SUPREME COURT OF NOVA SCOTIA

Citation: *Maplewood Properties Inc. v. Lindsay Construction Limited*, 2026 NSSC 31

Date: 20260202
Docket: Hfx No. 528326
Registry: Halifax

Between:

Maplewood Properties Inc.

Applicant

v.

Lindsay Construction Limited

Respondent

DECISION

Judge:	The Honourable Justice Ann E. Smith
Heard:	September 4, 2025, in Halifax, Nova Scotia
Additional Submissions:	January 9, 2026
Counsel:	William L. Mahody, K.C., for the Applicant
	Ian Dunbar, for the Respondent

By the Court:

Background

[1] The facts in this matter are outlined in my previous decision, reported at 2025 NSSC 112 (the "Stay Decision"). I will review only the most salient details again here.

[2] In January 2016, Maplewood Properties Inc. and Lindsay Construction Ltd. entered into a CDCC-2 Stipulated Price Contract (the "Contract") whereby Lindsay agreed to build two residential homes located at 770 and 800 Maplewood Lane ("770ML" and "800ML") in Halifax (the "Project") for the contract price of $12,617,110.00. The contract contained a mandatory arbitration clause in relation to any disputes between the parties.

[3] Construction was nearing completion in mid-2018. Lindsay constructed the two homes at the same time using common subcontractors. Maplewood took possession of 770ML in May 2018 and 800ML in July 2018, although construction on both homes continued during the rest of 2018. Lindsay issued its final invoices for the Project in 2018 after Maplewood took possession of the properties. Since that time, Maplewood has not paid Lindsay the outstanding Contract balance of $785,351.75 (before interest and costs).

[4] After Lindsay issued its final invoices, disputes arose between the parties regarding the roof design and construction at both properties. On April 17, 2020, Maplewood filed a Notice of Arbitration seeking a determination that Lindsay breached the terms of the Contract in relation to the construction of the roof assembly at 770ML. By agreement, Bruce Outhouse, K.C., was appointed as arbitrator.

[5] Lindsay filed its Statement of Defence and Counterclaim on July 17, 2020. Lindsay denied that it was negligent or breached its contractual obligations, and counterclaimed for the unpaid Contract balance for the Project (both properties). Maplewood objected to Lindsay's counterclaim, arguing that it exceeded the scope of the arbitration, which was limited to construction deficiencies at 770ML. Arbitrator Outhouse allowed the counterclaim to proceed and on September 29, 2020, the parties agreed that:

1. Arbitrator Outhouse would have jurisdiction over the issues raised in the counterclaim;

2. The 770ML roof arbitration would continue to hearing as a separate matter; and that

3. If an award was made in favour of Maplewood in the 770ML roof arbitration, Lindsay would be entitled to hold back from that award the amount of its counterclaim, pending resolution of the counterclaim.

[6] Maplewood had not filed a Statement of Defence to Counterclaim at the time of the agreement.

[7] The 770ML roof arbitration was heard by Arbitrator Outhouse in February 2021. On June 7, 2021, he issued a 103-page interim decision on liability, finding that widespread failure of the spray foam insulation was the main cause of condensation and excessive moisture in the roof assembly. He reserved jurisdiction to determine damages at a later date.

[8] On June 28, 2022, counsel for Maplewood notified counsel for Lindsay about deficiencies found at 800ML and advised that Maplewood would be proceeding to remediate and would be presenting those costs to Lindsay for reimbursement.

[9] On July 18, and 19, 2022, the parties appeared before Arbitrator Outhouse for the damages hearing. On February 23, 2023, Arbitrator Outhouse issued a 70-page decision awarding damages to Maplewood in the total amount of $3,616,214.37.

[10] By decision dated May 8, 2023, Arbitrator Outhouse ordered costs against Lindsay.

[11] On June 20, 2023, counsel for Maplewood wrote to Arbitrator Outhouse, with a copy to Lindsay's counsel, providing "an update regarding the pending arbitration in relation to remediation at 800 Maplewood." Lindsay's counsel responded, taking the position that there was no pending arbitration with respect to remediation at 800ML, and that Arbitrator Outhouse had no jurisdiction over that issue as a result.

[12] On October 4, 2023, Maplewood issued a Notice of Arbitration requesting that the issues related to the construction of the eave/gutter system and roof assembly at 800ML be referred to arbitration and proposing Bruce Outhouse as arbitrator. Maplewood estimated the cost of removing and repairing the roof assembly at approximately two million dollars. Also on October 4, Maplewood filed a Statement

of Defence to Counterclaim which stated, in part, that there were significant amounts owing to Maplewood from Lindsay as a result of construction deficiencies at both properties.

[13] On November 8, 2023, Maplewood filed an application in Chambers requesting an order appointing Bruce Outhouse as arbitrator to adjudicate the matters raised in the Notice of Arbitration dated October 4, 2023. Lindsay filed a Notice of Contest on February 16, 2024, and an Amended Notice of Contest on October 21, 2024, seeking a stay of the application.

[14] The parties appeared before me on October 24, 2024. I summarized their respective positions as follows in the Stay Decision:

> [36] Maplewood argues that Bruce Outhouse is the only appropriate choice for an arbitrator because the issue of whether Lindsay breached the Contract in relation to the construction of the eave/gutter system and roof assembly at 800 Maplewood is already before him in the context of the defence to counterclaim. Maplewood says, however, that Arbitrator Outhouse's jurisdiction to award damages for any deficiencies in the construction of both 770 and 800 Maplewood is limited to the $785,351.75 claimed in the counterclaim. Maplewood submits that appointing Mr. Outhouse as arbitrator would give him the jurisdiction to make an award for the full amount of Maplewood's damages. Maplewood also says it had no choice but to file the new Notice of Arbitration after Lindsay took the position in June 2023 that Arbitrator Outhouse had no jurisdiction over any deficiencies at 800 Maplewood.
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> [37] Lindsay argues that Maplewood's attempt to bring a separate proceeding in relation to the alleged roof construction deficiencies is an abuse of process because Arbitrator Outhouse already has jurisdiction over the issues that Maplewood is trying to raise in its Notice of Arbitration. Lindsay says that whether it properly carried out its construction work on 800 Maplewood is already before Arbitrator Outhouse in the counterclaim. Lindsay further notes that Maplewood pleaded in the defence to counterclaim that there are significant amounts owing to Maplewood from Lindsay in excess of the holdback amount. In other words, Maplewood pleaded a new affirmative claim – the same claim it makes in its Notice of Arbitration – by way of the defence to counterclaim. Lindsay says it follows that the exact scope of the arbitrator's existing jurisdiction, including whether the affirmative claim is properly before him or can otherwise be added to the existing arbitration, must be assessed and determined by the arbitrator before any further steps can be taken.
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> [38] Lindsay argues in the alternative that if the court determines that Maplewood is permitted to refer its claim regarding the roof construction at 800 Maplewood to a second, separate arbitration, procedural fairness requires that a different arbitrator be appointed to hear that claim.

[15] After reviewing the relevant authorities, I held that the application should be stayed, pending a decision from Arbitrator Outhouse on the scope of his existing jurisdiction:

> [65] In my view, Maplewood's application should be stayed while the parties obtain a ruling from Arbitrator Outhouse on the scope of his existing jurisdiction. In the absence of clarity on this issue, the court cannot determine whether a second Notice of Arbitration is necessary or an abuse of process.
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> [66] If Arbitrator Outhouse determines that the roof assembly deficiencies raised in the most recent Notice of Arbitration fall outside the scope of the counterclaim and there is no means for the claim to be added to the ongoing arbitration, Maplewood is free to revive its application for the appointment of an arbitrator.
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> [67] If Arbitrator Outhouse concludes that he does have jurisdiction over the roof assembly deficiencies, but only to the extent of the amount of the counterclaim, the parties and the arbitrator will need to find a path forward that does not involve litigation of the same issue in two separate arbitrations.

Arbitrator Outhouse's Decision of July 29, 2025

[16] The parties filed written submissions and appeared before Arbitrator Outhouse for oral submissions on July 24, 2025. At the conclusion of the hearing, he rendered an oral decision that the alleged roof assembly issues at 800ML are within his jurisdiction for the purposes of Maplewood's defence to Lindsay's counterclaim, but that he does not have the authority to make an affirmative award of damages to Maplewood. In a written version of the decision issued July 29, 2025, Arbitrator Outhouse wrote:

> **My initial jurisdiction as arbitrator was related solely to disputes about roof assembly deficiencies at 770 at [*sic*] Maplewood Lane.** That jurisdiction was expanded by Lindsay's counterclaim for the balance of funds owing to it under the construction contract which included both 770 and 800 Maplewood Lane.
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> …
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> I do not agree that my jurisdiction to decide Lindsay's counterclaim is confined to consideration of alleged deficiencies which were known to the parties in the fall of 2020. **The counterclaim is for the full balance owing under the single contract for both properties.** Maplewood is entitled to set off the cost or value of any construction deficiencies proven at the hearing. There is no temporal limit in the agreement made by the parties and [*sic*] the fall of 2020, and none should be implied. Otherwise, deficiencies known at that time would be decided by arbitration in conjunction with the counterclaim and deficiencies which only became apparent later, perhaps by only a few months, would be the subject of a separate arbitration or Court proceeding. This would result in significant

> duplication and unnecessary cost. Moreover, it could well lead to an unjust result if Lindsay is ultimately successful in preventing Maplewood from continuing or commencing any further arbitration proceedings based on time limits.
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> **I do recognize, however, that my remaining jurisdiction is limited to the disposition of Lindsay's counterclaim.** Of course, this includes deciding the merits of Maplewood's defense and right to set off. If Maplewood can prove construction deficiencies in either or both of the subject properties which are equal or greater in value than the amount of Lindsay's counterclaim, then the counterclaim will fail. What I lack the authority to do, however, is to make an affirmative award of damages to Maplewood for any amount by which the proven deficiencies exceed the counterclaim. Doing so would effectively transform the defensive shield of set off into a sword.
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> I acknowledge that this decision may well result in the roof assembly issues at 800 Maplewood Lane being re-heard in a subsequent arbitration. Justice Smith urged the parties to find a path forward to avoid such a result. This was discussed at the hearing, but no consensus was reached.
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> [Emphasis added]

[17] On August 15, 2025, Maplewood's counsel wrote to this Court seeking to revive its application. The parties appeared before me on September 4 to make oral submissions. They agreed that all the necessary evidence, legislation and case law were reviewed in the Stay Decision.

Positions of the Parties

[18] Maplewood submits that Arbitrator Outhouse's decision confirms his jurisdiction over all alleged deficiencies at 770ML and 800ML, including deficiencies discovered after the fall of 2020, by virtue of Lindsay's counterclaim. It says that in determining the counterclaim, Arbitrator Outhouse will need to review the construction specifications and drawings against the as-built conditions, weigh the competing expert evidence in relation to the alleged deficiencies, and consider the cost of remediating any deficiencies proven. The only limit on his jurisdiction is that after performing all of this work, he cannot make an affirmative award to Maplewood for any amount by which the proven deficiencies exceed the amount of the counterclaim. Maplewood says Arbitrator Outhouse's appointment under the October 2023 Notice of Arbitration is necessary to give him the authority to resolve the entire dispute between the parties in a single proceeding.

[19] From a procedural perspective, Maplewood notes that the CCDC 40 Rules for Arbitration of CCDC 2 Construction Disputes ("CCDC 40 Rules") provide a mechanism for consolidation of arbitrations:

> Part V Project Disputes
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> **Consolidation**
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> 21.1 Criteria for Consideration – If
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> (a) a common question of law or fact arises in more than one arbitration,
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> (b) the relief claimed in these arbitrations is in respect of or arises out of substantially the same factual situation, and
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> (c) the arbitrations are being conducted under these Rules,
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> a party to any of the arbitration may, by written notice given to each of the parties to the arbitrations, request that the arbitrations be consolidated.

[20] Maplewood says that in order for an arbitrator to consider consolidation, the arbitrator must have more than one arbitration.

[21] Lindsay submits that Maplewood should not be permitted to litigate the same issue in two separate proceedings. It compares Maplewood to a plaintiff seeking to advance a new claim against a defendant in court; the plaintiff would file a motion to amend the pleadings in the existing proceeding, not commence a second one. Lindsay says Maplewood should be looking to Arbitrator Outhouse to determine whether a new claim can be added to the existing arbitration, not asking the court to endorse the starting of a new, parallel proceeding.

[22] Lindsay continues to rely on clause 11.4 of the CCDC 40 Rules for its argument that Maplewood should be asking Arbitrator Outhouse to "transform" the issue of the alleged roof assembly deficiencies at 800ML "into an affirmative claim". Lindsay has not provided the court with any authority for its proposed interpretation of clause 11.4.

[23] Lindsay asks that Maplewood's application be dismissed.

Analysis

[24] The parties in this case agreed to resolve their disputes by arbitration, and the dispute about the alleged roof assembly deficiencies at 800ML is clearly one which the parties intended, under the Contract, would be determined by an arbitrator.

[25] Lindsay's submission that Maplewood's filing of a second Notice of Arbitration is analogous to a plaintiff filing a second action against the same defendant, rather than a motion to amend to add a new claim, is misguided. The analogy is inapt because Lindsay has not established that a mechanism exists under the CCDC 40 Rules for Maplewood to add an entirely new claim at this stage of the 770ML arbitration proceeding.

[26] The CCDC 40 Rules state at clause 6.1:

> **Notice to Arbitrate**
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> 6.1 Contents of Notice – **Either party** (the claimant) **shall submit a dispute to arbitration**, as permitted under the Contract, by giving the other party (the respondent) a written notice containing the following:
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> (a) a description of the Contract;
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> (b) **a statement of the issue in dispute**;
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> (c) **a request that the dispute be referred to arbitration**;
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> (d) a description of the claim being made;
>
> (e) the name or names of proposed arbitrators, along with the resume described in clause 8.6.
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> [Emphasis added]

[27] In the original Notice of Arbitration dated April 17, 2020, Maplewood stated at para. 4(a), under the heading "The Dispute":

> **This dispute relates to the roof assembly at 770 Maplewood Lane**. The roof assembly at 770 Maplewood Lane – as built by Lindsay – is defective and has led to the presence of moisture and mould.
>
> [Emphasis added]

[28] Under clause 11.1 of the CCDC 40 Rules, following the respondent's receipt of the Notice of Arbitration, the parties are required to exchange written statements of their respective positions "in the dispute":

> 11.1 Time Limits – The parties shall exchange written statements of their respective positions in the dispute in the following manner:
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> (a) the claimant shall give a statement outlining the facts, the matters in issue and the relief or remedy requested not later than 14 days after the procedural meeting is held in clause 9.1;

> (b) the respondent shall give a statement outlining the response to the claimant's statement and the respondent's counterclaim, if any, not later than 14 days after receiving the claimant's statement;
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> (c) the respondent to the counterclaim shall give a statement outlining the defence to the counterclaim not later than 14 days after receiving the counterclaim.

[29] Clause 11.4 provides for amendments or additions to "any statement made in clause 11.1":

> 11.4 Amendment of Statement – During the proceedings the arbitrator may allow a party to amend or add to any statement made in clause 11.1, including the list of documents, unless
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> (a) the amendment or addition goes beyond the terms of the arbitration agreement in the Contract, or
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> (b) the other party would be prejudiced by the delay in making the amendment or addition.

[30] As Arbitrator Outhouse noted in his most recent decision, his jurisdiction under the original Notice of Arbitration related solely to the dispute about alleged roof assembly deficiencies at 770ML. That is the only dispute submitted by Maplewood to arbitration in April 2020. Clause 11.4, relied on by Lindsay, does not provide a procedure for amending a Notice of Arbitration to add a new dispute. Moreover, Arbitrator Outhouse has already adjudicated the dispute about the roof assembly deficiencies at 770ML, including the issues of damages and costs. Maplewood's statement of its claim is spent; only its defence to the counterclaim remains alive, which, by its nature, cannot be "transformed" into an affirmative claim by an amendment.

[31] Maplewood's position is that it did not discover the alleged deficiencies in the roof assembly at 800ML until after the liability portion of the 770ML arbitration was heard and decided. In other words, it could not have included the claim in the April 2020 Notice of Arbitration. The issue of whether the limitation period for the claim has expired is not before the Court on this application. As such, there no basis to conclude that the October 2023 Notice of Arbitration is an abuse of process, and to refuse to appoint an arbitrator to adjudicate the matters raised in it.

[32] In the circumstances, appointing Bruce Outhouse as Arbitrator is the only option with the potential to avoid the same issue being adjudicated in two separate proceedings by two separate arbitrators. It will be up to Arbitrator Outhouse to

consider whether to consolidate the two proceedings and to determine Lindsay's preliminary objections based on expiry of the limitation period and reasonable apprehension of bias, if Lindsay still wishes to raise them.

Recent Developments

[33] On November 19, 2025 the parties wrote to the Court advising that, unfortunately, Bruce Outhouse, due to health reasons, would be unable to act as an arbitrator in this matter.

[34] In correspondence to the Court dated January 9, 2026, counsel advised that the parties identified Howard R. Wise as the replacement arbitrator for Mr. Outhouse. The parties state that Mr. Wise will adjudicate Lindsay's counterclaim.

[35] Maplewood now seeks to have the Court name Mr. Wise arbitrator for the 2023 Notice of Arbitration, in place of Arbitrator Outhouse. Lindsay maintains its position that the 2023 Notice of Arbitration is an abuse of process and the Application to appoint an arbitrator should be dismissed.

Conclusion

[36] Maplewood's application requesting an order appointing Bruce Outhouse as arbitrator to adjudicate the matters raised in the Notice of Arbitration dated October 4, 2023, would have been granted, had he remained able to act. Because he is not, the Court orders that Howard R. Wise is appointed arbitrator for the matters raised in the 2023 Notice of Arbitration as well as Lindsay's counterclaim.

[37] If the parties cannot agree on costs, I will accept brief written submissions within 30 days of the release of this decision.

Smith, J.