No. _____

SUPREME COURT
OF THE STATE OF WASHINGTON

No. 86536-6-I

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

CALLUM HERDSON, an individual,

Respondent,

v.

RICHARD FORTIN, et al.,

Petitioners.

PETITION FOR REVIEW

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A. Court of Appeals Decision.

Petitioners Richard Fortin, Robert Enslen, XCar Inc., FTW Services, Inc., XCar Remarketing Inc., Cross Border Vehicle Services, Inc., and Crossborder Vehicle Sales, Ltd. (collectively "defendants") seek review of the Court of Appeals' May 5, 2025, unpublished opinion. (App. A, cited as "Op. ___") The Court of Appeals affirmed the trial court's judgment requiring the defendants to pay respondent Callum Herdson $4.23 million as a "buyout" of his one-third interest in a used car company, XCar, Inc., which had gone out of business more than a year before the trial court entered judgment and sold its assets for $200,000, leaving its majority shareholders holding significant debt owed by XCar. The Court of Appeals entered an order denying publication on June 26, 2025. (App. B)

B. Issues Presented for Review.

1. The Court of Appeals affirmed the forced buyout of a minority shareholder's one-third interest in a

defunct company for $4.23 million despite the trial court's unchallenged findings that an accounting to determine exactly what damages plaintiff may have suffered was an adequate remedy and forcing defendants to spend $100,000 to pursue that accounting. Did the Court of Appeals err in refusing to follow this Court's holding in its seminal shareholder oppression case that a court lacks authority to award an extreme equitable remedy when "less severe equitable solutions . . . would effectively remedy the situation"? *Scott v. Trans-Sys., Inc.*, 148 Wn.2d 701, 718-19, 64 P.3d 1 (2003). *See* RAP 13.4(b)(1), (2).

2. The Court of Appeals acknowledged that no Washington authority addresses what circumstances justify a forced buyout, and no Washington precedent establishes the date a court should use when valuing a shareholder's interest as part of a buyout. Should this Court address these issues of first impression given the prevalence of shareholder litigation and the imposition of

buyouts as a remedy in shareholder disputes? *See* RAP 13.4(b)(4).

C. Statement of the Case.

1. In the first appeal, the Court of Appeals affirmed the trial court's findings that an accounting and damages were adequate remedies for shareholder oppression but reversed, on procedural grounds, its order appointing a third-party to perform an accounting.

In 2012, Richard Fortin and Robert Enslen formed XCar, Inc., a used car dealership. (Op. 2) In 2014, Fortin and Enslen hired respondent Callum Herdson as president of XCar, granting him a nonvoting one-third interest in XCar. (Op. 2) Fortin and Enslen fired Herdson in 2017. (Op. 3)

Herdson sued Fortin, Enslen, and XCar,[1] alleging minority shareholder oppression as well as other claims.

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[1] Herdson also sued the "Crossborder-owned companies," other wholesale and retail car companies owned and operated by Fortin and Enslen. (Op. 2-3)

(1CP 1-2)[2] Herdson sought as a remedy the "[d]issolution of XCar pursuant [to] RCW 23B.14.300." (2CP 1155; *see also* 2CP 1125-26) Alternatively, Herdson requested "a court-ordered buyback . . . of Herdson's shares pursuant to RCW 23B.14.300 at their current value (or as close as practicable)." (2CP 1155)

After a trial in November 2021, the trial court entered findings of fact and conclusions of law (FFCL) dismissing all of Herdson's claims (and several of the defendants) except for his shareholder oppression claim against Fortin and Enslen only. (1CP 1726-61)[3] The trial court found Fortin and Enslen oppressed Herdson "[b]y not accounting and not distributing 1/3 of XCar's net profits to Herdson."

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[2] This is the second appeal in this case. "1CP ___" refers to the Clerk's Papers from the 2023 appeal, which were made part of this appellate record. "2CP ___" refers to the Clerk's Papers in this appeal.

[3] The trial court issued and incorporated an oral ruling into its written findings and conclusions. (FFCL 1, 1CP 1726; RP 1572-1607)

(FFCL 87, 1CP 1747; *see also* FFCL 75-86, 88-97, 1CP 1745-49) The trial court rejected Herdson's request for dissolution, finding in 2021 that XCar was "a functioning and potentially profitable business." (FFCL 115, 1CP 1754) The trial court also refused to order a buyback, reasoning that, like dissolution, it is an extreme remedy. (RP 1587: "dissolution . . . that's an extreme remedy, which by extension means buyback") The trial court instead stated it would appoint a receiver over XCar "to provide the Herdson [sic] with an accurate accounting of the profits of XCar from March 2014 to the present." (FFCL 123, 1CP 1755-56; *see also* FFCL 112, 1CP 1753: "[t]he quantum of damage suffered and recoverable by Herdson is to be assessed in accordance with the receivership")

The defendants appealed. After the Court of Appeals accepted review, the trial court entered a new order appointing Ernst & Young, not as receiver, but as a forensic auditor, ordering it to perform an accounting "of XCar's

after-tax net profits for each" year which would then support a damage award "equal to one-third of the total after-tax profits." (1CP 1763-65; *see also* 1CP 1762: auditor would "fairly and equitably provide Plaintiff his share of profits") The trial court also appointed Ernst & Young as a "special fiscal agent" to "ensure that Plaintiff receives one-third of XCar's net profits on a go-forward basis." (1CP 1765-67)

The Court of Appeals affirmed the trial court's findings and conclusions but held it lacked authority under RAP 7.2 to appoint Ernest & Young after the Court of Appeals accepted review. *Herdson v. Fortin*, 26 Wn. App. 2d 628, 530 P.3d 220, *rev. denied,* 2 Wn.3d 1009 (2023).

2. The Court of Appeals affirmed the trial court's March 2024 order on remand that required defendants to pay Herdson $4.23 million in exchange for his shares in XCar, which had failed more than a year earlier after the used car market crashed.

While the case was on appeal, XCar lost its line of credit with its lender, NextGear Capital, following a severe downturn in the used car market after the Covid-19 pandemic as manufacturers resumed production and new car inventory rebounded. (2CP 8-9, 236-39, 246-47, 545-46; *see also* 2CP 1062, citing Neal E. Boudette, *The Pandemic Used-Car Boom is Coming to an Abrupt End*, N.Y. Times (Jan. 30, 2023) ("the used-car business is suffering a brutal hangover. . . . sales and prices of used cars are falling and the dealers that specialize in them are hurting"))

By early 2023, Fortin and Enslen had each injected over $1,000,000 of their personal funds into XCar, which was losing $30,000 a day. (2CP 8, 236, 1076, 1078)

Herdson never contributed any money into XCar. (RP 382, 597-98; 2CP 49-50) Fortin and Enslen—who, again unlike Herdson, had personally guaranteed XCar's line of credit—decided to cut their losses and cease XCar's operations while selling as much of its remaining inventory and assets as they could to try and pay down its debt. (2CP 7, 9, 235-37, 546-47, 1079)

On February 1, 2023, Fortin and Enslen executed an arms-length asset purchase agreement, selling some of XCar's assets to Windy Chevrolet, an unrelated third-party entity, for $200,000. (2CP 110-28; *see also* 2CP 22-23, 237, 690-91, 1084-85) XCar also sold off its remaining inventory and directed payments be remitted to Cox Automotive (NextGear Capital's parent company) to repay NextGear Capital's line of credit, which encumbered these vehicles. (2CP 6-8, 1876, 1882-2001) XCar was administratively dissolved on October 3, 2023. (2CP 998)

In January 2024, after the case was remanded to the trial court, Herdson sought an order requiring the defendants to purchase his shares in the now dissolved XCar for "$4,230,000, the value of his one-third share of XCar as presented at trial" more than two years earlier. (2CP 760; *see also* 2CP 791-804, 856-62) Herdson also alleged the sale of XCar's assets was "an attempt to defraud" him and sought to pierce the attorney-client privilege based on the crime-fraud exception. (2CP 398-407)

The trial court rejected Herdson's allegations of fraud and denied his motion to pierce the attorney-client privilege. (2CP 746-47) The trial court, however, ultimately granted Herdson a buyout adopting a June 2021 valuation date, and entered judgment in his favor for $4,231,806. (2CP 1086-91) The trial court cited testimony from Herdson's expert at trial that valued his interest as of June 2021—just before the used car market crash when XCar

was at the apex of its value—but did not explain why it chose June 2021, four years after Herdson was terminated from XCar, as the appropriate date for valuing his interest in XCar, or why, without revising its previous findings, it abandoned an accounting and damages—remedies the defendants had already spent $100,000 to support while Herdson's forensic accountants reviewed and audited XCar's financials. (2CP 1090)

The defendants appealed, arguing the trial court's findings and conclusions did not support a forced buyout or a June 2021 valuation date. The Court of Appeals affirmed in an unpublished opinion. The Court of Appeals acknowledged that "a court abuses its discretion in imposing an extreme remedy when a lesser remedy would suffice" (Op. 9), but affirmed the forced buyout, stating that the failure of XCar meant there was "'no longer the need to establish procedures or standards to protect the minority shareholder's interest in future net profits.'" (Op.

11, quoting 2CP 1090) The Court of Appeals acknowledged that "case law does not dictate the time of valuation" (Op. 12) but affirmed the June 2021 valuation date because "Herdson retained his shares past the termination of his employment." (Op. 13)

The Court of Appeals denied defendants' timely motion for publication on June 26, 2025. (App. B)

D. Reasons the Court Should Accept Review.

1. The Court of Appeals' opinion conflicts with Washington precedent holding that trial courts may not award extreme equitable remedies when lesser remedies will suffice.

A forced buyout of a minority shareholder's interest in a corporation is an extreme remedy meant to serve as an alternative to dissolution, not as a remedy imposed after a corporation has already dissolved. The Court of Appeals nonetheless affirmed the buyout notwithstanding the trial court's unchallenged and previously affirmed finding that an accounting and damages were adequate remedies and

the fact that there was nothing to buyout—XCar had already dissolved when the trial court ordered a buyout. The Court of Appeals' opinion warrants review because it conflicts with longstanding Washington precedent, including *Scott v. Trans-Sys., Inc.*, 148 Wn.2d 701, 64 P.3d 1 (2003), holding that a trial court abuses its discretion in awarding a drastic equitable remedy when a less severe remedy would suffice. RAP 13.4(b)(1)-(2)

Minority shareholder oppression claims are founded on RCW 23B.14.300(2)(b), which states "[t]he superior courts may dissolve a corporation" if "those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent." Suits under RCW 23B.14.300(2)(b) "are fundamentally equitable in nature." *Scott*, 148 Wn.2d at 716.

In *Scott*, this Court interpreted RCW 23B.14.300(2)(b) as authorizing not just dissolution, but a range of remedies because "liquidation is so drastic that it

must be invoked with extreme caution." 148 Wn.2d at 708-09 (internal quotation and quoted source omitted). The Court provided examples of other equitable remedies, including appointment of a receiver or "special fiscal agent," an accounting, or damages. *Scott*, 148 Wn.2d at 717 (citing *Baker v. Com. Body Builders, Inc.*, 264 Or. 614, 632-33, 507 P.2d 387 (1973)). The Oregon Supreme Court in *Baker* identified as a potential equitable remedy a forced buyout—"an order requiring the corporation or a majority of its stockholders to purchase the stock of the minority stockholders . . . at a price determined by the court to be a fair and reasonable price." 264 Or. at 633.

While Washington courts have not previously addressed orders directing a forced buyout, other jurisdictions have characterized a forced buyout as "an extreme remedy" that, like dissolution, should be used only if "some lesser remedy will not suffice." *Bedore v. Familian*, 122 Nev. 5, 125 P.3d 1168, 1169, 1172 (2006)

(reversing forced buyout because requiring return of excess salaries was adequate remedy) (internal quotation and quoted source omitted); *Brodie v. Jordan*, 447 Mass. 866, 857 N.E.2d 1076, 1081-82 (2006) (reversing forced buyout; "no matter how expedient a forced buyout may be as a solution, the remedy for a breach of fiduciary duty must be proportional to the breach"); *Brenner v. Berkowitz*, 134 N.J. 488, 513, 634 A.2d 1019, 1031 (1993) (buyout should be reserved for "exceptional circumstances"; affirming judgment denying buyout); *Franks v. Franks*, 330 Mich. App. 69, 108, 944 N.W.2d 388, 408 (2019) (reversing "drastic remedy" of forced buyout).

These holdings are consistent with the Model Statutory Close Corporation Supplement (MSCCS), adopted in six states, which identifies a forced buyout as "extraordinary relief" that should be granted only when "ordinary relief," such as an accounting or damages, are

inadequate. MSCCS §§ 41–42;[4] *see also* Ga. Code §§ 14-2-941–942; Mo. Rev. Stat. §§ 351.855–860; Mont. Code §§ 35-9-502–503; S.C. Code §§ 33-18-410–420; Wis. Stat. § 180.1833; Wyo. Stat. §§ 17-17-141–142.

Among other problems, forced buyouts risk "arbitrarily increasing [the] value" of a minority interest because it is "an asset that, by definition, has little or no market value" and thus is inherently difficult to value. *Brodie*, 857 N.E.2d at 1081-82; *see also Marriage of Gillespie*, 89 Wn. App. 390, 402, 948 P.2d 1338 (1997) ("It is difficult to value the shares of a closely held

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[4] The MSCCS, attached as Appendix C, was developed by the drafters of the Model Business Corporation Act. *See* F. Hodge O'Neal et al., *O'Neal and Thompson's Close Corporations and LLCs: Law and Practice* § 1:26 (Rev. 3rd ed. July 2025 Update) (hereinafter *Close Corporations*). The MSCCS was discontinued because amendments to the Model Business Corporation Act, including the adoption of § 14.34 discussed below, mooted the need for a supplement specific to close corporations. *Close Corporations*, *supra*, § 1.26.

corporation"). Forced buyouts also grant minority shareholders rights they did not bargain for. *Nixon v. Blackwell*, 626 A.2d 1366, 1380 (Del. 1993) (rejecting "court-imposed stockholder buy-out for which the parties had not contracted").[5]

This Court has limited the trial court's discretion to impose "extreme remedies" in shareholder disputes, holding in *Scott* that the trial court abused its discretion in ordering dissolution because it did not consider "less severe equitable solutions that would effectively remedy the situation." 148 Wn.2d at 718-19. This Court explained that any impropriety in the handling of loans between two companies could be remedied by an accounting and an order that "the respective corporation . . . repay th[e]

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[5] In this case, the parties did not execute a shareholders agreement; Fortin and Enslen, however, rejected Herdson's proposal for a "shotgun agreement" that would have given the shareholders the right to seek a buyout. (Ex. 443; RP 350, 834, 847; FFCL 16, 1CP 1729)

amount" owed. *Scott*, 148 Wn.2d at 718. *Scott* looked to *Baker*, where the Oregon Supreme Court affirmed the denial of equitable relief because although defendants oppressed the plaintiffs, they subsequently provided an accounting that proved the corporation did not "suffer[] financial loss in any ascertainable amount." *Baker*, 507 P.2d at 397.

Scott and *Baker* are consistent with the longstanding principle that "an equitable remedy is an extraordinary, not ordinary, form of relief" and should be granted "only when there is a showing that a party is entitled to a remedy and the remedy at law is inadequate." *Sorenson v. Pyeatt*, 158 Wn.2d 523, 531, 543, ¶¶12, 38, 146 P.3d 1172 (2006) (reversing equitable lien because "a remedy at law exists"); *Bellevue Square, LLC v. Whole Foods Mkt. Pac. Nw., Inc.*, 6 Wn. App. 2d 709, 724, ¶37, 432 P.3d 426 (2018) (reversing injunction because damages were adequate remedy), *rev. denied*, 193 Wn.2d 1024 (2019); *Ahmad v.*

Town of Springdale, 178 Wn. App. 333, 342, ¶17, 314 P.3d 729 (2013) (affirming refusal to issue extraordinary writs).

The Court of Appeals recognized that "a court abuses its discretion in imposing an extreme remedy when a lesser remedy would suffice" and agreed with the trial court "that both dissolution and buyout were 'extreme remed[ies].'" (Op. 9-10) But the Court of Appeals failed to explain how the trial court had the equitable authority to order a buyout after finding that an accounting and damages were adequate remedies. Its opinion directly conflicts with *Scott* and the established principle that more extreme forms of equitable relief should not be awarded when lesser remedies will suffice. RAP 13.4(b)(1)-(2).

The courts below reasoned that an accounting was unnecessary after the failure of XCar because there was "'no longer the need to establish procedures or standards to protect the minority shareholder's interest in future net profits.'" (Op. 11, quoting 2CP 1090) But the inability to

award prospective relief does not explain why an accounting and damages could no longer adequately make Herdson whole. Until his appointment was vacated on procedural grounds by the Court of Appeals, Herdson's chosen auditor performed months of work on an accounting, charging defendants almost $100,000. (2CP 831-52) Neither court below explained why that accounting could not have been completed on remand or why an award of the damages uncovered in the accounting would not make Herdson whole. Indeed, because the trial court abandoned an accounting—the remedy suggested in *Scott*

and awarded in *Baker*—there is no evidence that Herdson actually suffered any damages.[6]

The Court of Appeals' opinion did not tie its remedy to any statutory or equitable purpose. Courts typically award buyouts when "dissolution would needlessly harm a functioning business." *Waller v. Am. Int'l Distribution Corp.*, 167 Vt. 388, 706 A.2d 460, 462 (1997). But "when the business cannot be operated at a profit," "[d]issolution of the business is most appropriate." Steven C. Bahls, *Resolving Shareholder Dissension: Selection of the Appropriate Equitable Remedy*, 15 J. Corp. L. 285, 337

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[6] The Court of Appeals erroneously reasoned that the trial court found Herdson proved specific damages on his oppression claim. (Op. 11) In fact, the trial court found that a receiver and accounting were necessary to determine "[t]he quantum of damage suffered and recoverable by Herdson" on his oppression claim. (FFCL 112, 1CP 1753; *see also* RP 1589: remedy for "oppressive conduct" was a receiver who would "clarify the accounting" and determine "what each of shareholders are entitled to")

(1990).[7] In this case, however, the lower courts imposed a remedy that required defendants to pay $4.23 million for a one-third interest in a corporation that had *already dissolved*.

The Court of Appeals ignored that the purpose of a buyout is to provide a remedy to oppressed minority shareholders while also avoiding the dissolution of a profitable business. For instance, Section 14.34 of the Model Business Corporation Act (MBCA), adopted in 25

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[7] The only case Herdson cited below that involved a buyout in an already dissolved company was *Sipko v. Koger*, Inc., 251 N.J. 162, 276 A.3d 160 (2022). *Sipko* ordered a buyout *after* a "comprehensive accounting" and a "finding that [defendants] deliberately stripped the companies of value for the specific purpose of putting the money beyond [plaintiff's] reach." 276 A.3d at 163, 174. Here, in contrast, the trial court rejected Herdson's allegation Fortin and Enslen orchestrated XCar's failure to defraud him. (2CP 398-407, 746-47)

states,[8] provides for an "election to purchase in *lieu of dissolution*" and states that if a corporation or its other shareholders "elect to purchase all shares owned by the petitioning shareholder," then "the court shall dismiss the petition to dissolve the corporation." MBCA § 14.34 (2023) (emphasis added). This approach "allow[s] the corporation to continue in existence for the benefit of the remaining shareholders" but makes "[t]he election to purchase . . . *wholly voluntary*." MBCA § 14.34, comment (emphasis

[8] *See* Ala. Code § 10A-2A-14.14; Alaska Stat. § 10.06.630; Ariz. Rev. Stat. § 10-1434; Cal. Corp. Code § 2000; Col. Rev. Stat. § 7-114-305; Conn. Gen. Stat. § 33-900; D.C. Code § 29-312.24; Fla. Stat. § 607.1436; Idaho Code § 30-1-1434; 805 Ill. Comp. Stat. 5/12.56(e); Haw. Rev. Stat. § 414-415; Iowa Code § 490.1434; La. Stat. 12:1-1434; Md. Code, Corps. & Ass'ns. § 3-413; Miss. Code § 79-4-14.34; N.C. Gen. Stat. § 55-14-31(d); Neb. Rev. Stat. § 21-2,201; N.H. Rev. Stat. § 293-A:14.34; N.Y. Bus. Corp. Law § 1118; Or. Rev. Stat. 60.952(5)(b); R.I. Gen. Laws § 7-1.2-1315; S.D. Codified Laws § 47-1A-1434; Utah Code § 16-10a-1434; Va. Code § 13.1-749.1; W. Va. Code § 31D-14-1434.

added). Under the MSCCS, a buyout is likewise an optional means of avoiding dissolution. MSCCS § 42.

The courts below ignored this statutory purpose. Although ostensibly ordering a "buyout," the trial court did not give the majority shareholders the option of proceeding with dissolution (or rather ratifying the already complete dissolution). Instead, the trial court simply entered judgment against defendants for $4.23 million, without ordering Herdson to transfer his 1/3 interest in XCar or setting any other consideration for their payment of $4.23 million. (2CP 1086-91) The trial court did so despite finding that an accounting was necessary to prove what, if any, damages Herdson suffered. (FFCL 112, 1CP 1753) The trial court's windfall judgment in the wake of XCar's failure is doubly punitive because Fortin and Enslen—but not Herdson—paid millions to keep XCar afloat and still had to pay off XCar's loans that they—but not Herdson—personally guaranteed. (2CP 8, 236, 1076, 1078)

This Court should grant review because the Court of Appeals' opinion conflicts with *Scott* and undermines the purpose of RCW 23B.14.300(2)(b)—providing an equitable remedy to make an oppressed shareholder whole, but not an extreme remedy resulting in an unjustified windfall.

2. This Court should accept review because the circumstances that justify a buyout and the date for valuing a minority shareholder's shares are issues of substantial public interest.

Both the circumstances that justify a forced buyout and the valuation date used in a forced buyout are issues of substantial public interest warranting review under RAP 13.4(b)(4).

a. Despite the prevalence of shareholder litigation, Washington trial courts have no guidance on what circumstances justify a buyout.

"[T]he threshold question of whether an equitable remedy [is] available" is a question of law. *Borton & Sons, Inc. v. Burbank Props., LLC*, 196 Wn.2d 199, 207, ¶20-21,

471 P.3d 871 (2020). Accordingly, this Court has consistently established the threshold legal predicate for various forms of equitable relief. *See, e.g.*, *Henry George & Sons, Inc. v. Cooper-George, Inc.*, 95 Wn.2d 944, 953, 632 P.2d 512 (1981) (dissolution of corporation due to deadlock); *Sorenson*, 158 Wn.2d at 532-38, ¶¶14-25 (equitable lien); *Borton*, 196 Wn.2d at 213-14, ¶¶40-44 (equitable grace period to exercise lease purchase option); *City of Lakewood v. Pierce Cnty.*, 144 Wn.2d 118, 126-29, 30 P.3d 446 (2001) (constructive trust); *Douchette v. Bethel Sch. Dist. No. 403*, 117 Wn.2d 805, 810-13, 818 P.2d 1362 (1991) (equitable tolling of statute of limitations); *Kim v. Lee*, 145 Wn.2d 79, 88-92, 31 P.3d 665 (2001) (equitable subrogation) *opinion corrected*, 43 P.3d 1222 (2001).

This Court has not addressed remedies for shareholder oppression since *Scott*, more than two decades ago, despite the "tremendous amount of litigation in this

country arising out of shareholder disputes" and the fact that—despite their extreme nature—buyouts are now "the most common remedy for dissension within a close corporation." F. Hodge O'Neal et al., *O'Neal and Thompson's Oppression of Min. Shareholders and LLC Members*, Preliminary Materials (May 2025 Update); *Close Corporations*, *supra*, § 1.29.

The Court of Appeals' refusal to establish a legal threshold for imposition of one of the more extreme remedies available to a trial court in a shareholder dispute underscores the need for guidance from this Court regarding buyouts. The Court of Appeals reasoned the trial court did not abuse its discretion in ordering a buyout because it "relied on substantial evidence in imposing an

appropriate equitable remedy." (Op. 10)[9] But this reasoning—that the trial court's findings, untethered to any legal principles, is enough to support its remedy—is entirely circular.

It is axiomatic that findings of fact do not exist in a vacuum but to "support the trial court's conclusions of law and judgment." *In re LaBelle*, 107 Wn. 2d 196, 209, 728 P.2d 138 (1986). Similarly, an equitable remedy, though it "may arise from any number of varied facts and circumstances," is still "not a limitless remedy to be applied according to the . . . conscience of the particular chancellor," but requires "certain elements that must be established." *Sorenson*, 158 Wn.2d at 533, 535, ¶16, ¶21.

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[9] Defendants did not argue the trial court's findings were not supported by substantial evidence; they argued it abused its discretion because it found an accounting and damages were adequate remedies but nonetheless ordered a buyout. (*See* App. Br. 48-60; Reply Br. 10-15)

The Court of Appeals' unexplained "deference to the trial court selecting the remedy . . . provides no guidance to trial courts that are searching for appropriate, usable standards." Bahls, *supra*, 15 J. Corp. L. at 316; *see also* *Schirmer v. Bear*, 174 Ill. 2d 63, 72-73, 672 N.E.2d 1171, 1175 (1996) (rejecting interpretation of Illinois Business Corporations Act giving trial courts "unfettered discretion to order the corporation to purchase the minority shareholder's shares" and providing "no guidelines for determining what type of behavior warrants awarding the forced purchase of shares").

The absence of guidance also means "parties suffering from corporate dissension cannot predict how a court might settle their dispute" and will "have difficulty negotiating a solution short of litigation." Bahls, *supra*, 15 J. Corp. L. at 316. The Court of Appeals' opinion thus undermines "the express public policy of this state which

strongly encourages settlement." *City of Seattle v. Blume*, 134 Wn.2d 243, 258, 947 P.2d 223 (1997).

b. Trial courts have no guidance on how to select a date for valuing a shareholder's interest, a crucial issue in shareholder disputes.

The Court of Appeals erred in refusing to provide any guidance on the choice of a valuation date. "[T]he determination of fair value is . . . critically influenced by the choice of the valuation date." Douglas K. Moll, *Shareholder Oppression and "Fair Value": Of Discounts, Dates, and Dastardly Deeds in the Close Corporation*, 54 Duke L.J. 293, 366 (2004). Courts choose one of two dates almost uniformly—the date the plaintiff was ousted from the corporation, or the date the plaintiff filed suit. Moll, *supra*, 54 Duke L.J. at 367-81.

The rationale for both dates is similar—they represent "the point at which the minority shareholder is no longer entitled or required to participate in changes to the company's value":

> The rationale for utilizing one of these dates as the valuation benchmark is that, in most instances, they best approximate the point at which the minority shareholder is no longer entitled or required to participate in changes to the company's value—either because the shareholder has been "frozen out" of management (in which case the date of oppression might be used) or because the shareholder has formally requested an end to his or her shareholder status (in which case the date of filing might be more appropriate).

In re Herremans, 653 B.R. 386, 400 (Bankr. W.D. Mich.) (citing Moll, *supra*, 54 Duke L.J. at 382-83), *recon. denied*, 2023 WL 5182425 (2023).

The Court of Appeals recognized that "no Washington authority dictates the point at which a trial court should value a party's shares." (Op. 13) But rather than provide guidance on whether to use the ouster date or date of filing, the Court of Appeals chose neither, deferring to the trial court's choice of a June 2021 valuation date—four years after Herdson was ousted from XCar, 18 months after he filed suit, and three years before it entered judgment—unmoored from any legal principle. (Op. 12:

"Because case law does not dictate the time of valuation and the trial court articulated its reliance on credible testimony, the court did not abuse its discretion.")

The Court of Appeals reasoned that "Herdson retained his shares past the termination of his employment and . . . no Washington precedent requires that a shareholder maintain control to receive profits." (Op. 13) This reasoning presumes that Herdson was actually owed profits, a question that remains unanswered because the accounting was never completed. Regardless, that Herdson retained his shares after his termination may support Herdson's claim to pre-dissolution profits from XCar, as the trial court awarded in its initial decision, but it does not explain its choice of a *June 2021* valuation date, the point at which XCar—a used car lot on less than an acre of rented gravel—reached the zenith of its alleged value before sharply declining to a total value of $200,000 and debts far in excess of that. A June 2021 date was untethered from

any policy of making an oppressed shareholder of a closely held company whole and served no purpose save to give Herdson a windfall.

Moreover, "[j]ust as shareholders should share in the value of the firm in proportion to their *pro rata* ownership, they also should share in the diminution of value." Bahls, *supra*, 15 J. Corp. L. at 335. No principle of equity justified allowing Herdson to benefit from increases in XCar's value under Fortin's and Enslen's management, while Herdson retained his shares, but not XCar's diminution in value following the used car market crash that shuttered companies across the country. *See* Moll, *supra*, 54 Duke L.J. at 372 (if ouster date is not used "the value of a plaintiff minority's shares is properly affected by changes in a company's value . . . for as long as the minority remains a shareholder.").

The Court of Appeals approved a valuation date that gave Herdson—a nonvoting minority shareholder who

never contributed any capital to XCar nor guaranteed any of its debts—a windfall judgment. At the same time, Fortin and Enslen—the majority shareholders who oversaw the success underlying the trial court's valuation—were left to pay off all of XCar's debts after having already contributed more than $2 million of their personal funds. This Court should grant review to correct this injustice and provide guidance that will prevent similar injustices in the future.

E. Conclusion.

This Court should accept review. RAP 13.4(b)(1)-(2), (4).

I certify that this brief is in 14-point Georgia font and contains 4,999 words, in compliance with the Rules of Appellate Procedure. RAP 18.17(b).

Dated this 28th day of July, 2025.

FREY BUCK

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DECLARATION OF SERVICE

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on July 28, 2025, I arranged for service of the foregoing Petition for Review, to the court and to the parties to this action as follows:

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DATED at Everett, Washington this 28th day of July, 2025.

/s/ Victoria K. Vigoren
Victoria K. Vigoren

FILED
5/5/2025
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

CALLUM HERDSON, an individual, Respondent, v. RICHARD FORTIN, ROBERT ENSLEN, XCAR INC, FTW SERVICES, INC, XCAR REMARKETING INC, CROSS BORDER VEHICLE SERVICES, INC, and CROSSBORDER VEHICLE SALES, LTD, Appellants.	No. 86536-6-I DIVISION ONE UNPUBLISHED OPINION

SMITH, J. — In 2012, Richard Fortin and Robert Enslen formed XCar, a used car dealership. In 2014, Fortin and Enslen hired Callum Herdson to act as president of XCar, granting him a one-third interest in the company as a nonvoting minority shareholder. Fortin and Enslen later fired Herdson. Herdson brought an action against Fortin and Enslen, claiming minority shareholder oppression. The trial court entered judgment for Herdson and, in lieu of dissolving the corporation, appointed a receiver. Fortin and Enslen appealed. After this court accepted review, the trial court entered an order appointing special fiscal agents and a forensic auditor instead of the receiver.

On appeal, this court affirmed the trial court's ruling but held that the trial court lacked the authority to appoint the special fiscal agents. On remand, the

trial court entered judgment in favor of Herdson and ordered Fortin and Enslen to buy out Herdson's shares in XCar. Fortin and Enslen again appeal, asserting that the trial court erred in entering judgment in favor of Herdson, in valuing his shares as of June 2021, and in imposing that judgment against other companies also owned by Fortin and Enslen. They also contend that the court erred by not offsetting Herdson's judgment by discovery costs. Finding no error, we affirm.

FACTS

Background

Richard Fortin and Robert Enslen formed XCar, Inc., a used car dealership, in 2012. At the time, Fortin and Enslen owned and operated several other wholesale and retail car companies: Crossborder Vehicle Services, Inc., Crossborder Vehicle Sales Ltd., XCar Remarketing, Inc., and FTW Services, Inc. (collectively "Crossborder-owned companies"). XCar is not a subsidiary of any of the Crossborder-owned companies.

In 2014, Fortin and Enslen hired Callum Herdson to act as president of XCar, granting him one-third of its stock as common, nonvoting shares. Fortin and Enslen retained the remaining preferred voting shares, splitting them equally. Although the parties did not execute a written shareholder agreement, they signed a "Consent Resolution of the Board of Directors for XCar, Inc.," documenting the share split. Consistent with the distribution of shares, the parties agreed that each owner would receive one-third of XCar's after-tax net

profits. Fortin and Enslen retained ultimate control over XCar's operations and management.

Fortin and Enslen then terminated Herdson's employment in February 2017. He retained his shares in the company. In December 2019, Herdson sued Fortin, Enslen, XCar, and the Crossborder-owned companies, alleging that Fortin and Enslen failed to distribute his share of XCar's profits. He asserted a breach of fiduciary duty, breach of a shareholder agreement, fraudulent inducement, promissory estoppel, unjust enrichment, and accounting. He also argued that Fortin, Enslen, and the Crossborder-owned companies were alter egos of each other and requested that the court pierce the corporate veil to hold all jointly and severally liable. As a remedy, Herdson requested that a court-appointed receiver dissolve XCar under RCW 23B.14.300. Alternatively, he requested the court order Fortin and Enslen to buy back his shares of XCar at their current value.

Trial

The case proceeded to trial in November 2021. Following seven days of the parties' presentation of evidence, the trial court dismissed all of Herdson's claims save his minority oppression claim against Fortin and Enslen. The court determined that Fortin and Enslen engaged in oppressive conduct by hiding financial information, subordinating XCar's independent interests to the interests of the Crossborder-owned companies, manipulating XCar's finances, not accounting, and failing to distribute Herdson's share of XCar's net profits.

The court nevertheless rejected both of Herdson's requested remedies because they were too extreme. Instead, it appointed a receiver to oversee XCar's financial operations and accounting records until XCar's profits were accurately ascertained, its interests sufficiently protected, and safeguards imposed to ensure that Herdson received his share of the profits. The court acknowledged that it would consider reasonable alternatives to the receiver as long as the proposed options would account for yearly profits and distribute past profits evenly to shareholders. The court declined to award any fees.

Fortin and Enslen appealed the trial court's findings of fact in February 2022.[1] After this court accepted review, the trial court entered an order appointing special fiscal agents and a forensic auditor in lieu of a receiver.

Receiver and Special Fiscal Agent

Herdson proposed that the trial court appoint the Stapleton Group ("Stapleton") as receiver. Fortin and Enslen disagreed, proposing that the court appoint Ernst & Young to perform a forensic accounting and ongoing oversight of XCar's finances. Adopting Fortin and Enslen's suggestion, the trial court appointed Ernst & Young as a forensic auditor and "special fiscal agent" in lieu of a traditional receiver in February 2025. As a forensic auditor, the court required that Ernst & Young perform a historical forensic accounting of XCar's finances from March 2014 on, and present its findings. As a special fiscal agent, the trial

[1] The facts concerning Fortin and Enslen's initial appeal come from this court's published opinion in *Herdson v. Fortin*, 26 Wn. App. 2d 628, 530 P.3d 220, *review denied*, 2 Wn.3d 1009 (2023).

court granted Ernst & Young the authority to oversee XCar's financial operations and accounting records on a continuing basis.

Herdson repeatedly objected to the court's appointment of Ernst & Young, moving several times that the court appoint Stapleton instead. In response, the trial court appointed a former superior court judge to serve as a special master under CR 53.3. Although Fortin and Enslen objected to this appointment, the trial court stated that it was busy with many other tasks at the court and that this would allow the parties to get more immediate attention and hopefully get the issues resolved.

In October 2022, the special master issued a recommendation that Stapleton replace Ernst & Young. The trial court agreed and appointed Stapleton in Ernst & Young's place.

Sale of XCar

Over the course of its existence, XCar required a line of credit to provide the cashflow needed to purchase the vehicles it sold. NextGear Capital ("NextGear") provided that line of credit. But, while XCar was under Ernst & Young's review, NextGear changed its method of calculating loans. Determining that it had overfunded XCar by roughly $1.5 million, NextGear withdrew its line of credit in late 2022.

Unable to find a replacement line of credit, Fortin and Enslen eventually sold XCar's assets to Windy Chevrolet. Windy Chevrolet bought XCar's office equipment, shop equipment, goodwill, and the rights to reviews and marketing for

$200,000. The agreement did not include the vehicles in XCar's inventory, which Windy Chevrolet purchased separately. XCar ultimately dissolved in October 2023.

Herdson objected to the sale of XCar's assets, repeatedly alleging that the sale was intended to defraud both Herdson and the court. Greg Doublin and Mario Lyons, former employees of XCar, supported this theory, testifying that after executing the sale, Fortin and Enslen stated, "Fuck Cal. We got him" and danced around laughing. Although Fortin and Enslen did not contradict this particular testimony, they disputed the idea that the sale was intended to defraud.

Initial Appeal

Following the trial court's initial determination but before it appointed Ernst & Young, Fortin and Enslen appealed the trial court's findings of fact and conclusions of law.[2] When the trial court appointed Ernst & Young, Fortin and Enslen amended their appeal to challenge the appointment they themselves had requested.

This court issued its opinion in May 2023. Determining that the trial court's findings as to minority shareholder oppression were supported by substantial evidence and that the court did not abuse its discretion in fashioning an equitable remedy, this court affirmed each count of the trial court's rulings except the appointment of special fiscal agents and a forensic auditor. Because the trial court had not properly complied with RAP 7.2 in appointing the agents,

[2] Again, the facts concerning Fortin and Enslen's initial appeal come from this court's published opinion in *Herdson*.

this court reversed the order. Remanding on that singular issue, this court expressly provided that the trial court maintained the authority to order a remedy it deemed equitable.

Remand

On remand in January 2024, the trial court requested that both parties submit additional briefing on the appropriate remedy in light of the fact that XCar no longer existed. Herdson again alleged that Fortin and Enslen intended to defraud both him and the court and requested the value of his interest in XCar as of June 2021. Fortin and Enslen argued that the record did not support a finding of fraud and that Herdson's share should be valued as of February 2017, when his employment was terminated.

Referencing the appellate decision, the trial court noted the record supported Herdson's original request that Fortin and Enslen buy out his shares in the company. The trial court similarly determined that the record, including credible expert testimony at trial, supported the valuation of Herdson's interest in XCar at $4.23 million. And recognizing that XCar no longer existed, the court acknowledged no need exists to establish procedures or standards to protect minority shareholders' interests going forward and therefore no need for a receiver.

The court entered judgment in favor of Herdson, awarding him the $4.23 million value of his shares, plus costs of the appeal and accruing interest.

Fortin and Enslen timely appealed.

ANALYSIS

Standard of Review

We review the fashioning of equitable remedies for an abuse of discretion. *Herdson v. Fortin*, 26 Wn. App. 2d 628, 651, 530 P.3d 220, *review denied*, 2 Wn.3d 1009 (2023). A trial court abuses its discretion if its decision or order is manifestly unreasonable or based on untenable grounds or reasons. *Stocker v. Univ. of Wash.*, 33 Wn. App. 2d 352, 359, 561 P.3d 751 (2024). Whether equitable relief is appropriate at all is a question of law we review de novo. *Herdson*, 26 Wn. App. 2d at 651.

Judgment Supported by Record

Fortin and Enslen assert that the record does not support the trial court's order requiring Fortin and Enslen to buyout Herdson's shares in XCar because the court had already rejected that option as an extreme remedy. Herdson states that both the record and this court's earlier review provide substantial evidence to support the trial court's order. Because the trial court determined that Herdson was a minority shareholder, that he had experienced minority shareholder oppression, and that no need exists to protect future interests or sustain the business, we agree with Herdson.

We review a trial court's findings of fact for substantial evidence. *Columbia State Bank v. Invicta Law Grp., PLLC*, 199 Wn. App. 306, 319, 402 P.3d 330 (2017). Evidence is substantial if it is sufficient to persuade a rational, fair-minded person of the truth of the asserted premise. *Columbia State Bank*,

199 Wn. App. at 319. " 'We view the evidence and all reasonable inferences in the light most favorable to the prevailing party.' " *Columbia State Bank*, 199 Wn. App. at 319 (quoting *State v. Kaiser*, 161 Wn. App. 705, 724, 254 P.3d 850 (2011)).

" 'It is a recognized principle that majority shareholders must, at all times, exercise good faith toward the minority stockholders.' " *Herdson*, 26 Wn. App. 2d at 639 (internal quotation marks omitted) (quoting *Real Carriage Door Co., Inc. v. Rees*, 17 Wn. App. 2d 449, 458, 486 P.3d 955 (2021). In Washington, minority shareholders who experience oppressive conduct have several potential remedies under the law, including judicial dissolution of the corporation. *Herdson*, 26 Wn. App. 2d at 649. But courts are generally reluctant to dissolve corporations and require plaintiffs to meet a rigorous burden of proof. *Herdson*, 26 Wn. App. 2d at 639. So, in addition to dissolution, courts may consider less severe alternatives. *Herdson*, 26 Wn. App. 2d at 639. This includes the buyback of the minority shareholders' shares at fair value or awarding damages. *Herdson*, 26 Wn. App. 2d at 650. But a court abuses its discretion in imposing an extreme remedy when a lesser remedy would suffice. *Scott v. Trans-System, Inc.,* 148 Wn.2d 701, 718-19, 713, 64 P.3d 1 (2003).

The definition of oppressive conduct includes burdensome, harsh, and wrongful actions, a lack of fair dealing, and a visible departure from the standards of fair play. *Real Carriage Door Co.*, 17 Wn. App. 2d at 455-56.

Here, Herdson provided substantial evidence that Fortin and Enslen engaged in minority shareholder oppression. The record displays significant evidence of Fortin and Enslen's pattern of oppressive conduct, including engineering profits away from XCar, engaging in self-dealing by directing XCar's profits into constructive dividends and warranty program kickbacks, deliberately attempting to hide XCar's value, and refusing to provide Herdson with the financial information to which he was entitled. Relying on this evidence, the trial court appropriately determined that Fortin and Enslen materially impaired Herdson's rights to his portion of the profits, and therefore engaged in oppressive conduct. The trial court similarly relied on substantial evidence in imposing an appropriate equitable remedy.

As noted, courts are reluctant to grant dissolution as an equitable remedy, preferring to impose lesser fixes. The trial court acknowledged that reluctance, stating specifically that both dissolution and buyout were "extreme remed[ies]" when Herdson first requested them. This, Fortin and Enslen suggest, establishes that the record is insufficient to support buyout. But the court's initial hesitancy to require buyout stemmed from the fact that XCar remained a functioning and potentially profitable business, providing a service to the public. By the time the trial court reconsidered possible remedies, XCar's functionality no longer required consideration.

Fortin and Enslen dissolved XCar in October 2023. Therefore, when potential remedies were again before the trial court on remand, the court no

longer had to consider their implications on the business. In fact, the court explained as such in its additional findings, stating

> [g]iven that XCar is no longer an on-going business and that there is no longer the need to establish procedures or standards to protect the minority shareholder's interest in future net profits, the Court finds there are now remedies available to the Plaintiff as proved in trial for awarding Plaintiff his value of shares of XCar.

In doing away with the business, Fortin and Enslen opened the door to alternative remedies that the court initially considered too extreme. The facts underscoring the need for such a remedy did not change.

Fortin and Enslen next contend that evidence is insufficient because the trial court did not actually require buyout. Rather, Fortin and Enslen claim, the trial court simply awarded damages in contradiction to an earlier finding that Herdson had failed to prove any damages. But this is a misrepresentation of the facts.

The trial court at no point concluded that Herdson failed to prove damages as to his minority shareholder oppression claim. Indeed, the trial court initially appointed the receiver, and eventually the special fiscal agent and forensic auditor, to determine exactly what Fortin and Enslen owed Herdson for his shares. The trial court's statements that Fortin and Enslen reference suggesting that Herdson failed to prove damages, refer to two specific claims: breach of a shareholder agreement and fraudulent inducement. Neither proceeded beyond the initial trial and neither is relevant to Herdson's right to damages on the minority shareholder oppression claim.

Because the trial court determined that Herdson was a minority shareholder, that he had experienced minority shareholder oppression, and that no need exists to protect future interests or sustain the business, the trial court relied on substantial evidence and did not abuse its discretion in granting Herdson the value of his shares in XCar.

Share Valuation

Fortin and Enslen next contend that the trial court abused its discretion in awarding judgment based on XCar's June 2021 valuation, more than four years after Fortin and Enslen terminated Herdson's employment. Herdson claims that the court did not err because it appropriately valued Herdson's shares at the time of trial. Because case law does not dictate the time of valuation and the trial court articulated its reliance on credible testimony, the court did not abuse its discretion in awarding Herdson the June 2021 value of his shares.

Property valuation, including share value, is a determination made by the trier of fact. *Eagleview Tech., Inc. v. Pikover*, 192 Wn. App. 299, 309, 365 P.3d 1264 (2015). "An appellate court does not substitute its judgment for that of the trial court in a factual dispute over the valuation of property." *Eagleview*, 192 Wn. App. at 309. However, "an appellate court must be able to determine the method by which the trial court determined valuation." *In re Marriage of Berg*, 47 Wn. App. 754, 757, 737 P.2d 680 (1987).

Fortin and Enslen suggest that the trial court abused its discretion in valuing Herdson's shares as of June 2021 because he lost any management role

in the company in 2017. But they fail to address both that Herdson retained his shares past the termination of his employment and that no Washington precedent requires that a shareholder maintain control to receive profits.

Given the lack of directive as to how to value shares and the trial court's articulated reliance on a credible witness, the trial court did not abuse its discretion.

First, Fortin and Enslen do not challenge Herdson's role as a minority shareholder. Similarly, they do not challenge that he retained his shares beyond the end of his employment. And the trial court unequivocally concluded that Fortin and Enslen subjected Herdson to minority shareholder oppression. As a result, the record alone does not support valuing Herdson's shares at the end of his employment.

Next, no Washington authority dictates the point at which a trial court should value a party's shares. Fortin and Enslen point to a variety of out-of-state, non-binding cases, asking that the court align itself with other jurisdictions. But the trial court has no duty to do so. Rather, the trial court's only duty was to rely on sufficient evidence in making its determination.

Herdson presented an expert who provided an accounting of the value of Herdson's shares in 2021. When asked, the expert explicitly testified that she did not value Herdson's shares as of June 2021 to award him the highest amount. The trial court deemed this expert credible, a conclusion that an appellate court will not challenge. And the trial court articulated its reliance on this expert,

stating "this Court finds that Herdson's expert on valuation to be credible and adopts the valuation of $4.23 Million for Herdson's shares." This provided the reviewing court the information necessary to assess how the trial court determined valuation.

Because the trial court relied on credible evidence in determining valuation and articulated its method of doing so, the trial court did not abuse its discretion.

Judgment Against Crossborder-Owned Companies

Fortin and Enslen then claim that the trial court erred in entering judgment against the Crossborder-owned companies despite finding them to be distinct corporate entities. Herdson contends that the equitable remedy appropriately included the Crossborder-owned companies because they were both participants in and beneficiaries of the shareholder oppression. Because Fortin and Enslen involved Crossborder-companies directly in the shareholder oppression and share common shareholders with XCar, the trial court did not err in entering judgment against the Crossborder-owned companies.

Minority shareholder oppression includes burdensome, harsh, and wrongful actions, a lack of fair dealing, and a visible departure from the standards of fair play. *Real Carriage Door Co.*, 17 Wn. App. 2d at 458-59. It may further involve damaging a corporation by " 'the siphoning off of profits by excessive salaries or bonus payments and the operation of the business for the sole benefit

of the majority stockholders, to the detriment of the minority stockholders.' " *Real Carriage Door Co.*, 17 Wn. App. 2d at 459 (quoting *Scott*, 148 Wn.2d at 713).

Fortin and Enslen state that the trial court erred in entering judgment against the Crossborder-owned companies because it dismissed all of Herdson's claims against the entities, the Crossborder-owned companies did not own any stock in XCar and therefore could not have oppressed Herdson, and the trial court expressly rejected Herdson's request to pierce the corporate veil because he failed to prove his initial claims of alter ego. In holding the Crossborder-owned companies accountable, therefore, Fortin and Enslen assert that the trial court directly contradicted its earlier judgment. We disagree.

In its findings of fact, the trial court determined that Fortin and Enslen made retroactive changes to financial statements to shift profits from XCar to the Crossborder-owned companies, in addition to withdrawing money from the Crossborder-owned companies through dividends and management fees, engaging in self-dealing and breaching their fiduciary duties to Herdson. These findings track directly with the case law, with Fortin and Enslen siphoning profits from XCar to feed to the Crossborder-owned companies for the sole benefit of the majority shareholders. So, although the trial court did dismiss Herdson's alter ego claims, it nevertheless found that the Crossborder-owned companies were directly involved in the shareholder oppression.

And the fact that Herdson was not a shareholder in the Crossborder-owned companies is immaterial. *Scott* is particularly instructive here. 148 Wn.2d

at 718. In *Scott*, Tim Scott challenged the business dealings of two separate corporations, Northwest and TSI, asserting minority shareholder oppression. 148 Wn.2d at 705-06. Although Scott only owned stock in Northwest, the two companies had several common shareholders. *Scott*, 148 Wn.2d at 705-06. Neither company held stock in the other. *Scott*, 148 Wn.2d at 705-06.

Parallel to this case, the trial court in Scott determined that the majority shareholders in Northwest and TSI had engaged in oppressive conduct. *Scott*, 148 Wn.2d at 707. On review, the Washington State Supreme Court noted that, as a remedy for the oppressive conduct,

> TSI could have been required to produce an accounting of the money it loaned to Northwest and the interest it would have charged as compared to the interest paid by Northwest on the line of credit used by TSI. If there were a difference in interest amounts, the respective corporation could then repay the amount.

Scott, 148 Wn.2d at 718.

Put another way, if a discrepancy exists between the two corporations, either could be responsible for the remedy, despite Scott only holding stock in one. Therefore, a company under the common control of majority shareholders may be subject to equitable remedies for the misdeeds of another.

Here, it is unchallenged that Fortin and Enslen were majority shareholders in XCar and the sole shareholders of the Crossborder-owned companies. Additionally, this court already determined that substantial evidence supports the finding that Fortin and Enslen engaged in minority shareholder oppression. The Crossborder-owned companies are implicated both through direct involvement and common shareholders. And as a result, the Crossborder-owned companies

are subject to the equitable remedy the court imposed on Fortin, Enslen, and XCar. The trial court did not abuse its discretion in entering judgment against the Crossborder-owned companies.

Offsetting Judgment

Fortin and Enslen assert that the trial court erred by failing to offset its monetary judgment for costs it ordered Herdson to pay. Herdson contends that, because Fortin and Enslen failed to object to or request that the final judgment reflect those costs, they waived the issue on appeal. Because Fortin and Enslen failed to raise the issue below, we decline to reach it.

RAP 2.5(a) states that a party must raise an issue at trial to preserve the issue for appeal, with limited exceptions. A party may raise an issue for the first time on appeal if the issue addresses a lack of trial court jurisdiction, a failure to establish facts upon which relief can be granted, or manifest constitutional error. RAP 2.5(a).

Here, Fortin and Enslen did not object to Herdson's motion for entry of judgment or request that the final judgment reflect Herdson's discovery costs. Because it is not the trial court's responsibility to address issues that parties failed to raise, and none of the exceptions apply, Fortin and Enslen waived the issue on appeal.

Special Master

Lastly, Fortin and Enslen contend that, in the event of a remand, this court should vacate the trial court's order appointing a special master. Herdson

disagrees, asserting that the appointment of a special master is moot, or alternatively, unripe and invites an advisory opinion.

"As a general rule, [courts] will not decide moot questions or abstract propositions." *Hous. Author. of City of Everett v. Terry*, 114 Wn.2d 558, 570, 789 P.2d 745 (1990). An issue is considered moot on appeal if the appellate court cannot provide effective relief. *In re Dependency of L.C.S.*, 200 Wn.2d 91, 98-99, 514 P.3d 644 (2022). However, this court may provide guidance where an issue may arise again on remand. *State v. LaBounty*, 17 Wn. App. 2d 576, 579, 487 P.3d 221 (2021).

Because no issue exists for which this court could provide effective relief, the issue is moot.

We affirm.

WE CONCUR:

Díaz, J.

FILED
6/26/2025
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

CALLUM HERDSON, an individual, Respondent, v. RICHARD FORTIN; ROBERT ENSLEN, XCAR INC; FTW SERVICES, INC; XCAR REMARKETING INC, CROSS BORDER VEHICLE SERVICES, INC; and CROSSBORDER VEHICLE SALES, LTD, Appellants.	No. 86536-6-I ORDER DENYING MOTION TO PUBLISH

Appellants Richard Fortin, Robert Enslen, XCar Inc., FTW Services, Inc., XCar Remarketing Inc., Cross Border Vehicle Services, Inc., and Crossborder Vehicle Sales, Ltd., moved to publish the opinion filed on May 5, 2025. Respondent Callum Herdson filed an answer. The court has taken the matter under consideration and determined the motion should be denied.

Now, therefore, it is hereby

ORDERED that the motion to publish is denied.

For the Court:

Judge

MODEL STATUTORY CLOSE CORPORATION SUPPLEMENT

Creation

SECTION 1. SHORT TITLE

This Supplement shall be known and may be cited as the "[name of state] Statutory Close Corporation Supplement."

SECTION 2. APPLICATION OF [MODEL] BUSINESS CORPORATION ACT AND [MODEL] PROFESSIONAL CORPORATION SUPPLEMENT

(a) The [Model] Business Corporation Act applies to statutory close corporations to the extent not inconsistent with the provisions of this Supplement.

(b) This Supplement applies to a professional corporation organized under the [Model] Professional Corporation Supplement whose articles of incorporation contain the statement required by section 3(a), except insofar as the [Model] Professional Corporation Supplement contains inconsistent provisions.

(c) This Supplement does not repeal or modify any statute or rule of law that is or would apply to a corporation that is organized under the [Model] Business Corporation Act or the [Model] Professional Corporation Supplement and that does not elect to become a statutory close corporation under section 3.

SECTION 3. DEFINITION AND ELECTION OF STATUTORY CLOSE CORPORATION STATUS

(a) A statutory close corporation is a corporation whose articles of incorporation contain a statement that the corporation is a statutory close corporation.

(b) A corporation having 50 or fewer shareholders may become a statutory close corporation by amending its articles of incorporation to include the statement required by subsection (a). The amendment must be approved by the holders of at least two-thirds of the votes of each class or series of shares of the corporation, voting as separate voting groups, whether or not otherwise entitled to vote on amendments. If the amendment is adopted, a shareholder who voted against the amendment is entitled to assert dissenters' rights under [MBCA ch. 13].

Shares

SECTION 10. NOTICE OF STATUTORY CLOSE CORPORATION STATUS ON ISSUED SHARES

(a) The following statement must appear conspicuously on each share certificate issued by a statutory close corporation:

The rights of shareholders in a statutory close corporation may differ materially from the rights of shareholders in other corporations. Copies of the articles of incorporation and bylaws, shareholders' agreements, and other documents, any of which may restrict transfers and affect voting and other rights, may be obtained by a shareholder on written request to the corporation.

(b) Within a reasonable time after the issuance or transfer of uncertificated shares, the corporation shall send to the shareholders a written notice containing the information required by subsection (a).

(c) The notice required by this section satisfies all requirements of this Act and of [MBCA § 6.27] that notice of share transfer restrictions be given.

(d) A person claiming an interest in shares of a statutory close corporation which has complied with the notice requirement of this section is bound by the documents referred to in the notice. A person claiming an interest in shares of a statutory close corporation which has not complied with the notice requirement of this section is bound by any documents of which he, or a person through whom he claims, has knowledge or notice.

(e) A corporation shall provide to any shareholder upon his written request and without charge copies of provisions that restrict transfer or affect voting or other rights of shareholders appearing in articles of incorporation, bylaws, or shareholders' or voting trust agreements filed with the corporation.

SECTION 11. SHARE TRANSFER PROHIBITION

(a) An interest in shares of a statutory close corporation may not be voluntarily or involuntarily transferred, by operation of law or otherwise, except to the extent permitted by the articles of incorporation or under section 12.

(b) Except to the extent the articles of incorporation provide otherwise, this section does not apply to a transfer:

(1) to the corporation or to any other holder of the same class or series of shares;

(2) to members of the shareholder's immediate family (or to a trust, all of whose beneficiaries are members of the shareholder's immediate family), which immediate family consists of his spouse, parents, lineal descendants (including adopted children and stepchildren) and the spouse of any lineal descendant, and brothers and sisters;

(3) that has been approved in writing by all of the holders of the corporation's shares having general voting rights;

(4) to an executor or administrator upon the death of a shareholder or to a trustee or receiver as the result of a bankruptcy, insolvency, dissolution, or similar proceeding brought by or against a shareholder;

(5) by merger or share exchange [under MBCA ch. 11] or an exchange of existing shares for other shares of a different class or series in the corporation;

(6) by a pledge as collateral for a loan that does not grant the pledgee any voting rights possessed by the pledgor;

(7) made after termination of the corporation's status as a statutory close corporation.

SECTION 12. SHARE TRANSFER AFTER FIRST REFUSAL BY CORPORATION

(a) A person desiring to transfer shares of a statutory close corporation subject to the transfer prohibition of section 11 must first offer them to the corporation by obtaining an offer to purchase the shares for cash from a third person who is eligible to purchase the shares under subsection (b). The offer by the third person must be in writing and state the offeror's name and address, the number and class (or series) of shares offered, the offering price per share, and the other terms of the offer.

(b) A third person is eligible to purchase the shares if:

(1) he is eligible to become a qualified shareholder under any federal or state tax statute the corporation has adopted and he agrees in writing not to terminate his qualification without the approval of the remaining shareholders; and

(2) his purchase of the shares will not impose a personal holding company tax or similar federal or state penalty tax on the corporation.

(c) The person desiring to transfer shares shall deliver the offer to the corporation, and by doing so offers to sell the shares to the corporation on the terms of the offer. Within 20 days after the corporation receives the offer, the corporation shall call a special shareholders' meeting, to be held not more than 40 days after the call, to decide whether the corporation should purchase all (but not less than all) of the offered shares. The offer must be approved by the affirmative vote of the holders of a majority of votes entitled to be cast at the meeting, excluding votes in respect of the shares covered by the offer.

(d) The corporation must deliver to the offering shareholder written notice of acceptance within 75 days after receiving the offer or the offer is rejected. If the corporation makes a counteroffer, the shareholder must deliver to the corporation written notice of acceptance within 15 days after receiving the counteroffer or the counteroffer is rejected. If the corporation accepts the original offer or the shareholder accepts the corporation's counteroffer, the shareholder shall deliver to the corporation duly endorsed certificates for the shares, or instruct the corporation in writing to transfer the shares if uncertificated, within 20 days after the effective date of the notice of acceptance. The corporation may specifically enforce the shareholder's delivery or instruction obligation under this subsection.

(e) A corporation accepting an offer to purchase shares under this section may allocate some or all of the shares to one or more of its shareholders or to other persons if all the shareholders voting in favor of the purchase approve the allocation. If the corporation has more than one class (or series) of shares, however, the remaining holders of the class (or series) of shares being purchased are entitled to a first option to purchase the shares not purchased by the corporation in proportion to their shareholdings or in some other proportion agreed to by all the shareholders participating in the purchase.

(f) If an offer to purchase shares under this section is rejected, the offering shareholder, for a period of 120 days after the corporation received his offer, is entitled to transfer to the third person offeror all (but not less than all) of the offered shares in accordance with the terms of his offer to the corporation.

SECTION 13. ATTEMPTED SHARE TRANSFER IN BREACH OF PROHIBITION

(a) An attempt to transfer shares in a statutory close corporation in violation of a prohibition against transfer binding on the transferee is ineffective.

(b) An attempt to transfer shares in a statutory close corporation in violation of a prohibition against transfer that is not binding on the transferee, either because the notice required by section 10 was not given or because the prohibition is held unenforceable by a court, gives the corporation an option to purchase the shares from the transferee for the same price and on the same terms that he purchased them. To exercise its option, the corporation must give the transferee written notice within 30 days after they are presented for registration in the transferee's name. The corporation may specifically enforce the transferee's sale obligation upon exercise of its purchase option.

SECTION 14. COMPULSORY PURCHASE OF SHARES AFTER DEATH OF SHAREHOLDER

(a) This section, and sections 15 through 17, apply to a statutory close corporation only if so provided in its articles of incorporation.

If these sections apply, the executor or administrator of the estate of a deceased shareholder may require the corporation to purchase or cause to be purchased all (but not less than all) of the decedent's shares or to be dissolved.

(b) The provisions of sections 15 through 17 may be modified only if the modification is set forth or referred to in the articles of incorporation.

(c) An amendment to the articles of incorporation to provide for application of sections 15 through 17, or to modify or delete the provisions of these sections, must be approved by the holders of at least two-thirds of the votes of each class or series of shares of the statutory close corporation, voting as separate voting groups, whether or not otherwise entitled to vote on amendments. If the corporation has no shareholders when the amendment is proposed, it must be approved by at least two-thirds of the subscribers for shares, if any, or, if none, by all of the incorporators.

(d) A shareholder who votes against an amendment to modify or delete the provisions of sections 15 through 17 is entitled to dissenters' rights under [MBCA chapter 13] if the amendment upon adoption terminates or substantially alters his existing rights under these sections to have his shares purchased.

(e) A shareholder may waive his and his estate's rights under sections 15 through 17 by a signed writing.

(f) Sections 15 through 17 do not prohibit any other agreement providing for the purchase of shares upon a shareholder's death, nor do they prevent a shareholder from enforcing any remedy he has independently of these sections.

SECTION 15. EXERCISE OF COMPULSORY PURCHASE RIGHT

(a) A person entitled and desiring to exercise the compulsory purchase right described in section 14 must deliver a written notice to the corporation, within 120 days after the death of the shareholder, describing the number and class or series of shares beneficially owned by the decedent and requesting that the corporation offer to purchase the shares.

(b) Within 20 days after the effective date of the notice, the corporation shall call a special shareholders' meeting, to be held not more than 40 days after the call, to decide whether the corporation should offer to purchase the shares. A purchase offer must be approved by the affirmative vote of the holders of a majority of votes entitled to be cast at the meeting, excluding votes in respect of the shares covered by the notice.

(c) The corporation must deliver a purchase offer to the person requesting it within 75 days after the effective date of the request notice. A purchase offer must be accompanied by the corporation's balance sheet as of the end of a fiscal year ending not more than 16 months before the effective date of the request notice, an income statement for that year, a statement of changes in shareholders' equity for that year, and the latest available interim financial statements, if any. The person must accept the purchase offer in writing within 15 days after receiving it or the offer is rejected.

(d) A corporation agreeing to purchase shares under this section may allocate some or all of the shares to one or more of its shareholders or to other persons if all the shareholders voting in favor of the purchase offer approve the allocation. If the corporation has more than one class or series of shares, however, the remaining holders of the class or series of shares being purchased are entitled to a first option to purchase the shares not purchased by the corporation in proportion to their shareholdings or in some other proportion agreed to by all the shareholders participating in the purchase.

(e) If price and other terms of a compulsory purchase of shares are fixed or are to be determined by the articles of incorporation, bylaws, or a written agreement, the price and terms so fixed or determined govern the compulsory purchase unless the purchaser defaults, in which event the buyer is entitled to commence a proceeding for dissolution under section 16.

SECTION 16. COURT ACTION TO COMPEL PURCHASE

(a) If an offer to purchase shares made under section 15 is rejected, or if no offer is made, the person exercising the compulsory purchase right may commence a proceeding against the corporation to compel the purchase in the [name or describe] court of the county where the corporation's principal office (or, if none in this state, its registered office) is located. The corporation at its expense shall notify in writing all of its shareholders, and any other person the court directs, of the commencement of the proceeding. The jurisdiction of the court in which the proceeding is commenced under this subsection is plenary and exclusive.

(b) The court shall determine the fair value of the shares subject to compulsory purchase in accordance with the standards set forth in section 42 together with terms for the purchase. Upon making these determinations the court shall order the corporation to purchase or cause the purchase of the shares or empower the person exercising the compulsory purchase right to have the corporation dissolved.

(c) After the purchase order is entered, the corporation may petition the court to modify the terms of purchase and the court may do so if it finds that changes in the financial or legal ability of the corporation or other purchaser to complete the purchase justify a modification.

(d) If the corporation or other purchaser does not make a payment required by the court's order within 30 days of its due date, the seller may petition the court to dissolve the corporation and, absent a showing of good cause for not making the payment, the court shall do so.

(e) A person making a payment to prevent or cure a default by the corporation or other purchaser is entitled to recover the payment from the defaulter.

SECTION 17. COURT COSTS AND OTHER EXPENSES

(a) The court in a proceeding commenced under section 16 shall determine the total costs of the proceeding, including the reasonable compensation and expenses of appraisers appointed by the court and of counsel and experts employed by the parties. Except as provided in subsection (b), the court shall assess these costs equally against the corporation and the party exercising the compulsory purchase right.

(b) The court may assess all or a portion of the total costs of the proceeding:

(1) against the person exercising the compulsory purchase right if the court finds that the fair value of the shares does not substantially exceed the corporation's last purchase offer made before commencement of the proceeding and that the person's failure to accept the offer was arbitrary, vexatious, or otherwise not in good faith; or

(2) against the corporation if the court finds that the fair value of the shares substantially exceeds the corporation's last sale offer made before commencement of the proceeding and that the offer was arbitrary, vexatious, or otherwise not made in good faith.

Governance

SECTION 20. SHAREHOLDER AGREEMENTS

(a) All the shareholders of a statutory close corporation may agree in writing to regulate the exercise of the corporate powers and the management of the business and affairs of the corporation or the relationship among the shareholders of the corporation.

(b) An agreement authorized by this section is effective although:

(1) it eliminates a board of directors;

(2) it restricts the discretion or powers of the board or authorizes director proxies or weighted voting rights;

(3) its effect is to treat the corporation as a partnership; or

(4) it creates a relationship among the shareholders or between the shareholders and the corporation that would otherwise be appropriate only among partners.

(c) If the corporation has a board of directors, an agreement authorized by this section restricting the discretion or powers of the board relieves directors of liability imposed by law, and imposes that liability on each person in whom the board's discretion or power is vested, to the extent that the discretion or powers of the board of directors are governed by the agreement.

(d) A provision eliminating a board of directors in an agreement authorized by this section is not effective unless the articles of incorporation contain a statement to that effect as required by section 21.

(e) A provision entitling one or more shareholders to dissolve the corporation under section 33 is effective only if a statement of this right is contained in the articles of incorporation.

(f) To amend an agreement authorized by this section, all the shareholders must approve the amendment in writing unless the agreement provides otherwise.

(g) Subscribers for shares may act as shareholders with respect to an agreement authorized by this section if shares are not issued when the agreement was made.

(h) This section does not prohibit any other agreement between or among shareholders in a statutory close corporation.

SECTION 21. ELIMINATION OF BOARD OF DIRECTORS

(a) A statutory close corporation may operate without a board of directors if its articles of incorporation contain a statement to that effect.

(b) An amendment to articles of incorporation eliminating a board of directors must be approved by all the shareholders of the corporation, whether or not otherwise entitled to vote on amendments, or if no shares have been issued, by all the subscribers for shares, if any, or if none, by all the incorporators.

(c) While a corporation is operating without a board of directors as authorized by subsection (a):

(1) all corporate powers shall be exercised by or under the authority of, and the business and affairs of the corporation managed under the direction of, the shareholders;

(2) unless the articles of incorporation provide otherwise, (i) action requiring director approval or both director and shareholder approval is authorized if approved by the shareholders and (ii) action requiring a majority or greater percentage vote of the board of directors is authorized if approved by the majority or greater percentage of the votes of shareholders entitled to vote on the action;

(3) a shareholder is not liable for his act or omission, although a director would be, unless the shareholder was entitled to vote on the action;

(4) a requirement by a state or the United States that a document delivered for filing contain a statement that specified action has been taken by the board of directors is satisfied by a statement that the corporation is a statutory close corporation without a board of directors and that the action was approved by the shareholders;

(5) the shareholders by resolution may appoint one or more shareholders to sign documents as "designated directors."

(d) An amendment to articles of incorporation deleting the statement eliminating a board of directors must be approved by the holders of at least two-thirds of the votes of each class or series of shares of the corporation, voting as separate voting groups, whether or not otherwise entitled to vote on amendments. The amendment must also specify the number, names, and addresses of the corporation's directors or describe who will perform the duties of a board under [MBCA § 8.01].

SECTION 22. BYLAWS

(a) A statutory close corporation need not adopt bylaws if provisions required by law to be contained in bylaws are contained in either the articles of incorporation or a shareholder agreement authorized by section 20.

(b) If a corporation does not have bylaws when its statutory close corporation status terminates under section 31, the corporation shall immediately adopt bylaws under [MBCA § 2.06].

SECTION 23. ANNUAL MEETING

(a) The annual meeting date for a statutory close corporation is the first business day after May 31st unless its articles of incorporation, bylaws, or a shareholder agreement authorized by section 20 fixes a different date.

(b) A statutory close corporation need not hold an annual meeting unless one or more shareholders deliver written notice to the corporation requesting a meeting at least 30 days before the meeting date determined under subsection (a).

SECTION 24. EXECUTION OF DOCUMENTS IN MORE THAN ONE CAPACITY

Notwithstanding any law to the contrary, an individual who holds more than one office in a statutory close corporation may execute, acknowledge, or verify in more than one capacity any document required to be executed, acknowledged, or verified by the holders of two or more offices.

SECTION 25. LIMITED LIABILITY

The failure of a statutory close corporation to observe the usual corporate formalities or requirements relating to the exercise of its corporate powers or management of its business and affairs is not a ground for imposing personal liability on the shareholders for liabilities of the corporation.

Reorganization and Termination

SECTION 30. MERGER, SHARE EXCHANGE, AND SALE OF ASSETS

(a) A plan of merger or share exchange:

(1) that if effected would terminate statutory close corporation status must be approved by the holders of at least two-thirds of the votes of each class or series of shares of the statutory close corporation, voting as separate voting groups, whether or not the holders are otherwise entitled to vote on the plan;

(2) that if effected would create the surviving corporation as a statutory close corporation must be approved by the holders of at least two-thirds of the votes of each class or series of shares of the surviving corporation, voting as separate voting groups, whether or not the holders are otherwise entitled to vote on the plan.

(b) A sale, lease, exchange, or other disposition of all or substantially all of the property (with or without the good will) of a statutory close corporation, if not made in the usual and regular course of business, must be approved by the holders of at least two-thirds of the votes of each class or series of shares of the corporation, voting as separate voting groups, whether or not the holders are otherwise entitled to vote on the transaction.

SECTION 31. TERMINATION OF STATUTORY CLOSE CORPORATION STATUS

(a) A statutory close corporation may terminate its statutory close corporation status by amending its articles of incorporation to delete the statement that it is a statutory close corporation. If the statutory close corporation has elected to operate without a board of directors under section 21, the amendment must either comply with [MBCA § 8.01] or delete the statement dispensing with the board of directors from its articles of incorporation.

(b) An amendment terminating statutory close corporation status must be approved by the holders of at least two-thirds of the votes of each class or series of shares of the corporation, voting as separate voting groups, whether or not the holders are otherwise entitled to vote on amendments.

(c) If an amendment to terminate statutory close corporation status is adopted, each shareholder who voted against the amendment is entitled to assert dissenters' rights under [MBCA ch. 13].

SECTION 32. EFFECT OF TERMINATION OF STATUTORY CLOSE CORPORATION STATUS

(a) A corporation that terminates its status as a statutory close corporation is thereafter subject to all provisions of the [Model] Business Corporation Act or, if incorporated under the [Model] Professional Corporation Supplement, to all provisions of that Supplement.

(b) Termination of statutory close corporation status does not affect any right of a shareholder or of the corporation under an agreement or the articles of incorporation unless this Act, the [Model] Business Corporation Act, or another law of this state invalidates the right.

SECTION 33. SHAREHOLDER OPTION TO DISSOLVE CORPORATION

(a) The articles of incorporation of a statutory close corporation may authorize one or more shareholders, or the holders of a specified number or percentage of shares of any class or series, to dissolve the corporation at will or upon the occurrence of a specified event or contingency. The shareholder or shareholders exercising this authority must give written notice of the intent to dissolve to all the other shareholders. Thirty-one days after the effective date of the notice, the corporation shall begin to wind up and liquidate its business and affairs and file articles of dissolution under [MBCA sections 14.03 through 14.07].

(b) Unless the articles of incorporation provide otherwise, an amendment to the articles of incorporation to add, change, or delete the authority to dissolve described in subsection (a) must be approved by the holders of all the outstanding shares, whether or not otherwise entitled to vote on amendments, or if no shares have been issued, by all the subscribers for shares, if any, or if none, by all the incorporators.

Judicial Supervision

SECTION 40. COURT ACTION TO PROTECT SHAREHOLDERS

(a) Subject to satisfying the conditions of subsections (c) and (d), a shareholder of a statutory close corporation may petition the [name or describe] court for any of the relief described in section 41, 42, or 43 if:

(1) the directors or those in control of the corporation have acted, or are acting, or will act in a manner that is illegal, oppressive, fraudulent, or unfairly prejudicial to the petitioner, whether in his capacity as shareholder, director, or officer, of the corporation;

(2) the directors or those in control of the corporation are deadlocked in the management of the corporation's affairs, the shareholders are unable to break the deadlock, and the corporation is suffering or will suffer irreparable injury or the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally because of the deadlock; or

(3) there exists one or more grounds for judicial dissolution of the corporation under [MBCA § 14.30].

(b) A shareholder must commence a proceeding under subsection (a) in the [name or describe] court of the county where the corporation's principal office (or, if none in this state, its registered office) is located. The jurisdiction of the court in which the proceeding is commenced is plenary and exclusive.

(c) If a shareholder has agreed in writing to pursue a nonjudicial remedy to resolve disputed matters, he may not commence a proceeding under this section with respect to the matters until he has exhausted the nonjudicial remedy.

(d) If a shareholder has dissenters' rights under this Act or [MBCA ch. 13] with respect to proposed corporate action, he must commence a proceeding under this section before he is required to give notice of his intent to demand payment under [MBCA § 13.21] or to demand payment under [MBCA § 13.23] or the proceeding is barred.

(e) Except as provided in subsections (c) and (d), a shareholder's right to commence a proceeding under this section and the remedies available under sections 41 through 43 are in addition to any other right or remedy he may have.

SECTION 41. ORDINARY RELIEF

(a) If the court finds that one or more of the grounds for relief described in section 40(a) exist, it may order one or more of the following types of relief:

(1) the performance, prohibition, alteration, or setting aside of any action of the corporation or of its shareholders, directors, or officers of or any other party to the proceeding;

(2) the cancellation or alteration of any provision in the corporation's articles of incorporation or bylaws;

(3) the removal from office of any director or officer;

(4) the appointment of any individual as a director or officer;
(5) an accounting with respect to any matter in dispute;
(6) the appointment of a custodian to manage the business and affairs of the corporation;
(7) the appointment of a provisional director (who has all the rights, powers, and duties of a duly elected director) to serve for the term and under the conditions prescribed by the court;
(8) the payment of dividends;
(9) the award of damages to any aggrieved party.

(b) If the court finds that a party to the proceeding acted arbitrarily, vexatiously, or otherwise not in good faith, it may award one or more other parties their reasonable expenses, including counsel fees and the expenses of appraisers or other experts, incurred in the proceeding.

SECTION 42. EXTRAORDINARY RELIEF: SHARE PURCHASE

(a) If the court finds that the ordinary relief described in section 41(a) is or would be inadequate or inappropriate, it may order the corporation dissolved under section 43 unless the corporation or one or more of its shareholders purchases all the shares of the shareholder for their fair value and on terms determined under subsection (b).

(b) If the court orders a share purchase, it shall:
(1) determine the fair value of the shares, considering among other relevant evidence the going concern value of the corporation, any agreement among some or all of the shareholders fixing the price or specifying a formula for determining share value for any purpose, the recommendations of appraisers (if any) appointed by the court, and any legal constraints on the corporation's ability to purchase the shares;
(2) specify the terms of the purchase, including if appropriate terms for installment payments, subordination of the purchase obligation to the rights of the corporation's other creditors, security for a deferred purchase price, and a covenant not to compete or other restriction on the seller;
(3) require the seller to deliver all his shares to the purchaser upon receipt of the purchase price or the first installment of the purchase price;
(4) provide that after the seller delivers his shares he has no further claim against the corporation, its directors, officers, or shareholders, other than a claim to any unpaid balance of the purchase price and a claim under any agreement with the corporation or the remaining shareholders that is not terminated by the court; and
(5) provide that if the purchase is not completed in accordance with the specified terms, the corporation is to be dissolved under section 43.

(c) After the purchase order is entered, any party may petition the court to modify the terms of the purchase and the court may do so if it finds that changes in the financial or legal ability of the corporation or other purchaser to complete the purchase justify a modification.

(d) If the corporation is dissolved because the share purchase was not completed in accordance with the court's order, the selling shareholder has the same rights and priorities in the corporation's assets as if the sale had not been ordered.

SECTION 43. EXTRAORDINARY RELIEF: DISSOLUTION

(a) The court may dissolve the corporation if it finds:
(1) there are one or more grounds for judicial dissolution under [MBCA § 14.30]; or
(2) all other relief ordered by the court under section 41 or 42 has failed to resolve the matters in dispute.

(b) In determining whether to dissolve the corporation, the court shall consider among other relevant evidence the financial condition of the corporation but may not refuse to dissolve solely because the corporation has accumulated earnings or current operating profits.

Transition Provisions

SECTION 50. APPLICATION TO EXISTING CORPORATIONS

(a) This Supplement applies to all corporations electing statutory close corporation status under section 3 after its effective date.

(b) [If Sec. 54 repeals an integrated close corporation statute enacted before this Supplement, this and additional subsections should provide a cutoff date by which corporations qualified under the repealed statute must elect whether to be covered by this Supplement, the procedure for making the election, and the effect of the election on existing agreements among shareholders. Cf. MBCA ch. 17 and Model Professional Corporation Supplement sec. 70.]

SECTION 51. RESERVATION OF POWER TO AMEND OR REPEAL

The [name of state legislature] has power to amend or repeal all or part of this supplement at any time and all corporations subject to this supplement are governed by the amendment or repeal.

SECTION 52. SAVING PROVISIONS

(a) The repeal of a statute by this Supplement does not affect:
(1) the operation of the statute or any action taken under it before its repeal;
(2) any ratification, right, remedy, privilege, obligation, or liability acquired, accrued, or incurred under the statute before its repeal;
(3) any violation of the statute, or any penalty, forfeiture, or punishment incurred because of the violation, before its repeal;
(4) any proceeding, reorganization, or dissolution commenced under the statute before its repeal, and the proceeding, reorganization, or dissolution may be completed in accordance with the statute as if it had not been repealed.

SECTION 53. SEVERABILITY

If any provision of this Supplement or its application to any person or circumstance is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions or applications of the Supplement that can be given effect without the invalid provision or application, and to this end the provisions of the Supplement are severable.

SECTION 54. REPEAL

The following laws and parts of laws are repealed: _____.

SECTION 55. EFFECTIVE DATE

This Supplement takes effect _____.

SMITH GOODFRIEND, PS

July 28, 2025 - 1:54 PM

Transmittal Information

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