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COLUMN: BANKING ON CORPORATE

Family corporations walk on eggshells

Remedy in self-dealing case removes father from his position of control over family holding company

THERE ARE certainly some symmetries when one finds oneself reading court decisions about corporate disputes among family members during the holiday season and the case involves a poultry-processing operation. It brings to mind the traditional family dinner setting and underscores an enduring law that applies in corporate contexts like all others: Families are complicated. One of my parents was a corporate lawyer and the other a family therapist, and I'm embarrassed to admit that only after reading dozens of decisions about business disputes among family members did I begin to notice the natural synergies.

The recent decision of the Divisional Court (Ontario) in *Georgakakos v. Georgakakos* provides an example of a corporate dispute among family members involving allegations of fowl behaviour (I will try to limit the poultry references but may have a few, just to manage "eggspectations"). Each case is a product of its own facts, of course, but there are some consistent themes. In *Georgakakos*, the claimants were the second-generation minority shareholders in a family holding company, AG, which was controlled by the claimants' father. The claimants alleged their father had breached his fiduciary duty as a director of AG by self-dealing and that AG had carried on its affairs in a way that was oppressive to their interests as shareholders by failing to declare dividends for many years.

The allegations about self-dealing related to AG's minority shareholding in another company, Riverview, that owned and operated a profitable poultry operation. Another shareholder of Riverview decided to sell its shares to Riverview's other shareholders. Instead of having AG buy the shares, the father caused the additional Riverview shares to be acquired by his own personal holding company. He subsequently had his holding company sell those Riverview shares to AG at a significant profit to himself.

In essence, for those few that did not see this coming, the claim was that, in his capacity as director, the father had hatched a plan to feather his own nest. As for the oppression claims, the basis was the corporation's record of not having paid any dividends for a significant period of time despite having substantial retained earnings.

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The court determined that the father had breached his fiduciary duty by appropriating an opportunity (the acquisition of the additional Riverview shares) that properly belonged to AG. The court noted that not all self-dealing actions are necessarily problematic, but there must be full and proper disclosure and the relevant actor must demonstrate that the best interests of the corporation were served. In *Georgakakos*, the original acquisition had been approved by a resolution signed by both the father and the (since divorced) mother of the family, but the disclosure and recusal requirements of applicable corporate law had not been met, and the subsequent stage of the acquisition occurred after the mother had ceased to be involved in AG's affairs. Nobody was left to guard the fox in the henhouse. The court ordered the father's holding company to turn over the profit earned to AG.

The substance of the oppression claim was more straightforward, and the court had little difficulty confirming that there had been a reasonable expectation of some dividends. The claimants apparently needed income, having many of their eggs in this basket. The more interesting aspect was the remedy. Where the trial court had determined that the children should sell their shares in AG to their father because their relationships were irretrievably broken, the Divisional Court concluded that this step was not necessary to remedy the oppression and instead made orders that removed the father from his position of control.

The verbiage of corporate law takes on acute meaning in the context of familial disputes: reasonable expectations unmet, oppressive conduct, breaches of duty and failure to properly disclose are a small sample of this phenomenon. This phenomenon is discernible when styles of cause in corporate law decisions feature two of the same surname.

Whatever the family dynamics, decisions such as *Georgakakos* yield clear directions about the scope of fiduciary duties and legal obligations. I could conclude with one last chicken reference, but I prefer not to ruffle feathers. CL

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