CITATION: Belova v. Monkhouse Law, 2025 ONSC 3415
COURT FILE NO.: CV-23-00708336-0000
DATE: 20250612

SUPERIOR COURT OF JUSTICE – ONTARIO

RE: JULIA BELOVA, Applicant

AND:

MONKHOUSE LAW, Respondent

BEFORE: Parghi J.

COUNSEL: *Julia Belova*, self-represented Applicant

Archit Gupta, for the Respondent

HEARD: May 23 and June 2, 2025 (via case conference)

ENDORSEMENT

[1] Ms. Belova and her former law firm, Monkhouse Law, are embroiled in a fee dispute. Ms. Belova has requested an assessment of Monkhouse Law's fees. Monkhouse Law states that Ms. Belova's request for an assessment should be stayed and that the issue of fees, and Monkhouse Law's own claim against Ms. Belova for unpaid fees, should be handled via arbitration pursuant to an arbitration provision in the retainer agreements between the parties. Ms. Belova states that the arbitration provision is unconscionable and therefore unenforceable.

[2] Ms. Belova now brings a motion for directions on whether the fee dispute and any issues regarding the enforceability of the arbitration provision in her retainer agreements with Monkhouse Law must be addressed via arbitration.

[3] For the reasons below, I stay Ms. Belova's request for an assessment and order that the fee dispute and any complaints Ms. Belova has in respect of the retainer agreements be addressed by way of arbitration.

Background

[4] In March 2023, Ms. Belova retained Monkhouse Law to advise her in a Workplace Safety and Insurance Board (WSIB) matter. She paid the first invoice, which was sent to her in April

2023. She did not pay the second invoice, which was sent to her in October 2023. A week after it sent the second invoice to her, Monkhouse Law responded to a question Ms. Belova had posed about the second invoice and said it could not do any more work until the amount was paid. Further correspondence ensued. On October 30, 2023, Monkhouse Law terminated the retainer agreement.

[5] In June 2023, Ms. Belova retained Monkhouse Law, via separate retainer agreement, to advise her in a wrongful dismissal matter subject to a contingency fee agreement. In October 2023, Monkhouse Law asked her to pay the outstanding fees owed in the WSIB matter so that it could continue working in the wrongful dismissal matter. On October 30, 2023, it terminated the retainer.

[6] Sometime thereafter, Ms. Belova requested an assessment of Monkhouse Law's fees.

[7] In April 2024, the parties were instructed by the Assessment Office to bring a motion for directions in light of Monkhouse Law's position that the matter should be arbitrated.

[8] In May 2024, Monkhouse Law successfully moved to be removed as solicitors of record. Monkhouse Law now states that Ms. Belova owes it $5,654.17 in fees from the wrongful dismissal matter and $14,629.90 in fees from the WSIB matter.

[9] In October 2024, Monkhouse Law referred its claim for unpaid fees to an arbitrator. Ms. Belova refused to engage in the arbitration proceedings.

[10] In November 2024, the arbitrator stayed the arbitration pending resolution of the motion for directions because she was uncertain whether an arbitral decision for jurisdiction could be rendered prior to the January 2025 hearing date for Ms. Belova's motion for directions.

[11] In January 2025, Ms. Belova's motion for directions was heard by an associate justice, who held that they did not have jurisdiction to consider Ms. Belova's claim that the arbitration provision is unconscionable, and remitted the matter to be heard by this court.

[12] The parties attended at Civil Practice Court to schedule Ms. Belova's motion for directions and were directed to attend a case conference. Case conferences were held before me on May 23 and June 2, 2025. Ms. Belova was unable to attend the May 23 case conference, although she did upload materials to Case Centre. During the case conference on June 2, I clarified certain factual points with the parties and advised that I would treat this as a motion in writing based on the materials before me and would render a decision on the merits. I do so now.

Analysis

[13] The issue before me is whether Ms. Belova's application for an assessment of fees should be stayed pursuant to section 7 of the *Arbitration Act, 1991*, S.O. 1991, c. 17 (the "Act"). Section 7 provides that, subject to certain exceptions, the court must stay a proceeding that is commenced in respect of a matter that is to be submitted to arbitration pursuant to an arbitration agreement:

> 7 (1) If a party to an arbitration agreement commences a proceeding in respect of a matter to be submitted to arbitration under the agreement, the court in which the

> proceeding is commenced shall, on the motion of another party to the arbitration agreement, stay the proceeding.
>
> (2) However, the court may refuse to stay the proceeding in any of the following cases: …
>
> 2. The arbitration agreement is invalid. …

[14] Section 17(1) of the Act provides that an arbitrator "may rule on its own jurisdiction to conduct the arbitration and may in that connection rule on objections with respect to the existence or validity of the arbitration agreement." The case law is clear that the threshold question of the arbitrator's jurisdiction must first be determined by the arbitrator, in keeping with the competence-competence principle, unless the challenge to the arbitrator's jurisdiction is based solely on a question of law (*Dell Computer Corp. v. Union des consommateurs*, 2007 SCC 34, [2007] 2 S.C.R. 801, at paras. 70, 84-87). If a party objects to the arbitrator's jurisdiction and disagrees with the arbitrator's decision on jurisdiction, the party may apply to this court to review the arbitrator's decision, pursuant to section 17(8) of the Act.

[15] Here, this option was not available as the arbitrator stayed the arbitration pending resolution of this motion for directions. She did so because she was uncertain whether she could render a decision on jurisdiction prior to the January 2025 hearing date for Ms. Belova's motion for directions.

[16] It therefore falls on me to address the issue in this motion.

[17] In determining whether to grant a stay under section 7 of the Act, I am to consider (1) whether there is an arbitration agreement, (2) what the subject matter of the dispute is, (3) what the scope of the arbitration agreement is, (4) whether the dispute arguably falls within the scope of the arbitration agreement, and (5) whether there are grounds on which I should refuse to stay the proceeding (*Haas v. Gunasekaram*, 2016 ONCA 744, at para. 17).

[18] Both of the retainer agreements that Ms. Belova signed with Monkhouse Law contained an arbitration provision that stated:

> It is important to keep our relationship professional, and to that regard if you have any complaints or issues about this retainer we agree to work things out between ourselves first, and confidentially at all times. The parties further agree that if matters cannot be worked out between the parties that they agree to be bound by binding confidential arbitration under the Ontario Arbitration Act regarding any complaints, issues, or payment problems relating to the retainer including but not limited to negative comments, reviews or invoice payments.

[19] In a separate provision, the retainer agreement for the contingency fee wrongful dismissal matter also contemplated that certain disputes between the parties would rightly proceed to an application for assessment. It provided, "If you feel that the final account statement is unreasonable, contact the Superior Court to ask for a review. You should do this within 30 days of

receiving the final account statement." It went on to provide contact information for the Superior Court of Justice, Toronto region. In my view, this provision is not relevant because no final account statement was ever rendered in the wrongful dismissal matter: Monkhouse Law terminated the retainer well before a final account statement was provided due to Ms. Belova's failure to pay her fees in the WSIB matter.

[20] I find that the arbitration provision established a clear obligation to arbitrate disputes in relation to any issue that either party may have under either retainer ("if you have any complaints or issues about this retainer we agree to work things out between ourselves first …. The parties further agree that if matters cannot be worked out between the parties that they agree to be bound by binding confidential arbitration under the Ontario Arbitration Act regarding any complaints, issues, or payment problems").

[21] The dispute here falls within the scope of the arbitration provision. Ms. Belova contests the enforceability of the arbitration provision. This constitutes a complaint or issue about the retainer and is therefore subject to the arbitration requirement. The dispute about enforceability is within the jurisdiction of the arbitrator as per s. 17(1) of the Act. In addition, Ms. Belova disputes the fees in both matters. She also has complaints that are not specifically fee-related in both matters, including, for instance, in relation to Monkhouse Law's use of unsecured email platforms to communicate with her. All of these complaints are subject to the arbitration requirement. Moreover, Monkhouse Law complains that Ms. Belova has not paid her fees, and the arbitration provision makes clear that that, too, is a matter for arbitration.

[22] In making this finding, I echo previous findings of this court that the arbitration provision in Monkhouse Law's retainer agreements requires the arbitration of issues related to enforceability and fee disputes (see, for example, *Sefcikova v. Monkhouse Law Professional Corporation*, 2023 ONSC 7091, leave to appeal to Ont. C.A. refused, COA-24-OM-0011 (May 22, 2024), leave to appeal to S.C.C. refused, [2025] S.C.C.A. No. 41396).

[23] Finally, I am of the view that there are no grounds on which to refuse to stay the action. As noted above, the Act contemplates that I may exercise my discretion to not grant a stay if the arbitration provision is invalid. Ms. Belova makes several arguments that the arbitration provision in the retainer agreements is not valid and that accordingly I should refuse the stay. For the reasons below, I do not give effect to these submissions.

[24] First, Ms. Belova states that the arbitration provision is unconscionable.

[25] The leading Supreme Court of Canada authority on unconscionability is *Uber Technologies Inc. v. Heller*, 2020 SCC 16, [2020] 2 S.C.R. 118. The Court in *Uber* described unconscionability as a doctrine in equity that may be used to set aside unfair agreements that result from an inequality of bargaining power (at para. 54). It reasoned that a case may present "serious flaws in the contracting process that challenge the traditional paradigms of the common law of contract, such as faith in the capacity of the contracting parties to protect their own interests" (at para. 58).

[26] The Court held that, to demonstrate unconscionability, a party must show an inequality of bargaining power and a resulting improvident bargain (at para. 65). There is an inequality of bargaining power where one party cannot adequately protect their interests in the contracting process (at para. 66). If they are personally vulnerable or suffer from disadvantages specific to the contracting process, and are therefore unable to understand and appreciate the full impact of the contractual terms, this "cognitive asymmetry" may give rise to an inequality of bargaining power (at paras. 67-72). An improvident bargain is one that unduly advantages the stronger party or unduly disadvantages the more vulnerable party (at para. 74). In assessing the terms of the bargain, the courts should consider the surrounding circumstances at the time the contract was entered into, including the market price and the position of the parties (*Uber*, at para. 75).

[27] Based on the record before me, I am not persuaded that there was unequal bargaining power between the parties or a resulting improvident bargain.

[28] Ms. Belova attests that she was experiencing health issues at the time she engaged Monkhouse Law and was in a vulnerable state as a consequence. Respectfully, I am not satisfied that her health issues rose to the level required to ground a finding of unequal bargaining power. That is, the record does not persuade me that her health issues gave rise to a disadvantage specific to the contracting process that left her unable to understand and appreciate the full impact of the terms of the retainer agreements.

[29] I see no evidence of improper tactics or undue pressure on the part of Monkhouse Law in respect of either retainer agreement. I note the following:

a. Although Ms. Belova complains that the arbitration provision was "buried" within each agreement, the two agreements are roughly four and eight double spaced pages long, respectively. In my view, neither agreement "buries" the arbitration provision.

b. There is no suggestion that Ms. Belova was limited in her ability to review either agreement or to have her questions about them answered. The first agreement urges Ms. Belova to contact the firm if there is anything in the agreement she wishes to discuss before signing. The record indicates that a partner with Monkhouse Law met with Ms. Belova in person and explained the terms of the first agreement to her. Two days later, the firm sent her a message asking if "there were any outstanding items" they could "help clear up from [their] consultation". Ms. Belova did not pose any questions or raise any concerns before she signed the agreement that same day. Her affidavit evidence is that she read the agreement and signed it after 18 minutes. She does not suggest that she was pressured to sign it or that she needed more time to review it or pose questions.

c. Three months later, she signed the second agreement. Had she really felt pressured to sign the first agreement, or felt that her vulnerability left her unable to understand the agreements, it is difficult to imagine she would have entered into the second agreement three months after entering into the first one. The second agreement, too,

urges her to contact the firm if there is anything in the agreement she wishes to discuss before signing.

[30] Second, Ms. Belova submits that she has a statutory right to assess legal fees through the court under the *Solicitors Act*, R.S.O. 1990, c. S.15, which prevails over the terms of the retainer agreements before me.

[31] I cannot agree. While parties cannot contract out of the substantive statutory protections contained in the *Solicitors Act*, such as the right to have an independent assessment of fees by an independent assessor, parties can choose to have an arbitrator conduct the assessment rather than a judge (*Jean Estate v. Wires Jolley LLP*, 2009 ONCA 339, 310 D.L.R. (4th) 95, at paras. 73-74). Here, the arbitration provision does just that. The parties' choice to resolve disputes through an arbitrator must be respected.

[32] Third, Ms. Belova suggests that the arbitration will not be impartial.

[33] Again, I respectfully disagree. There is a high presumption of impartiality on the part of an adjudicator (*Wewaykum Indian Band v. Canada*, [2003] 2 S.C.R. 259, at para. 59), including in the context of arbitrations (*Dufferin v. Morrison Hershfield*, 2022 ONSC 3485, at para. 112). A claim of bias questions the personal integrity of the adjudicator and the integrity of the administration of justice. As a consequence, the threshold for a finding of real or perceived bias is high. The grounds for claiming bias must be substantial. The onus is on the party seeking to disqualify the adjudicator to bring forward evidence to satisfy the test (*A.T. Kearney Ltd. v. Harrison*, (2003) CanLII 32908 (ON SC), at para. 7, cited in *Feng v. Mak*, 2015 ONSC 5675, at para. 23). Ms. Belova has provided no such evidence here.

Conclusion

[34] For the reasons above, I stay Ms. Belova's application for an assessment. I order that Daniela Corapi of ADR Chambers be appointed as the arbitrator and that this matter be referred to Ms. Corapi to settle the dispute between the parties, including Ms. Belova's assessment of Monkhouse Law's fees.

[35] Monkhouse Law seeks its costs on this motion if successful. It has outlined its position in a costs outline. Ms. Belova does not appear to have provided any submissions on costs. She should have the opportunity to do so. I grant her 15 days from today in which to provide to my judicial assistant, via email, with her written response to Monkhouse Law's position on costs. These submissions should be no more than five pages, double spaced. I will then issue a separate endorsement on costs.

Date: June 12, 2025 Parghi J.