Court of King's Bench of Alberta

Citation: ONE Properties Holdings Corp v Turtle Bay Investments Ltd, 2025 ABKB 411

Date: 20250704
Docket: 2203 15134
Registry: Edmonton

Between:

ONE Properties Holdings Corp, ONE Properties Senior Management Corp, Durs (2013) Holdings Corp and Darren Durstling

Applicants/Cross-Respondents

- and -

Turtle Bay Investments Ltd and Thomas Eger

Respondents/Cross-Applicants

Endorsement as to Costs
of the
Honourable Justice Douglas R. Mah

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[1] This Costs Endorsement arises from my decision reported at 2025 ABKB 313. In that decision, ONE Properties Holdings and related parties (whom I call the Applicants) were successful in persuading me that two of three Notices to Arbitrate issued by Turtle Bay and its principal (whom I call the Respondents) should be struck out. The two that were struck out related to arbitration clauses found in two different unanimous shareholder agreements (USAs). I found that the third Notice to Arbitrate, which originates from an arbitration provision in an exercised Option Agreement, was valid. I therefore directed certain matters to arbitration related to the procedure for determining the price of the shares being sold.

[2] In respect of costs of the application, the Applicants say they were substantially successful and are entitled to costs on Column 2 and disbursements or a substantial proportion thereof. The Respondents say it was a saw-off and each side should bear their own costs.

[3] In making a ruling on costs, I bear in mind these principles:

- The determination of costs is inherently discretionary, and the exercise of that discretion must be based on judicial principles of reasonableness, fairness, balance and equity: ***JBRO Holdings Inc v Dynasty Power Inc***, 2022 ABCA 258 at para 26, *Rule* 10.31. The non-exhaustive list of factors enumerated in *Rule* 10.33 help guide the discretion and include, among a list of factors: importance, result, complexity, and conduct.
- The default rule is that the party who is substantially successful receives costs. If success was mixed and neither party was substantially successful, no costs are awarded: ***Zuk v Alberta Dental Association and College***, 2018 ABCA 398 at para 4; ***Schneider v Homenick***, 2025 ABCA 39 at para 6.
- The number and nature of the issues decided are relevant to deciding who was substantially successful: ***Steam Whistle Brewing Inc v Alberta Gaming and Liquor Commission***, 2020 ABCA 210 at para 8; ***Zuk*** at para 7.

[4] The issue here is whether the Applicants were substantially successful.

[5] As I expressed in para 1 of 2025 ABKB 313, the main question decided was: Does the exercise of an option to purchase shares by a majority shareholder effectively extinguish the minority shareholder's recourse to seek an oppression remedy by way of the arbitration clause in a unanimous shareholder agreement?

[6] The Applicants achieved complete success on this question.

[7] It is also worth noting what was being sought in the proposed arbitrations under the USAs. The Respondents had alleged oppression and advanced a litany of wrongdoing allegations against the Applicants in general and Mr. Durstling in particular. The arbitrations that the Applicants avoided would have been arduous, complex, resource and document-intensive, taxing on the memory (as the events go back to 2013), expensive, and acrimonious.

[8] With regard to the third Notice to Arbitrate, the Respondents first argued that the validity of the Option Agreement itself was arbitrable. While I appreciate that this was an alternative position, it was a necessary question for me to resolve, covering about three pages in a 19-page decision. The Applicants were also successful on this issue.

[9] I did say that the two issues arising from the Option Agreement were arbitrable: Mr. Eger's access to the data room and the content of the data room. However, these issues are primarily procedural and, in the overall context, relatively minor given the entire scope of the dispute. I suggested to the parties (at paras 77 & 80) that they should just agree to what the other side was asking as I did not feel the issues were worth arbitrating.

[10] Having regard to the number and nature of the issues decided and what was at stake with regard to each issue, I conclude that the Applicants were substantially successful in the application and are entitled to their costs.

[11] In terms of quantum, the Applicants say they do not seek costs on the scale of up to 50% of full indemnity as recognized in ***McAllister v Calgary (City)***, 2021 ABCA 25 at para 51. They are prepared to default to the "steps taken" approach embodied by Schedule C. They suggest that while they could claim on Column 5 based on the value of Mr. Eger's claim, they are content to confine themselves to Column 2, or even a proportionate two-thirds of Column 2 costs and disbursements. The Respondents say that only declaratory relief and no monetary amount was involved in these applications and therefore, if costs are going to be awarded to the Applicants, Column 1 should be applied.

[12] I exercise discretion informed by the factors in *Rule* 10.33. In particular, I have regard to the importance of the matter to both sides in that the arbitrability of the oppression allegations has been finally determined and complex arbitrations avoided. I also have regard to the long history and dense facts brought to bear in the application and cross-application which resulted in a complex matter, along with the degree of success of the respective sides as discussed above.

[13] In the result, I find that the Applicants' request for Schedule C costs on Column 2, plus disbursements, as shown in the draft Bill of Costs, is reasonable and fair and I make that Order.

Heard by way of written submissions on the 20th day of June, 2025.
Dated at the City of Edmonton, Alberta this 4th day of July, 2025.

Douglas R. Mah
J.C.K.B.A.

Appearances:

Roderick C. Payne
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for One Properties Holdings Corp, One Properties Senior Management Corp, Durs (2013) Holdings Corp and Darren Durstling (Applicants/Cross-Respondents)

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