been able to agree on a lease of the All Treat, Second Line, and Mitchell Properties. These properties have previously been leased to third parties to plant crops. The All Treat Property has been leased to the Applicant's brother (A&A Family Farms) since 2019. The Applicant wants to continue leasing the properties while listing them for sale. She asserts that it is common to plant farmland and still sell it, making an arrangement whereby the crops are harvested by the seller and retained. The former lessees of the Second Line and Mitchell properties no longer want to lease the land, so the Applicant proposed leasing all the properties to her brother. The Respondent has not agreed to these proposed leases for several reasons, including his belief that planting crops on the All Treat Property could devalue the land to be sold, and the fact that there is a significant account receivable ($48,626) owed by the Applicant's brother, who has not paid the rent from last year's (2023) lease of the All Treat property.

[41] This is a significant disagreement between the parties on an issue that affects the businesses, but I do not infer, from this single example, that the parties are incapable of making business decisions on an ongoing basis. There is insufficient evidence that the acrimony between them will frustrate the continued operation of the farms. The personal conflict between the parties is not the cause of their different positions on the leasing issue. Rather they hold divergent views on the likely impact that planting the land will have on the value of the properties to be sold, and

on the wisdom of re-leasing properties to a lessee who has not paid the previous year's rent. These types of differences of opinion can arise between business partners who get along. In my view, termination of the business relationship over such differences would not likely have been in the contemplation of the parties when they started the businesses.

[42] Moreover, the motions before me do not present a binary choice between co-management of the Partnership and Corporation, on the one hand, and dissolving the Partnership and winding up the Corporation, on the other hand. As will be explained below, equitable relief may be ordered to remedy the oppression and fiduciary breaches claimed by the Respondent without making an order for equal co-management of the businesses.

[43] The parties' longstanding practice, during the marriage, was to have the Applicant assume primary responsibility for bookkeeping and financial administration of the farms. That practice reflected the parties' expectations from the time that they started the farming businesses. The practice should therefore be maintained, on an interim basis, until the issues are finally resolved at trial, provided that appropriate safeguards are put in place to protect the Corporation's, the Partnership's, and the Respondent's interests, and to ensure transparency of and accountability for the Applicant's business decisions.

[44] For all the above reasons, the Applicant's motion for orders dissolving the Partnership and winding up the Corporation is dismissed.

BIFURCATION OF TRIAL

[45] I have the authority to split the issues to be tried in this Application pursuant to r. 12(5) of the *Family Law Rules*, O. Reg. 114/99. The primary objective of the *Family Law Rules* is to enable the court to deal with cases justly (r.2(2)). Dealing with cases justly includes ensuring that the procedure is fair to all parties, saving expense and time, dealing with the case in ways that are appropriate to its importance and complexity, and giving appropriate court resources to the case while taking account of the need to give resources to other cases (r.2(3)).

[46] The court's power to split a case pursuant to r. 12(5) is discretionary. It has been exercised in cases where bifurcation provided an expeditious, cost-effective and fair process for arriving at

a just resolution of the merits: *Baudanza v. Nicoletti* [2011] O.J. No. 457 (Ont. Sup. Ct.), at para. 40; *Grossman v. Grossman*, [2014] O.J. No. 6450 (Ont. Sup. Ct.), at paras. 16-43; *Shulman v. Ganz*, [2015] O.J. No. 2655 (Ont. Sup. Ct.), at paras. 32-45. However, a multiplicity of proceedings is generally to be avoided, so the power to bifurcate is narrowly circumscribed and should be exercised only in the clearest of cases: *Simioni v. Simioni*, 2009 CarswellOnt 258 (ONSC), at paras.16; *Van Eck v. Pham*, 2019 ONSC 1006, at paras. 21-22.

[47] The analytical framework for deciding a motion for bifurcation is well established in the jurisprudence and is not in dispute. The parties agree that the applicable principles are set out in this Court's decision in *Simioni* at paras. 15-17. See also *Van Eck*, at para. 23. I have applied those principles in arriving at my conclusion below.

[48] The moving party who seeks an order for bifurcation must show that it would be in the interests of justice for the motion judge to exercise her judicial discretion to split the trial. The interests of justice will be served if there are clear time and expense benefits to be gained from the bifurcation, provided that no prejudice is caused to either party. The moving party must satisfy the court on a balance of probabilities that if granted, severance will result in the just, expeditious and least expensive determination of the proceeding on its merits.

[49] The Applicant argues that the sale or buyout of the farm businesses is a threshold issue that "must be decided prior to a determination of the corollary issues of equalization and support." She submits that "[d]etermining these issues first will provide the necessary information, including values of the businesses for property purposes, and allow a determination of the parties' respective incomes for support purposes." She further submits that the sale of the businesses is the most contentious issue between the parties, so its resolution at a first trial "may allow the parties to settle all other matters without a second trial, which would save the parties and the court both time and significant costs."

[50] For the following reasons, the Applicant has not satisfied me that bifurcated trials would serve the interests of justice in this case. I disagree with the Applicant's submission that a buyout or sale of the businesses is required in order to resolve equalization issues. The buyout/sale of the businesses would provide information about the businesses' *current* values, but it would not assist

in determining their values on the relevant dates for equalization purposes (i.e., date of marriage and date of separation). In any event, the businesses are and have always been equally owned by the parties, so the values of their respective shares of the businesses (on all relevant dates) will offset in any equalization calculation. There is, therefore, no time or cost savings to be gained by dealing with the sale of the businesses prior to deciding equalization issues.

[51] While it is true that the sale/buyout of the businesses will need to be resolved before the parties' *future* income for support purposes can be ascertained, resolution of the sale/buyout issues is not required to assist the court in determining the parties' incomes *since the date of separation*, which are the relevant amounts that will be used to determine retrospective and current (prospective) support obligations. The incomes generated by the farm businesses over the past three years (and in the three years prior to the date of separation) will be the primary focus of the evidentiary inquiry at trial.

[52] Moreover, the issues to be decided at the proposed first trial are not threshold issues; their resolution will not necessarily obviate the need for a second trial. The equalization and support issues will still need to be litigated after adjudication of the issues pertaining to the buyout/sale of the businesses. While it is possible that the parties could settle the family law issues after a trial on the sale of the businesses, there is no reason to believe that bifurcation of the trial would enhance the prospects of such a settlement.

[53] Furthermore, the issues to be decided in the proposed first trial are intertwined with the issues to be decided in the second trial. There would be considerable overlap in the evidence to be adduced and the witnesses to be called. This duplication would waste court resources and increase the expense of the litigation rather than save the parties costs.

[54] In addition, the issues to be decided in the proposed first trial are complex and will take time to litigate. Requiring a final determination of those issues before proceeding to the second trial would postpone the ultimate resolution of all the issues raised by the application. A bifurcated proceeding would contribute to delay rather than save the parties’ time.

[55] Finally, I note that the Respondent objects to the requested severance of the issues to be tried. While cost savings and efficiency are important considerations, the focus on expediency

does not displace fairness and justice as the dominant considerations in a motion for bifurcation: *Simioni*, at para. 17. Based on the findings I made earlier in this decision, I accept the Respondents' submission that he will suffer prejudice if the parties are required to adjudicate the sale/buyout of the businesses (at a first trial) before the post-separation adjustments are calculated as part of the equalization process (at a second trial). As explained earlier in this decision, fairness and justice require that the reconciliation of post-separation adjustments be decided *before* the sale or buyout of the businesses occurs, so that the Respondent can have an accurate picture of his purchasing power when he considers whether (and how much) to bid on the broiler farm. The proposed order in which these issues would be decided in a bifurcated trial would be unfair to the Respondent.

[56] The Applicant's motion for an order bifurcating the trial is therefore dismissed.

SALE OF THE SECOND LINE PROPERTY

[57] The Applicant requests an order for sale of the Second Line Property. The parties co-own the property as joint tenants.

[58] Every property owner has a *prima facie* right to an order for partition or sale of lands held in joint tenancy: *Partition Act*, R.S.O. 1990, c. P.4, s. 2. A court is required to compel partition or sale unless the opposing party has demonstrated that such an order should not be made. The party opposing the order must show malicious, vexatious, or oppressive conduct to avoid the order: *Latcham v. Latcham*, 2002 ONCA 44960, at para. 2.

[59] In the family law context, the court will often order sale of a jointly owned property at an interim stage of the litigation, where sale of the property will likely be an inevitability at trial. In this case, the Applicant argues that sale is inevitable and that delaying the sale would be financially irresponsible and unreasonable because the parties' business bank accounts are in overdraft, they owe business debts that they cannot repay, and their mortgages have fallen into default. She further submits that the onus is on the Respondent to show why the sale should not be ordered, which is a correct statement of the law.

[60] I note that the consent order issued on June 11, 2024 includes terms for the distribution of net proceeds from the sale of the All Treat Property. The parties have agreed to use such amounts

of those funds as are necessary to bring the farm mortgages and lines of credit in good standing, before either of them receives any of the money. They have also agreed that, after each of them then receives a $150,000 allocation, any remaining sale proceeds will be used to pay outstanding debts to their feed suppliers. The parties will therefore benefit from some financial relief once the All Treat Property is sold, which renders the need to sell the Second Line Property less pressing.

[61] Nevertheless, the Respondent must demonstrate that the Applicant engaged in malicious, vexatious, or oppressive conduct in order to prevent an order for sale of the jointly owned Second Line Property. The misconduct must relate to the sale issue itself, and not to the general conduct of the party bringing the motion: *Marchese v. Marchese,* 2017 ONSC 6815, at para. 18.

[62] As will be explained in detail below, the Applicant has engaged in oppressive conduct in the administration of the farming businesses. She has also engaged in vexatious conduct specifically with respect to the sale of the Second Line Property. She is aware that the Respondent wants to retain that piece of land. For reasons already discussed, he cannot ascertain or maximize his purchasing power until a reconciliation of post-separation adjustments has been completed, and the All Treat Property has been sold. Consequently, the Applicant's motion for an interim order to sell the Second Line Property at this stage of the proceeding would, if successful, severely prejudice the Respondent in his bid for the property. The Applicant is aware of this fact, yet she continues to push for sale of the land prior to any reconciliation, either as an interim order for sale, or through bifurcation of the issues at trial. I infer that she is intentionally trying to place the Respondent at a marked disadvantage as a potential purchaser of the property. This constitutes vexatious conduct.

[63] In the circumstances, the Respondent has met his onus of demonstrating why an order for sale should not be made at this time. The Applicant's motion for such an order is therefore dismissed.

RESPONDENT'S CLAIMS

[64] The remedies requested by the Respondent are based on claims of oppression and breach of fiduciary duty. I will first summarize the law pertaining to these causes of action, then review the relevant evidence and my findings in this case.

Oppression

[65] The Applicant and the Respondent are equal shareholders in and are the two sole directors of the Corporation. As such, they fall within the definition of a "complainant" in s. 245 of the OBCA. They therefore have access to the application process outlined in Part XVII of the OBCA. The Respondent has invoked that process in his motion to seek remedies for oppression.

[66] Directors of a corporation have a fiduciary obligation to discharge their duties to the corporation honestly and in good faith, with a view to the best interests of the corporation: OBCA, s.134(1)(a). Directors, acting in the best interests of a corporation, may be obliged to consider the impact of their decisions on corporate stakeholders, including shareholders. However, directors owe a fiduciary duty to the corporation only, not to the stakeholders: *BCE*, at para. 66.

[67] Directors also have a duty to exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances: OBCA, s.134(1)(b). Directors must operate the company according to their best judgment, and that judgment must be informed and must have a reasonable basis. They must act reasonably and fairly. Their decisions must be reasonable, but not perfect. The Court will defer to the business judgment of a director that falls within a range of reasonable alternatives: *Maple Leaf Foods Inc. v. Schneider Corp. (1998)*, 42 O.R. (3d) 177 (C.A.).

[68] A complainant may apply to the court for relief from oppression where a director has exercised his or her powers "in a manner that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of any security holder [or] director": OBCA, s.248(1)(2). To rectify such improper conduct, the court may make any interim or final order that "it thinks fit": OBCA, s.248(3).

[69] The test for establishing oppression is set out in the Supreme Court of Canada's decision in *BCE Inc. v. 1976 Debentureholders*, 2008 SCC 69, a case decided under the *Canadian Business Corporations Act*, which contains provisions virtually identical to the relevant provisions of the OBCA. In *BCE*, the Supreme Court observed (at para.61) that reasonable expectations are "the cornerstone of the oppression remedy."

[70] To prove oppression, a complainant must first identify the expectations that he or she claims have been violated and establish that the expectations were reasonably held. Not every unmet expectation will give rise to a claim for relief, even if the expectation was reasonable. To obtain a remedy from the court, the complainant must also prove, on a balance of probabilities, that the violation of their reasonable expectations occurred through conduct that amounted to "oppression," or "unfair prejudice to" or "unfair disregard of" their interests: *BCE*, at paras. 62-68.

[71] These are three related but different concepts. "Oppression" suggests bad faith and carries the sense of conduct that is coercive and abusive. It refers to harsh behaviour that constitutes a visible departure from standards of fair dealing and usually results in a wrong of the most serious sort. "Unfair prejudice" involves conduct that is less offensive than "oppression". It admits of a less culpable state of mind that nevertheless has unfair consequences. "Unfair disregard of" interests is the least serious of the three actionable wrongs. It refers to conduct that ignores a relevant interest as being of no importance, contrary to the stakeholder's reasonable expectations. Although they are distinct, these three concepts do not represent watertight compartments; they often overlap and intermingle: *BCE*, at paras. 89-94.

Duty of Good Faith

[72] The parties are equal partners in the layer farm. No written partnership agreement exists between them, so their mutual rights and duties as partners are governed by the *Partnerships Act*, and by the rules of equity and common law applicable to partnerships (except so far as those rules are inconsistent with the express provisions of the *Partnerships Act*): *Rochwerg v. Truster*, 2002 CanLII 41715 (ONCA), at paras. 7-9, and 63.

[73] In equity and under s. 28 of the *Partnerships Act*, partners are subject to a strict duty of disclosure concerning full information of all things affecting their partnership. Under s. 29(1) of the *Act*, a duty to account arises where undisclosed benefits are derived by a partner from a transaction concerning the partnership, or from use by a partner of the partnership property, name or business connection.

[74] In addition, equitable principles impose on partners "duties of loyalty, utmost good faith and avoidance of conflict and self-interest": *Rochwerg*, at paras. 22-25, 36, and 71-74. The

common law has long recognized that a fiduciary relationship exists between partners. In accordance with that fiduciary duty, a partner must not directly or indirectly use the partnership property for her or his own private benefit. A partner must not, in anything connected with the partnership, take any profit clandestinely for herself or himself. A partner must not carry on the business of the partnership otherwise than for the benefit of the partnership: *Dean v. MacDowell (1878)*, 8 Ch. D. 345 (C.A.), at pp. 350-351, cited in *Rochwerg*, at para. 37.

[75] The court has discretion to impose equitable remedies in the event of a breach of a fiduciary relationship within a business partnership. The purpose of such remedies is to deter fiduciary faithlessness and preserve the integrity of the fiduciary relationship: *Nguyen v. Adas*, 2022 ONSC 2541, at para. 58; *Gupta v. Ghauhan*, 2024 ONSC 2294, at para. 87.

Analysis of the Respondent's Claims

[76] The Respondent claims that the Applicant has breached her duty of disclosure pursuant to the OBCA and her fiduciary duty to him as an equal partner in the layer farm. He also claims that she has violated his reasonable expectations as a director and shareholder of the broiler farm Corporation. He submits that the Applicant's conduct entitles him to oppression remedies under s. 248(3) of the OBCA. To succeed with that claim, the Respondent is not required to satisfy the high threshold for "oppression". Rather, he will be entitled to relief if he establishes, on a balance of probabilities, that the Applicant violated his reasonable expectations through conduct that "unfairly prejudiced" or "unfairly disregarded" his interests as a co-director and shareholder of the company: OBCA, s. 248.

[77] The Respondent cannot claim to have had a reasonable expectation that he would be consulted and involved in every business decision affecting the Corporation, because that is not how the parties operated the businesses during their marriage. The long-standing continuous past practice was that the Applicant was principally responsible for bookkeeping and financial management of the farming operations. She did not seek the Respondent's authorization for every routine expenditure, nor even for every major transaction. However, the Respondent had unrestricted access to business accounts, business funds, and business records. The fact that he rarely exercised that access during the marriage because he trusted the Applicant's business

judgment does not defeat his claim to a reasonable expectation that he would continue to enjoy the same access to accounts and funds post-separation and would continue to be entitled to information about the company's finances.

[78] The Respondent's reasonable expectations in that regard were violated by the Applicant's conduct, which unfairly disregarded his interests as co-director and equal shareholder of the Corporation. For example, shortly after the parties separated, the Applicant changed the password to the parties' joint business email account without consulting the Respondent. This resulted in him being blocked from accessing the account. Despite multiple requests, the Applicant has not provided him with credentials to re-establish his access to this joint account. She claims not to remember the password to the account, despite using the account herself routinely. She explains that the password is stored in her cell phone, and she therefore accesses the account on her phone without having to enter the password each time she logs in. She states that she does not know how to retrieve the hidden password. She notes that the person who set up the email account is deceased.

[79] Be that as it may, since the Applicant has access to the account, she could easily change the password (again) and provide the Respondent with the new password. She ought to know how to do that because she did it before. Even if she does not know how to do it, she could easily seek assistance from anyone with rudimentary computer knowledge. Changing a password is a simple task for any email user. The Applicant has chosen not to take steps to reinstate the Respondent's access to the joint email account. Instead she has proposed the creation of a new joint email account, which does not address the Respondent's concern about having been excluded from all business communications on the existing email account for the past three years.

[80] Another example of the Applicant's wrongful conduct is that she placed a hold on the Respondent's layer farm business credit card. She claims not to remember doing this, but I infer from the evidence that it could not have been done by anyone other than her. Furthermore, the Applicant admits that she took a $20,000 cash advance on that card, which is in the Respondent's name, without his prior knowledge or consent. This was the maximum credit allowable on the card.

[81] Although this credit card is for the layer farm, which is operated by the parties' Partnership, the two businesses are significantly intertwined, and money is regularly transferred between the Corporation and the Partnership for cash flow purposes. Consequently, the Applicant's actions with respect to the credit card unfairly prejudiced the Respondent's interests in respect of the Corporation, as well as his interests pertaining to the Partnership.

[82] Given the parties' mutual statutory and common law duty to act in good faith (OBCA, s. 134; *Partnerships Act*, s. 45), the Respondent has a reasonable expectation that the Applicant will make financial decisions in the best interests of the Corporation and the Partnership. The evidence in the motion record demonstrates that she has repeatedly violated the Respondent's reasonable expectation in that regard, particularly in business dealings with her family members. Moreover, she has failed in her fiduciary obligations to the Corporation (under the OBCA) and to the Respondent (in equity and under the *Partnership Act*) to avoid conflict and self-interest when using business assets.

[83] As mentioned earlier, the Applicant has not collected rent from her brother's business (A&A Farms) for land leased to him in 2023. This failure to collect the rent owing is not in the best interests of the businesses. It does, however, favour her brother's interest.

[84] The record also shows that the Applicant made a significant loan of approximately $485,000 to her parents' company (Donkers Poultry Farms Inc.) in June 2022, at a below-market interest rate. Similar loans had been made to her parents in previous years (prior to the parties' separation), but those loans were either at or above market interest rates. Records show that the interest payment on an existing loan fell from around $2,500 at the start of 2021 to $240 in May of 2021. During her cross-examination, the Applicant had no explanation for this decrease in the interest rate, which roughly coincided with the parties' separation in late March 2021.

[85] I infer that the interest rate on the Donkers Poultry Farm loan was reduced by the Applicant so that the Respondent would no longer benefit (as a partner in the layer farm) from her parents' generosity post-separation. However, the loans in question are not personal loans from the Applicant's parents to the parties. Rather, they are loans between the parents' corporation and the parties' Partnership. The Applicant's conduct, in reducing the interest payable on the loan post-

separation, was therefore detrimental to the interests of the layer farm Partnership. It also had negative financial consequences for the Respondent, who was neither consulted before nor informed after the change in the interest rate. This constituted a breach of the Applicant's fiduciary duty to the Respondent as her business partner.

[86] Although the loans to the Applicant's parents' company were made from the Partnership, they impacted the Corporation's interests as well, because the broiler farm corporate bank account has been consistently overdrawn since 2021 as a result of excess funds being transferred by the Applicant to the layer farm (Partnership) bank account. The funds for the two businesses are so intermingled that any decision impacting the financial health of the layer farm indirectly impacts the financial health of the broiler farm, and *vice versa*.

[87] The Applicant testified that her parents neither required nor requested the half-million-dollar loan in June 2022 and that no security was obtained for the loan. While previous loans to the Applicant's parents may have benefitted the parties' businesses because they were at or above market interest rates, it is difficult to see how such a large unsecured loan at a reduced interest rate in 2022 was in the best interest of either the Corporation or the Partnership, given that both businesses were carrying a significant debt load. The money ought reasonably to have been used to service the debt.

[88] Based on the above, I conclude that the Applicant has engaged in questionable business decisions involving members of her family, specifically not collecting the rent owed by her brother's company for the 2023 lease of the All Treat Property, reducing the interest rate on the substantial loan to her parents' company in or about April 2021, and increasing the balance of that loan in June 2022. These impugned decisions are not in the best interest of either the Corporation or the Partnership; rather, they serve the interests of the Applicant's family members. The decisions do not fall within a reasonable range of options to which the court should show deference to the Applicant's business judgment, particularly since she has proffered no explanation for any of them.

[89] Moreover, as discussed earlier in these reasons, the Applicant has personally benefitted from surplus draws from the Partnership for the past three years without the Respondent's prior knowledge or consent. He learned of these draws only because his accountant, Mike Bossy, was

permitted to examine the farms' financial records in the context of disclosure in this family law proceeding. The Applicant had a duty to be transparent about those draws when she took them, as part of her disclosure obligation to her business partner (*Partnerships Act*, s. 28).

[90] The Applicant had a similar duty to be forthright about withdrawals from the Partnership that she attributed to the Respondent's draw even though the money was paid to her parents' company and not to him. The Applicant did not respect her disclosure obligations in that regard. Instead, her actions and their detrimental impact on the Respondent's interests were discovered by Mike Bossy when he reviewed business records to obtain disclosure for the Respondent in the context of this family law proceeding.

[91] The Applicant was also obligated to disclose the "equalization" payments that she unilaterally advanced to herself from business funds when the Applicant used the broiler farm business credit card to pay his legal expenses. Her failure to advance similar "equalization" payments to the Respondent on occasions when she used business accounts to pay for her own personal expenses makes this failure to disclose more egregious. It constitutes a violation not only of her disclosure obligations under s. 28 of the *Partnerships Act*, but also of her duty under s. 29(1) to account to the partnership for benefits derived by her from her use of partnership property.

[92] The Applicant not only breached her statutory disclosure obligations, but she also failed in her common law duty of loyalty and utmost good faith in her dealings with the Respondent as her business partner. The fact that she acknowledges the need to reconcile post-separation adjustments does not diminish the gravity of these breaches. The fact that she has given undertakings to produce documents (e.g., invoices, receipts, bank statements, correspondence with the accountant, etc.) similarly does not mitigate the gravity of her wrongful conduct, because the documents ought to have been disclosed as a matter of course, or upon the Respondent's request.

[93] The Applicant was able to commit these wrongful acts without any accountability because she hindered the Respondent's access to financial information and business records. The Respondent has a reasonable expectation, as co-director of the broiler farm Corporation, to be given unrestricted access to the company's books and financial documents. He also has a statutory

right to receive "full information [from the Applicant] of all things affecting the partnership": *Partnerships Act*, s. 28.

[94] The Respondent is therefore entitled to inspect more than just the bank statements and financial statements for the businesses; he is entitled to inspect the invoices, receipts, and other documents underlying the business transactions: *Thomas v. Thomas Health Care Corporation*, 2005 CanLII 6391 (ONSC). The Applicant has violated his rights and reasonable expectations in that regard, by (among other things) instructing the businesses' accountant, John Broderick, not to respond to information and records requests from the Respondent or his representatives. Although the Respondent's accountant, Mike Bossy, was permitted to view relevant business records at the offices of the Applicant's counsel, this restricted access was insufficient.

[95] Mike Bossy deposed that, when he asked Mr. Broderick about a $55,000 investment made by the layer farm in Ridge Valley Farms Inc., Mr. Broderick advised him, on behalf of the Applicant, that he was not entitled to that information. The Respondent similarly deposed that Mr. Broderick said he requires instructions from the Applicant before responding to requests for financial information about the businesses. During her cross-examination, the Applicant admitted to asking Mr. Broderick not to send business communications or documentation to the Respondent. She later resiled from that testimony and said she never told Mr. Broderick not to provide the Respondent with documentation.

[96] The Applicant did not file an affidavit from Mr. Broderick. From that decision, I infer that if Mr. Broderick had been called as a witness, he likely would have confirmed that he received these instructions from the Applicant.

[97] Based on the totality of the evidence, I conclude that the Applicant has directed the businesses' accountant not to provide financial information or documentation to the Respondent (or his representatives), at least not without her prior approval. This constitutes a flagrant breach of her fiduciary duty and disclosure obligations to the Respondent under the *Partnerships Act*, as well as a breach of his rights and reasonable expectations as a director and shareholder of the Corporation. These breaches completely ignore the Respondent's interests. I am therefore satisfied that the Applicant has exercised her powers as a director of the Corporation in a manner that is

oppressive, or unfairly prejudicial to, or that unfairly disregards the Respondent's interests: OBCA, s. 248(2).

Remedies

[98] Based on all the above, I conclude that the Respondent has established his entitlement to equitable remedies for oppression and for the Applicant's breach of her fiduciary obligations to him as a business partner. However, some of the remedies sought by the Respondent go beyond what is necessary to satisfy his reasonably held expectations, protect his legitimate business interests, deter fiduciary faithlessness, and preserve the integrity of the parties' fiduciary relationship.

[99] In particular, the Respondent's request for an order that the Applicant take no step in the management of the layer farm without consulting and obtaining his prior consent for any business decision, including all payments and receipts, is impractical to the point of being unworkable. The Partnership's and the Respondent's personal interests will be adequately protected provided that appropriate safeguards are in place to prevent conflict of interest, ensure transparency and establish accountability for the Applicant's business decisions. The evidence suggests that her administrative decision-making authority should only be curtailed in respect of transactions involving her family members and payments made to herself.

[100] Similarly, the Respondent's request for an order entrusting him with the primary financial management of the broiler farm Corporation would not be practical in the current circumstances, in which money regularly flows between the two businesses. Realistically, until the parties' interests in the two farms are disentangled, they need to be managed by the same individual. The Applicant has both the education as well as the necessary experience to do so, but she must be transparent in her decision-making and must not be permitted to engage in business transactions with family members without the Respondent's consent. The evidence does not suggest that she has acted contrary to the businesses' best interests in dealings with arm's length parties.

[101] Furthermore, I do not see the need to appoint Mike Bossy as a joint business accountant with Mr. Broderick. There is no evidence to suggest that Mr. Broderick is not performing his work competently and in good faith. To the extent that he has refused to provide information or

documentation to the Respondent (or the Respondent's representatives), he was acting on the Applicant's (his client's) instructions. This problem can easily be corrected by ordering the Applicant to give him different instructions. Such an order is preferable to an order for joint accountants, which would be unnecessarily complicated and unduly costly for the parties.

[102] While I do not agree that the appointment of a second accountant is warranted, I appreciate why the Respondent perceives the need for an audit of the businesses' finances. The Respondent may retain an expert of his choice to conduct such a forensic audit. However, I will not order that the expert's fees be paid by the Applicant personally. If an expert is retained, the fees should be paid initially by the Respondent but may be subject to a costs order at the end of the trial.

[103] Finally, some of the remedies requested by the Respondent are premature, such as his request for an order that the Applicant is personally liable for any improper personal benefit she may have received at the expense of the two businesses, as revealed through a forensic audit. It would not be appropriate to make such anticipatory remedial orders at this time. This ruling is without prejudice to the Respondent's right to seek such orders at trial.

[104] Taking all the relevant circumstances into account, I have concluded that the following Temporary Orders are fit and just remedies,

(a) In managing the finances of Stickney Poultry Farms Inc. and Stickney Poultry Farm, the Applicant shall refrain from entering into any business transactions, contracts, agreements, ventures or endeavours with members of her family or with businesses owned or operated by members of her family, without obtaining the Respondent's prior written consent.

(b) The Applicant shall immediately cease paying herself draws in excess of the agreed $1,500/month, except if she obtains the Respondent’s prior written consent.

(c) The Applicant shall refrain from attributing any payments to any third parties as draws upon the Respondent’s partnership account, except if she obtains his prior written consent.

(d) The Applicant shall forthwith facilitate the Respondent's access to all online banking accounts for Stickney Poultry Farms Inc. and Stickney Poultry Farm.

(e) The Applicant shall forthwith provide the Respondent with direct access to all existing email accounts (in operation in 2021, 2022, 2023 or 2024) connected to the operations of Stickney Poultry Farms Inc. and Stickney Poultry Farm.

(f) The Applicant shall not delete any historical email messages (dated from March 2021 to present) connected to the businesses.

(g) The Applicant shall not create any new email account for the businesses without obtaining the Respondent's prior written consent and granting him full direct access to the account.

(h) The Applicant shall forthwith produce to the Respondent copies of all business-related communications (including letters, emails, and text messages) she has had with the accountant John Broderick since March 1, 2021.

(i) The Applicant shall copy the Respondent on all future business-related correspondence with John Broderick. She shall instruct Mr. Broderick to do the same. She shall not have verbal communications about the businesses with Mr. Broderick without including the Respondent in the conversation.

(j) The Applicant shall instruct Mr. Broderick to provide the Respondent and his representatives with any and all business-related information that may be requested by them, pertaining to the years 2021 to present. These instructions shall be provided forthwith in writing, with a copy to the Respondent.

(k) The Applicant shall deliver (or shall instruct Mr. Broderick to deliver) to the Respondent (or his representative) all business records generated for the Partnership and the Corporation since Mach 1, 2021. The Applicant submits that she cannot deliver these materials to the Respondent until she completes her answers to undertakings, and Mr. Broderick completes the businesses' financial

statements and tax returns. The Applicant shall have until July 8, 2024 to complete her answers to undertakings. The delivery of business records shall be done forthwith thereafter, except for the 2023 business records, which Mr. Broderick requires to complete work on the financial statements and tax returns. The Applicant shall deliver (or shall instruct Mr. Broderick to deliver) the 2023 documents to the Respondent as soon as the accounting work is completed.

(l) The Applicant shall provide (or shall instruct Mr. Broderick to provide) the Respondent (or his representative) with the requisite software used to prepare the businesses' financial records.

(m) If the Respondent decides to retain an expert to conduct a forensic audit of the businesses' finances, the Applicant shall cooperate fully with the audit and shall instruct Mr. Broderick to cooperate fully with the audit. Cooperation includes (but is not limited to) turning over all relevant documents and information to the auditor, as requested by the auditor. The Respondent shall pay the fees of the auditor, subject to any different costs order at trial.

COSTS

[105] I remain seized with respect to costs of these motions. The parties are encouraged to settle the issue of costs. If necessary, they may make written costs submissions and I will adjudicate the issue.

[106] The Respondent has until July 12, 2024 to serve and file his costs submissions, which are not to exceed three (3) double-space pages in length. The page limit excludes the Bill of Costs and any Settlement Offers upon which the Respondent seeks to rely. In addition to filing his Costs submissions with the court, a copy should be forwarded to my judicial assistant via email at ana.boras@ontario.ca.

[107] The Applicant shall have until July 26, 2024 to serve and file her responding costs submissions, which must comply with the same page limit, and should also be emailed to my judicial assistant.

[108] There shall be no reply costs submissions unless requested by me.

[109] If the parties resolve the issue of costs, counsel should notify my judicial assistant of same.

Justice Cynthia Petersen

Released: June 21, 2024

CITATION: Stickney v. Stickney, 2024 ONSC 3581
GUELPH COURT FILE NO.: FS-21-369
DATE: 2024/06/21

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

ANNE MARIE STICKNEY

Applicant

– and –

COREY STICKNEY

Respondent

DECISION ON MOTIONS

Justice Cynthia Petersen

Released: June 21, 2024