Court of King's Bench of Alberta

Citation: Professional Bull Riders, LLC v Australis Capital Inc 2025 ABKB 122

Date: 20250304
Docket: 2401 11915
Registry: Calgary

Between:

Professional Bull Riders, LLC

Applicant

- and -

Australis Capital Inc. and Terrence Robert Booth ("Terry Booth")

Respondents

Memorandum of Decision
of the
Honourable Justice M.R. Gaston

I. Introduction

[1] The parties appeared in morning chambers. The Applicant, Professional Bull Riders, LLC ("PBR"), seeks to enforce in Alberta a personal guarantee included in a settlement agreement arising from arbitration proceedings in Colorado. PBR seeks judgment in the amount of the award, plus interest pursuant to the *Judgment Interest Act*, RSA 2000, c J-1 and costs.

[2] By way of background, PBR is a Delaware limited liability company headquartered in Pueblo, Colorado. Australis Capital Inc ("Australis") is an Alberta corporation. Mr. Terrence Booth is the Chief Executive Officer ("CEO") of Australis.

[3] PBR and Australis entered into a Sponsorship Agreement (the "Sponsorship Agreement") in July 2021 which gave Australis several rights, including permission to use PBR's trademarks and identify itself as a sponsor for some of PBR's events. The Sponsorship Agreement included an agreement to arbitrate any disputes between the parties in Denver, Colorado.

[4] In April 2023, PBR submitted to JAMS – Denver ("JAMS"), a Demand for Arbitration with Australis on the basis that Australis had breached the Sponsorship Agreement. Australis submitted a Response. The parties entered into a Settlement and Mutual Agreement (the "Settlement Agreement") in December 2023.

[5] The Settlement Agreement stipulated that Australis would pay PBR $275,000 USD to resolve the dispute. Mr. Booth was also a party to the Settlement Agreement and agreed to be the personal guarantor for Australis' obligations under the Settlement Agreement. He signed the Settlement Agreement both on behalf of Australis as CEO, and in his personal capacity as guarantor.

[6] On May 7, 2024, PBR, Australis and Mr. Booth submitted to the arbitrator appointed under JAMS a Stipulation to Liability and Joint Request to Vacate Hearing (the "Stipulation") arising from the Settlement Agreement. The arbitrator issued an Order in the action (the "Order") reflecting the terms of the Settlement Agreement and requiring Australis to pay PBR $275,000 USD with Mr. Booth, in his personal capacity, acting as Australis' guarantor for the debt agreed. The Order was amended on May 20, 2024, to include attorney's fees of $39,503 USD as negotiated by the parties, resulting in a total judgment of $314,503 (the "Award"). Mr. Booth is expressly liable as guarantor for the total judgment amount by the express terms of the Award.

[7] Neither of the Respondents appealed the Award and the deadline for amending either the Order or the Award has expired.

[8] The full amount of $314,503 USD remains outstanding.

II. Parties' Positions

a) PBR's Position

[9] PBR's position is that the Award is binding on both Australis and Mr. Booth, and that it should be recognized and enforceable in Alberta. Australis is an Alberta registered corporation. Mr. Booth resides at least part-time in Alberta and has assets and business interests in the province.

[10] PBR indicates that the Settlement Agreement, reflected in the Award, including Mr. Booth's personal guarantee, is expressly subject to the laws of Colorado. Further, pursuant to the terms of the Settlement Agreement, Mr. Booth expressly submitted to the jurisdiction of the arbitrator regarding the Settlement Agreement and the Stipulation.

[11] The primary matter in dispute is the enforceability of Mr. Booth's personal guarantee because it does not comply with the requirements set out in s 3 of the *Guarantees Acknowledgment Act*, RSA 2000, c G-11 (the "*GAA*").

[12] PBR's position is that the choice of law provision in the Settlement Agreement applies the laws of Colorado to the personal guarantee. Mr. Booth submitted to the jurisdiction of the arbitrator and had counsel representing him regarding the Stipulation submitted to the arbitrator. The requirements for personal guarantees under the *GAA* do not apply to Mr. Booth's guarantee.

[13] In furtherance of its argument, PBR relies on Part 1 of the *International Commercial Arbitration Act*, RSA 2000, c I-5 ("*ICAA*") and Schedule 1 of the *ICAA* being the *Convention on the Recognition and Enforcement of Foreign Arbitral Awards* (the "*Convention*").

[14] PBR also relies on the *Reciprocal Enforcements of Judgments Act*, RSA 2000, c R-6 ("*REJA*").

[15] In relation to the *REJA*, PBR argues that s 1(1)(b) of the *REJA* encapsulates arbitration awards. PBR's position is that it can rely on either the *ICAA* or *REJA* to claim compensation pursuant to the Award from Mr. Booth in Alberta.

b) Australis and Mr. Booth's Position

[16] Australis did not appear, make any arguments or take a position with respect to the application.

[17] Mr. Booth did not file any evidence. Mr. Booth's position is that his personal guarantee is unenforceable because the requirements as set out in section 3 of the *GAA* have not been met, specifically that there is no certificate.

[18] Mr. Booth acknowledges that paragraph 20 of the Settlement Agreement specifies that it will be construed and enforced in accordance with the laws of Colorado. However, Mr. Booth argues that he only consented to being bound by the arbitration process in Colorado and the Court cannot read the choice of law clause to be an agreement by Mr. Booth to be personally liable for the amount indicated in the Settlement Agreement when enforcement in Alberta was not put to him directly. He argues that paragraph 20 limits enforcement of the Award to Colorado.

[19] Mr. Booth emphasizes that he was not a party to or guarantor for the original Sponsorship Agreement and did not participate in the original arbitration proceedings. He was only a participant to the process in relation to the Settlement Agreement. He argues that paragraph 20 of the Settlement Agreement is not an arbitration agreement.

[20] Mr. Booth argues that he should be entitled to the protection of the *GAA*, and this situation goes beyond a "mere technical non-compliance" with the Alberta legislation. Rather, he believes that the issue is one of public policy which would justify the Award not being enforced. He describes his role in the Settlement Agreement as a "very small inclusion". Essentially, Mr. Booth argues that his minimal involvement in the Settlement Agreement and arbitral proceedings justifies him, as an individual, relying on PBR's compliance with the *GAA*.

[21] Mr. Booth's counsel indicates that there is no evidence that Mr. Booth had counsel when he signed the personal guarantee in the Settlement Agreement. However, in their submissions, PBR stated that the Order was signed in the presence of Mr. Booth and his counsel.

[22] Mr. Booth indicated that the Award should have been registered as a judgment with a court in Colorado for PBR to rely on the *REJA*.

[23] In respect of the *ICAA*, Mr. Booth argues that Article 2(2) is not met in this situation as the Settlement Agreement does not found a "difference arising out of commercial legal relationships" between Mr. Booth and PBR. Further, he argues that he is not a party to the arbitration because he only joined the arbitration between PBR and Australis after it was commenced.

[24] However, regardless of whether the relevant legislation is the *ICAA* or the *REJA*, Mr. Booth argues that the violation of the *GAA* renders his personal guarantee unenforceable.

III. Issue

[25] The issue before the Court in this matter is whether PBR can enforce Mr. Booth's personal guarantee of the Australis debt pursuant to the Award in Alberta.

IV. Analysis and Decision

a) *REJA* Does Not Apply

[26] PBR advised that it was relying on the *REJA* in this matter, confirming in argument that Colorado is a reciprocating jurisdiction under the *REJA*. Colorado is not listed in the *Reciprocating Jurisdictions Regulation*, Alta Reg 344/1985 as a reciprocating jurisdiction and the *REJA* does not apply. Therefore, the provisions of the *ICAA* must be considered.

b) Settlement Agreement Reflects a Commercial Legal Relationship

[27] Mr. Booth argues that the Settlement Agreement does not reflect "differences arising out of commercial legal relationships" between he and PBR, as required by the *ICAA* section 2(2), such that it is not subject to the *ICAA*. He argues that only the Sponsorship Agreement is subject to the *ICAA*, and the Settlement Agreement is not a commercial legal relationship, or not the commercial legal relationship that was the subject of arbitration.

[28] I disagree. The dispute between PBR and Australis is clearly commercial, arising out of the terms of the Sponsorship Agreement. The Settlement Agreement resolved that commercial dispute, when PBR and Australis, together with Mr. Booth, executed it. The Settlement Agreement reflects a commercial legal relationship amongst the three parties. The fact that Mr. Booth entered into that Settlement Agreement in his personal capacity does not change the character of the Settlement Agreement to something other than a commercial legal relationship.

[29] Similarly, the Settlement Agreement and subsequent Award issued to reflect it, acknowledge and resolve the commercial differences arising amongst the parties. *ICAA* section 2(2) is satisfied, and the *Convention* applies.

c) Agreement to Arbitrate and Enforce

[30] Paragraph 20 of the Settlement Agreement reads:

> 20. **Choice of Law, Venue and Prevailing Party.** This Settlement shall be construed, interpreted, applied and enforced in accordance with the laws of the state of Colorado, and governed by those laws, without regard to the conflicts of laws principles of any adjudicatory forum. Any efforts to enforce this Settlement shall be brought before the JAMS arbitration authority, before the same arbitrator if possible, under the same terms specified in the Sponsorship Agreement. For purposes of any such action, Mr. Booth consents to the jurisdiction before JAMS in Denver, Colorado, and all Parties consent to the exclusive jurisdiction of the state and federal courts of Denver, Colorado, and service through the Notice clause of this Settlement, for proceedings in aid of arbitration or proceedings to enforce any award.

[31] Mr. Booth expressly agreed that the enforcement of the Settlement Agreement was to be brought before JAMS as the arbitration authority. He agreed to the jurisdiction of the arbitrator and therefore, agreed to arbitration. That is exactly what happened when PBR, Australis and Mr.

Booth submitted the Stipulation to the arbitrator to enforce the Settlement Agreement, where it was converted to an Order of the arbitrator, and subsequently the Award. The enforcement of the Settlement Agreement was its conversion to the Award.

[32] In consideration of the language of paragraph 20 of the Settlement Agreement, Mr. Booth's agreement to submit to the jurisdiction of an arbitrator to enforce the Settlement Agreement is an arbitration agreement pursuant to the *ICAA*.

[33] The Settlement Agreement was enforced as contemplated by paragraph 20 with the Stipulation, Order and subsequent Award.

[34] Finally, Mr. Booth argues that PBR cannot pursue him in jurisdictions outside of Colorado for enforcement of the Award. He points to the last sentence of paragraph 20: "For purposes of any such action, Mr. Booth consents to the jurisdiction before JAMS in Denver, Colorado, and all Parties consent to the exclusive jurisdiction of the state and federal courts of Denver, Colorado, and service through the Notice clause of this Settlement, for proceedings in aid of arbitration or proceedings to enforce any award" [Emphasis added].

[35] As noted, this final sentence commences with the words "For the purposes of any such action". These words can only refer to the preceding sentence, in which "such action" is efforts to enforce the Settlement Agreement being brought before the arbitrator appointed by JAMS and pursuant to the same arbitration terms as contained in the Sponsorship Agreement. The final sentence must then refer to efforts that may become necessary to bring the enforcement of the Settlement Agreement within JAMS' jurisdiction. Thus, the parties must go to the Colorado courts if disputes arise about JAMS' jurisdiction to enforce the Settlement Agreement.

[36] Had the parties disputed matters relating to the Settlement Agreement however, or its handling or disposition by arbitration, it was to the Colorado courts that they had recourse. No further steps in Colorado are necessary to enforce the Award against Mr. Booth's property in Alberta. Mr. Booth has not argued that the debt owed by Australis pursuant to the Award is not due.

[37] If the parties intended to restrict enforcement of the Award to assets located within Colorado, as Mr. Booth seems to suggest, then a restriction regarding asset availability to satisfy the settlement amount ought to have been expressly included in the Settlement Agreement. Such a significant restriction in a settlement agreement must be clear and unequivocal, particularly when arbitration awards between parties that are resident of different jurisdictions (i.e. international arbitration awards) are, by their nature, meant to be easily transported into other jurisdictions.

d) Application of the *ICAA*

[38] Article III of the *Convention* states that:

> Each Contracting State shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon, under the conditions laid down in the following articles...

[39] Article V of the *Convention* states that:

> 1. Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that:

> a) The parties to the agreement referred to in article II were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or
>
> b) The party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; or
>
> c) The award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or
>
> d) The composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or
>
> e) The award has not yet become binding on the parties or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.
>
> 2. Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that:
>
> a) The subject matter of the difference is not capable of settlement by arbitration under the law of that country; or
>
> b) The recognition or enforcement of the award would be contrary to the public policy of that country. [Emphasis added]

[40] As a Contracting State under the *Convention*, Alberta must recognize and enforce the Award. Only if Mr. Booth offers proof as set out in Article V can the Award not be recognized.

[41] Mr. Booth has provided no proof:

a) That he was under some incapacity or that the Settlement Agreement is not valid under the laws of Colorado;

b) That he was not given proper notice of the appointment of the arbitrator or of the arbitration proceeding or was unable to present his case;

c) That the Award deals with a matter not falling within the terms of the submission to arbitration or decided matters beyond the scope of matters submitted to arbitration;

d) That the arbitral procedure was not in accordance with the agreement of the parties;

e) That the award has not yet become binding on the parties.

[42] In the result, the Award must be enforced in Alberta unless it may be refused under Article V, section 2 of the *Convention*.

e) Refusal Due to Public Policy and the *GAA*

[43] Mr. Booth has raised a concern with enforcement of the award being contrary to public policy in Alberta, and specifically, argued that there was no compliance with the *GAA* and to recognize and enforce the personal guarantee contained in the Award would explicitly defy Alberta legislation.

[44] He distinguishes this situation from ***Emerald Developments Ltd v 768158 Alberta Ltd***, 2001 ABQB 143 at para 12, where a guarantee was enforceable notwithstanding non-compliance with the *GAA*. The Court determined that, "mere technical non-compliance does not void the guarantee in the absence of evidence by the guarantor that he did not understand the guarantee": ***Emerald Developments*** at para 12. Mr. Booth argues that his circumstance is well beyond the scope of a mere technical error because the *GAA* was not followed at all.

[45] He differentiates the situation in ***Bad Ass Coffee Co of Hawaii Inc v Bad Ass Enterprises Inc***, 2007 ABQB 581 ("***Bad Ass Coffee 2007***") where a guarantee was enforceable notwithstanding it did not comply with the *GAA* but was notarized. Mr. Booth argues that he, as an individual, should be afforded the protections of the *GAA*. To enforce the Award in Alberta when the guarantee is void as per the *GAA* would, he suggests, "offend notions of justice and morality": ***Bad Ass Coffee Co of Hawaii Inc v Bad Ass Enterprises Inc***, 2008 ABQB 404 ("***Bad Ass Coffee 2008***").

[46] This argument cannot stand.

[47] Similar to ***Bad Ass Coffee 2007***, whether Mr. Booth was party to the Sponsorship Agreement or not, he signed the Settlement Agreement, both in his personal capacity and as CEO. Paragraph 20 of the Settlement Agreement clearly indicates that "This Settlement shall be construed, interpreted, applied and enforced in accordance with the laws of the state of Colorado...". The laws of Colorado obviously do not incorporate the provisions of Alberta's *GAA*.

[48] A similar situation was directly addressed in ***Associate Capital Services Corp v Multi Geophysical Services Inc***, 1987 CanLII 3183 (ABQB) at para 18, where the Court stated that:

> ...I do not believe that the defendant...can now be heard to complain concerning his own negligence or carelessness in signing an agreement which he knew to be a guarantee agreement, and which he now states was not complete at the time he signed it...

[49] Mr. Booth signed the Settlement Agreement knowing that the applicable laws would be those of Colorado, not Alberta. There is no evidence before the Court to suggest that the guarantee does not comply with the laws of Colorado.

[50] In ***Dunhill Personnel System Inc v Dunhill Temps Edmonton Ltd***, 1993 CanLII 7171 (ABQB) at para 8, the Court stated that prior to considering compliance with the *GAA*, "...the formal validity of a contract is to be determined by the law of the contract in the jurisdiction chosen by the parties...". If the parties have selected Colorado as the applicable jurisdiction, then the laws of that state reign supreme, not Alberta laws. As such, "...the law of Alberta is not applicable, and the document is enforceable here": ***Dunhill Personnel System*** at para 8.

[51] At para 24 of ***Bad Ass Coffee 2008***, the Court provided a helpful summary of the purpose of the *GAA* and how it applies to situations like the one in which Mr. Booth finds himself:

> ...The purpose of the G.A.A. is to ensure that guarantors understand the personal liability that they are undertaking. Unsophisticated borrowers may not understand that they are taking on a potential financial burden. The G.A.A. insures [sic] that they do understand. Given the Act's intention to protect unsophisticated borrowers from unexpected debt, it is a fundamental value of this province. However, as in *Saunders*, whether that affords a defence to enforcement of a foreign judgment depends on the facts. Here, the borrower was a businessman who knew what obligation he was undertaking. The defence of public policy does not apply.

[52] I cannot accept that Mr. Booth was an unsophisticated borrower in respect of the Settlement Agreement. Nor is the debt owed to PBR by Mr. Booth on Australis' behalf an "unexpected debt". Mr. Booth, on behalf of Australis and in his personal capacity, signed the Settlement Agreement and requested the Order.

[53] As stated in ***Bank of Montreal v Snoxell***, 1982 CanLII 1313 (ABQB) at para 11, "The Alberta Court of Appeal does not view the enforcement in Alberta of an unacknowledged guarantee covered by the law of another province, of which it is valid, as being contrary to public policy".

[54] The enforcement of an unacknowledged guarantee which accords with Colorado law is not contrary to public policy. Mr. Booth has failed to displace this presumption. The defence of public policy does not apply in this situation.

V. Conclusion

[55] In conclusion, PBR has brought the appropriate Originating Application in Alberta to have the Award recognized and enforced.

[56] Not only is the *GAA* inapplicable in this matter since the governing law is Colorado, but Mr. Booth has failed to demonstrate how enforcing the Award and the guarantee against him would violate public policy. Mr. Booth is a sophisticated businessman who made his guarantee in Colorado under that state's laws. As stated in para 75 of ***Bad Ass Coffee 2007***, "...if every provincial statutory enactment were treated as an expression of Canadian public policy for the purpose of defeating foreign judgments, little would be left of the principle of judicial comity".

[57] In the interests of international comity and in the absence of evidence that enforcing the Award would violate public policy, the Award and Mr. Booth's guarantee contained within are both enforceable in the province of Alberta.

[58] The Application is granted.

VI. Costs

[59] Should the parties be unable to agree as to costs, they may provide me with written argument as to costs no later than July 15, 2025, such argument not to exceed 5 pages

Heard on the 24th day of October, 2024.
Further submissions received on February 12th, 2025.
Dated at the City of Calgary, Alberta this 4th day March, 2025.

M.R. Gaston
J.C.K.B.A.

Appearances:

Joshua D. Sadovnick
for the Applicant

Frank P.K. Friesacher, KC
for the Respondent, Terrence Booth