Recent Ontario decision illustrates risk of undocumented equity interests

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A recent decision by the Ontario Superior Court provides an important reminder that equity interests in a corporation can be created notwithstanding incomplete agreements, missing share certificates and share registers, and other legal deficiencies. The ruling underscores the courts' willingness to protect the reasonable expectations of contracting parties.

Background

The case, *Shifrin v. LDF Frozen Foods Inc.* (2025 ONSC 2095) (*Shifrin*) involved a dispute over whether the applicant held a 15% shareholding in the respondent corporation. The applicant had, in 2013, reached an oral agreement in principle with one of the two shareholders of the corporation providing for the issuance of the shares to the applicant in consideration for an investment of $100,000, and the applicant commencing work as general manager of the corporation. A written agreement was drafted after the applicant had contributed most of the required funds and begun working for the corporation. The written agreement was signed by the applicant and the first shareholder in 2014, although it was unclear whether the second shareholder, whose signature was also required, ever signed. However, share certificates were never issued and the share register was not updated to reflect the ownership of shares by the applicant. The applicant stopped working for the corporation later that same year.

The dispute arose 10 years later when the applicant requested certain documents relating to the corporation, and the corporation responded that the applicant was not a shareholder (but rather a creditor who had subsequently been repaid) and therefore not entitled to receive such documents. The applicant sought a declaration that he was the beneficial owner of 15% of the outstanding shares of the corporation, along with oppression remedy relief under the *Business Corporations Act* (Ontario) (OBCA) in his capacity as a shareholder.

Key findings

- Enforceable agreement: The Court found that there was a binding agreement for the applicant to receive 15% of the corporation's shares in exchange for his investment and work. The fact that no share certificates had been issued to the applicant, that the share register of the corporation had not been updated, and that the funds paid to the corporation by the applicant, and by the corporation to the applicant, had been documented as a loan and the repayment of a loan, were not dispositive. Notably, the Court held that even if the written agreement had not been executed, the earlier oral agreement would have constituted a binding agreement for the applicant's subscription for shares.

- Oppression remedy: Accordingly, the applicant was entitled to oppression remedy relief under the OBCA as a shareholder, and the Court ordered that the corporation's share register be retroactively rectified to reflect the applicant's 15% ownership interest.
- Limitation periods and discoverability: Another significant element of the decision involved the application of Ontario's *Limitations Act*, which provides for a two-year limitation period following discovery of a claim to commence a proceeding. The Court held that the two-year period had not expired and therefore the applicant's proceeding was not statute-barred. It was not disputed that the 2014 agreement had been breached that same year when the corporation failed to issue shares to the applicant. However, the Court found that the breach was not discovered by the applicant until 2024, when the corporation denied in writing that the applicant was a shareholder. The Court accepted that, prior to that date, the applicant simply believed that he was missing the paperwork, and not that the respondents denied that he was a shareholder.

Conclusion

This decision serves as a reminder to business owners and corporate stakeholders of the importance of clearly and promptly documenting arrangements and transactions that might involve, or might be understood by the other party to involve, equity interests. The decision underscores the potential risks of negotiating and finalizing legal documentation after performance has already begun or funds have been transferred. The decision further illustrates that disputes over the terms of an incompletely-documented agreement can arise many years after the commercial relevance of the agreement has ended, at which point the economic value of the disputed equity stake may have changed significantly.

In the M&A and financing contexts, the decision also illustrates the importance of a buyer or an investor conducting thorough diligence reviews and obtaining detailed and broad representations and warranties, with appropriately long survival periods, regarding the capital structure of target companies. For targets or sellers, it is imperative to engage legal counsel early to help manage the company's capitalization records. Prior to embarking on a sales process, a thorough review of the company's capitalization records should be undertaken and, if ambiguity is discovered, the company should be proactive in negotiating a resolution. There are a host of commercially available software products that are available to help companies manage their corporate records which are employed by Osler on behalf of our clients which aim to help avoid the issue identified in Shifrin.