COURT OF APPEAL FOR ONTARIO

CITATION: Dhaliwal v. Richter International Ltd., 2025 ONCA 522
DATE: 20250715
DOCKET: COA-24-CV-1127

Copeland, Wilson and Rahman JJ.A.

BETWEEN

Jagtar Dhaliwal and Voxx Sports Inc.

Applicants (Appellants)

and

Richter International Ltd., Peter Sellitto, Robert Small,
PFA Socks Inc., Timothy Damaso and 2248717 Ontario Inc. o/a Physiomed
Roytech Road a.k.a. Physiomed Vaughan

Respondents (Respondents)

Timothy Danson, for the appellants

Daniel Hamson and Sara Ray Ramesh, for the respondents

Heard: June 25, 2025

On appeal from the judgment of Justice Ira G. Parghi of the Superior Court of Justice, dated September 20, 2024, with reasons reported at 2024 ONSC 5103, dismissing an appeal from a decision of Arbitrator David McCutcheon, dated February 20, 2023.

REASONS FOR DECISION

A. OVERVIEW

[1] The appellants appeal the application judge's judgment dismissing their application to remove an arbitrator for bias. After hearing from the appellants' counsel, we dismissed the appeal with reasons to follow. These are our reasons.

B. BACKGROUND

[2] The parties each sued one another over a commercial dispute in 2018. In 2020, because of the impact of the COVID-19 pandemic on the operation of the courts, the parties decided to resolve their dispute through arbitration. The parties entered into the arbitration agreement with the arbitrator in October 2020. Almost five years later, the arbitration still has not been heard on the merits. The delay is almost exclusively because of various procedural issues that the appellants have raised during the arbitration proceedings. The most recent of those procedural delays, and the subject of this appeal, was the appellants' application to have the arbitrator challenged for bias.

[3] Within the arbitration proceedings, the appellants brought their motion to challenge the arbitrator on the ground that circumstances existed that gave rise to a reasonable apprehension of bias: see *Arbitration Act*, *1991*, S.O. 1991, c. 17, s. 13(1). They claimed that a reasonable apprehension of bias arose because the arbitrator had not disclosed his involvement in another arbitration with the respondents' lawyer.

[4] The arbitrator dismissed the appellants' motion. The arbitrator ruled that the appellants brought the challenge too late, and that, in any event, there was no reasonable apprehension of bias. The arbitrator considered the evidence filed by the parties and concluded that the appellants knew about the other arbitration at the time of his appointment, or, at the latest, by December 2020. They filed their motion well outside of the 15-day time limit prescribed by s. 13(3) of the *Arbitration Act*. The arbitrator also observed that there was nothing about his involvement in the other arbitration that could give rise to a reasonable apprehension of bias. He dismissed the motion. In his reasons awarding the respondents costs for the motion, the arbitrator commented that Mr. Dhaliwal's supporting affidavit for the motion contained "false statements".

[5] The appellants then brought an application in the Superior Court of Justice to challenge the arbitrator for bias. They renewed their reasonable apprehension of bias complaint and added an allegation of actual bias. The actual bias allegation was based on the arbitrator's comments that Mr. Dhaliwal made false statements in his affidavit. The appellants alleged that this was tantamount to a finding of perjury and "unnecessary" to decide the bias motion. The appellants also argued that the arbitrator erred in finding that their motion to disqualify him for bias was brought too late.

[6] The application judge dismissed the appellants' application. The application judge agreed that the appellants' bias motion was time-barred under s. 13(3) of

the *Arbitration Act*. The application judge also concluded that there was no reasonable apprehension of bias, nor actual bias. There was no reasonable apprehension of bias because the two arbitration proceedings were unrelated. In short, there was nothing about the arbitrator's involvement in the other arbitration that would raise a concern that he would approach the appellants' arbitration with a closed mind. As for the actual bias claim, the application judge ruled the arbitrator's conclusion that Mr. Dhaliwal made false statements did not show bias. She concluded that arbitrators "are, and should remain, free to make such findings" and that any such findings are not a reason to find bias.

C. ANALYSIS

[7] We agree with the application judge that there was neither a reasonable apprehension of bias nor actual bias.

[8] We reject the appellants' contention that the terms of the arbitration required the arbitrator to disclose that he and the respondents' counsel were involved in another arbitration. The arbitrator was required to disclose circumstances that could give rise to a reasonable apprehension of bias. Simply being involved in a separate arbitration with one party's lawyer is not, on its own, such a circumstance. The parties had no agreement that they could only select an arbitrator that neither had worked with before. Nor did the terms of the arbitration agreement require the arbitrator to disclose any previous involvement with the parties' lawyers. We

observe that it is not uncommon for lawyers to select arbitrators for the very reason that they have worked with those arbitrators before. There is no merit to the appellants' submission that any non-disclosure created a reasonable apprehension of bias.

[9] The appellants' allegation of actual bias is equally without merit. The arbitrator was entitled to find that Mr. Dhaliwal's statements were false, in the sense that they were incorrect. This was not a finding of "perjury", as the appellants allege. Even if the arbitrator had found that Mr. Dhaliwal committed perjury, that would not be a basis to find actual bias. Just as trial judges make adverse credibility findings against parties during pre-trial or mid-trial motions, making such a finding does not, on its own, give rise to a reasonable apprehension of bias, let alone actual bias. If a party could move to disqualify an arbitrator by alleging that the arbitrator made findings that were "unnecessary" or "went too far", it would make the arbitration process unwieldy.

[10] As we agree with the application judge's ruling on the bias issue, we need not deal with the application judge's conclusion that the bias motion was not brought in time.

[11] The appeal is dismissed. The respondents are entitled to costs of the appeal in the amount of $20,000, all-inclusive, as agreed upon by the parties.

"J. Copeland J.A."
"D.A. Wilson J.A."
"M. Rahman J.A."