

SUPREME COURT OF NOVA SCOTIA

Citation: *N.W. Fulcher Limited v. Chad Munro Family Trust (2010)*,
2025 NSSC 240

Date: 20250711

Docket: Hfx. No. 536400

Registry: Halifax

Between:

N.W. Fulcher Limited, BMO Trust Company in its capacity as
Executor of the Estate of the Late N. Wayne Fulcher

Plaintiffs

v.

Chad Richard Munro, Chad Richard Munro, Shauna Marie Barrington as
Trustees of the Chad Munro Family Trust (2010)

Defendants

Decision

Judge: The Honourable Justice Peter P. Rosinski

Heard: July 7, 2025, in Halifax, Nova Scotia

Final Written Decision: July 11, 2025

Counsel: Daniel MacKenzie, for the Plaintiffs
Chad Munro, for the Defendants

By the Court:

Introduction

[1] The Plaintiffs [the **Fulcher Group**] herein have sued the Defendants for breach of provisions of a Shareholders Agreement.

[2] The Defendants' [the **Munro Group**] motion before me requests an Order that the Plaintiffs' Action be stayed in favour of the matter proceeding by way of arbitration as contemplated under the relevant Shareholders Agreement.

[3] I deny the motion.

Background

[4] NW Fulcher Limited [**Fulcher Ltd.**] is suing the Defendants for breach of contract which arises from an executed Shareholders Agreement [the Shareholders Agreement] regarding the shares of Glengary Holdings Limited [**Glengary**].¹

[5] Fulcher Ltd.'s assertions are that:

- The Shareholders Agreement includes specific provisions triggered upon the death of certain individuals. One of those individuals, N. Wayne Fulcher died in January 2024;
- The Fulcher Group seek to enforce their rights under the Shareholders Agreement which they have exercised after Mr. Fulcher's death;
- The Munro Group have refused to comply with their obligations and are therefore in breach of the Shareholders Agreement;
- Fulcher Ltd., Mr. Fulcher, Chad Munro, and the Chad Munro Family Trust are each parties to Glengary's Shareholders Agreement [**the "Shareholders Agreement"**] dated November 19, 2010;
- Concurrent with entering into that Agreement, Fulcher Ltd. invested over \$800,000 directly in Glengary, and indirectly in Halifax Biomedical Inc. [HBI];

¹ Personal service of the Notice of Action and Statement of Claim - filed August 30 2024- was effected on Chad Richard Munro personally and Chad Richard Munro as a Trustee of the Chad Munro Family Trust (2010) and Shauna Marie Barrington as a Trustee of the Chad Munro Family Trust (2010) on October 4, 2024.

- Glengary remains the majority shareholder of HBI;
- Upon the death of Mr. Fulcher on January 29, 2024, Officers of BMO Trust Co. became the Officers and Directors of Fulcher Limited.

[6] On March 25, 2024 **pursuant to section 10.3(b)**, the Fulcher Group delivered written notice to the Munro Group of their intention to exercise the contractual right of the Fulcher Group [comprised of Fulcher Ltd., Mr. Fulcher and any Affiliate of such persons which becomes a Shareholder] to require the Munro Group [Munro, the Munro Trust, and any Affiliate of such persons which becomes a Shareholder] to purchase the shares held by the Fulcher Group.

[7] On April 8, 2024, the Munro Group advised the Fulcher Group that the Munro Group refused to purchase the shares of the Fulcher Group based on its interpretation of section 10.3 of the Shareholders Agreement.

[8] The Fulcher Group plead that the Munro Group’s continuing refusal to purchase the shares of Fulcher Group in accordance with the obligations of the Munro Group in the Shareholders Agreement constitutes an ongoing breach of the Agreement.

[9] I need not decide this issue on the merits not having heard the full arguments thereon, however the answer is discernable in my view.

[10] There is no dispute that Mr. Fulcher was a “Principal” as contemplated by the Shareholders Agreement and that he died in January 2024. Therefore Article 10 – Death of a Principal - is clearly applicable.

[11] **Section 10.3 options reads:**

Subject to the provisions of this Agreement:

- upon the death of the Munro** [this is clearly a reference to “Chad Munro”, who on the identified Parties page of the Agreement and is listed as “Munro”], the **Fulcher Group** [being “the Survivor”] **shall have the right**, but not the obligation, **to purchase the shares held by the Munro Group** [the “Vendors”];
- upon the death of Fulcher, the Fulcher Group** [being “the Vendors”] shall have the right, but not the obligation to require the Munro Group [being “the Survivor”] to purchase the shares held by the Fulcher Group;
- upon the death of Fulcher, Munro** [“Munro” is identified on the first page of the Shareholders Agreement as an individual being “Chad Munro” – and he

does not fit within the definition of “Survivor”] **shall have the right**, but not the obligation **to purchase all of the Special Voting Shares of the Company held by the Fulcher Group** at a price per share equal to the redemption price of such Special Voting Shares;²

An option under this Section may be exercised [by] the Survivor [“means, upon the death of the Deceased, the Group other than the Deceased’s Group” –section 1(hh) – i.e. the Munro Group] giving notice in writing to the Vendors [“means the Deceased’s Group together with all members thereof” – the Fulcher Group] on or before the date that is [one year] following the death of the Deceased. [“A Principal who has died”- section 1(k)].

[12] Because the “Survivor” must be either the Fulcher Group or the Munro Group and “Vendors” “means the Deceased’s Group together with all members thereof”, only Sections 10.3 (a) and (b) can have been intended to be subject to the wording:

“An option under this Section may be exercised the Survivor giving notice in writing to the Vendors on or before the date that is one year following the death of the Deceased.”

[13] The Fulcher Group believed that under section 10.3(b) it had the right to require the Munro Group to purchase the shares held by the Fulcher Group - and so communicated to the Munro Group.

[14] In the full context of the circumstances here, including the wording in the Shareholders Agreement, I am inclined to the conclusion that the parties intended the language, in section 10.3(b), “ the Fulcher Group shall have the right, but not the obligation to require the Munro Group to purchase the shares held by the Fulcher Group”, to be properly interpreted as it appears on its face:

² The Shareholders Agreement defines “Shares” as: “means the shares of the capital stock of the Company issued and outstanding at the relevant time, of any class, whether containing any preferential, deferred or qualified rights, privileges or conditions, and includes any shares or securities into which such shares of the Companies may be converted, changed, reclassified, subdivided or consolidated, and any shares or securities of any successor or continued company which may be received on a reorganization, amalgamation, consolidation or merger, statutory or otherwise;”. “Voting Shares” is defined as: “means Shares carrying the right to vote pursuant to the terms and conditions hereof.” “Securities” is defined as: “means Shares and securities which are convertible into, or exchangeable for, or otherwise carrying a right to purchase or subscribe for any shares;” **Notably Article 7.1 of the Shareholders Agreement reads: “7.1 Restriction on Transfer-No shareholder shall be entitled to deal with any Securities held by it, whether by way of sale, transfer, assignment, pledge, charge, hypothec, encumbrance, gift or otherwise except: (a) in accordance with and as specifically provided for in Article 7 [Restrictions on Transfer], Article 8 [Right of first refusal; Piggyback right; Drag along right; Option to purchase] or Article 9 [Mandatory Purchase and Sale of shares] of this Agreement; or (b) upon the written agreement of all other shareholders.”**

Upon the death of Mr. Fulcher, the Fulcher Group shall have the right, but not the obligation, to require the Munro Group to purchase the shares held by the Fulcher Group.

The Fulcher Group had a simple choice: it is entitled to require, or not require, the Munro Group to purchase its shares.

The Munro Group does not have a choice- if the Fulcher Group requires the Munro Group to purchase its shares -the Munro Group must do so.

[15] This interpretation applies equally in favour of the Munro Group should Mr. Munro have become deceased, except that section 10.3(a) reads: “The Fulcher Group shall have the right ... to purchase the shares held by Munro Group”

[16] The wording in section 10.3(b) is entirely in keeping with the wording and structure of the Shareholders Agreement, in this closely held private Corporation, which evidences significant emphasis on “control” and “ownership” issues.

[17] For present purposes, the Motion at issue is whether on August 30, 2024, the Fulcher Group were entitled to file their Notice of Action in spite of the restrictions in Article 15.1 of the Shareholders Agreement.

[18] **Article 15 –Dispute Resolution** reads:

15.1 The Parties agree that, except as otherwise specifically provided in this Agreement, if any dispute arises between or among the Parties concerning either (a) the interpretation or application of this Agreement or (b) the business and affairs of the Company (each a “Dispute”), any such Party may, upon written notice to the other Parties, refer the Dispute to a mediator with the “C. Med” designation for resolution. Failing a mediated resolution, the Dispute shall be referred to an arbitrator, who shall not be the mediator or associated with the mediator, and the Dispute shall be arbitrated in accordance with the provisions of the Arbitration Act (Nova Scotia) and the decision of the arbitrator shall be final and binding upon all Parties and shall not be open to appeal to a court or otherwise.

15.2 – Costs of the Arbitration

Unless the Parties agree otherwise, the mediator or the arbitrator, as the case may be, shall determine which portion of the costs and expenses incurred in any such proceeding shall be borne by each Party participating in such mediation or arbitration.

[19] The wording “any such party may... refer the Dispute to a mediator... for resolution.” is clear: either the Fulcher Group or Munro/Munro Group had the right

to insist on the dispute at issue here being heard by a mediator - and “Failing a mediated resolution, the Dispute shall be referred to an arbitrator”.

[20] While the mediation process could have been invoked to deal with this issue, and was being considered by the Defendants, their Counsel expressly declined the mediation process on May 4, 2024.

[21] The wording “Failing a mediated resolution” presumes that both parties agreed to proceeding with a mediation and it did not resolve the dispute. I agree with this interpretation.

The Motion before me

[22] The Munro Group’s motion specifically requests:

1. an Order directing that the dispute be referred to arbitration as required by the Shareholders Agreement;
2. an Order dismissing the Plaintiff’s Notice of Action/Statement of Claim in its entirety;
3. an Order awarding costs to the Defendants on a full indemnity basis.

[23] The Grounds for the Motion are as follows:

1. **Dispute Resolution by Arbitration:** the Shareholders Agreement contains a binding arbitration clause requiring that disputes be resolved through arbitration rather than litigation. The Shareholders Agreement section 15.1 [Mediation and Arbitration] specifically includes scenarios where disputes could arise due to “(a) the interpretation or application of this Agreement...” The Plaintiff has improperly bypassed the agreed-upon dispute resolution mechanism.
2. **No Breach of Contract:** The Shareholders Agreement explicitly grants the surviving shareholder (in this case the Munro Group) the sole right, but not the obligation, to select an option under Section 10.3 [Options as part of Article 10 – Death of a Principal] of the Shareholders Agreement within one year following the death of a Principal. There is no contractual requirement for Munro to select any option under section 10.3, and thus, no breach has occurred.
3. **Frivolous and Vexatious Litigation:** The Plaintiff’s claim is an abuse of process, as it misinterprets and ignores essential parts of the

Agreement and contradicts its plain language. This is the second frivolous lawsuit filed by the Plaintiff, both of which ignored the arbitration clause. The continuous baseless litigation demonstrates a pattern of harassment and bad faith.

4. **Costs to Defendants:** Given this lawsuit was improperly filed, the Defendants seek costs on a full indemnity basis.
5. Such further grounds as the Defendant may advise and the Court may permit.

[24] The Munro Group rely on the following:

1. the arbitration clause in the [Glengary] Shareholders Agreement, which mandates that disputes be resolved through arbitration, making this lawsuit improperly filed in Court.
2. *Self v Abridgean Inc.*, 2001 NSSC 191, which confirms that “the onus of showing that the case is not [a] fit one for arbitration falls upon the party resisting the stay of proceeding”.
3. the Shareholders Agreement, particularly Article 10, section 10.3, which provides that the surviving Shareholder group has the right, but *not the obligation*, to select an option under section 10.3 within one year from the death of a Principal.
4. the Affidavit of Chad Munro, which outlines:
 - (a) (The Munro and Fulcher Groups different interpretations of the [Glengary] Shareholders Agreement.
 - (b) The lack of a legal obligation to select any option of section 10.3 within one year following the death of a Principal;
 - (c) (The Plaintiff’s bad faith conduct.
5. Any affidavit filed by the Defendant(s) in support of this motion.
6. Any relevant case law, or precedents that demonstrate the Court’s treatment of similar shareholder disputes.
7. Such further and other evidence as the Court may allow.

[25] On February 12 and February 24, 2025, Chad Munro filed extensive affidavits in support of the Defendants’ arguments.

[26] The first addresses their argument that the Plaintiff's lawsuit "should be dismissed with costs to the Defendants on the following grounds...", whereas the later affidavit is intended to address the Defendants' Motion to Dismiss the Plaintiff's Notice of Action and Statement of Claim.

[27] The motion I am addressing seeks a form of procedural relief.

[28] The Munro Group seeks to stay the Plaintiff's lawsuit and receive an Order that formally concludes the Arbitration process contemplated by the Shareholders Agreement must be followed.

[29] They argue that the proper procedure to deal with the Plaintiff's complaints is within an arbitration process, not a proceeding in Court.

Why I conclude that the Plaintiffs are entitled to continue the proceeding as an Action.

[30] The Defendants bear the evidentiary and persuasive onus on their motion.

[31] The evidence is clear that after Mr. Fulcher's death, **the Fulcher Group demanded "Munro" buy all its shares according to the Shareholders Agreement** sections 10.3; 10.4; and 12.2 or else deal with the matter by mediation per section 15.1 - MacKenzie Affidavit, June 26, 2025, Exhibit "A" – being a letter dated March 25, 2024:

Please treat this letter as formal notice that the Fulcher Group is exercising its contractual right to require the Munro Group to purchase the shares held by the Fulcher Group in accordance with section 10.3 of the Agreement and in accordance with the prescribed Special Valuation Provisions contained in sections 10.4 and 12.2 of the Agreement...

If we do not receive confirmation of the Munro Group's intended compliance with this demand within the next 10 days... then we will pursue mediation under Article 15 – Dispute Resolution – 15.1 Mediation and Arbitration of the Agreement.

... Finally, we confirm that our client's rights under section 10.3 of the Agreement are fully distinct and separate from the claims being advanced by way of Notice of Action and Statement of Claim in **Halifax No. 509368**. As you know, the existing and ongoing litigation is seeking relief and redress arising from the Defendants' pattern of oppressive and unfairly prejudicial conduct. The contractual rights arising from the death of Mr. Fulcher do not alter the Fulcher Group's rights being advanced in that separate action, which remain scheduled for trial in November 2024.

Put simply, the ongoing Action is seeking to remedy past Shareholder oppression, which remains an ongoing concern warranting its own remedy. The issue of past oppression is separate and distinct... any payment from the Munro Group to [the Fulcher Group] for its shares in Glengary Holdings Limited will need to be accounted for against the damages claim in the existing litigation.”

[32] Two significant issues for resolution by the Court follow.³

[33] **What is the effect of the evidence in relation to the mediation issue, including specifically the Defendants’ counsel Ian Dunbar having written the following to emails to:**

Plaintiffs’ counsel, Jason Woycheshyn, on April 12, 2024; and the proposed mediator Jim Musgrave and Plaintiff’s Counsel on May 4, 2024 “Re-: Request for Mediation/Shareholder Dispute”:

- Without prejudice

Jason,

If your client decides to pursue appointment of an arbitrator via Court process, we will oppose any such application based solely on an inability of the Munro Group to pay for the arbitrator; and

- Hi Jim [Mr. Musgrave]:

Thank you for your speedy response [Mr. Musgrave stated the day before: “I confirm that I hold a Chartered Mediator designation... as called for in the Mediator Qualifications contemplated by Article 15.1 of the Agreement... I have no conflicts I am aware of and would be pleased to act in this matter.... On a personal/professional note, I want to thank you and Ian for thinking of me to assist.”].

On this matter, my client has financial limitations and is unable to proceed to mediation. We had made this known to Mr. Woycheshyn previously. If we are able to sort out those issues, I will let you know, but otherwise regrettably my client will

³ I have borne in mind Mr. Munro’s evidence in his two Affidavits. For example, in his February 12, 2025, Affidavit at paragraph 178 he stated:

“Prior to filing the second Fulcher lawsuit the lawyers for the Estate of Wayne Fulcher did suggest that we start the mediation process. We agreed to this mediation process, but we indicated that we could not pay any of the associated mediation arbitration costs.”

The Shareholders Agreement which the parties decided would govern their business relationship contained a clause relevant to the issue of mediation/arbitration costs: Article 15.1 is entitled – “Dispute Resolution – Mediation and Arbitration”. Article 15.2 is entitled “Costs of the Arbitration” and reads:

“Unless the parties agree otherwise, the mediator or the arbitrator, as the case may be, shall determine which portion of the costs and expenses incurred in any such proceeding shall be borne by each party participating in such mediation or arbitration.”

The Munro Group agreed to the highly customized terms of the Shareholders Agreement, yet in this motion it argues, through Chad Munro, as if they were not or should not be binding in the present circumstances. There is nothing in the present circumstances to justify such an argument.

not be able to agree to your standard fee engagement for mediation services. [On August 30, 2024, the Plaintiffs filed their Notice of Action.]

[My bolding added to both quotations]⁴

[34] Mr. MacKenzie for the Plaintiffs relies upon section 7 of the *Arbitration Act* RSNS 1989, c.19, because he says it prevents the Defendants from now being eligible for arbitration. That section reads:

Stay of proceedings

7 If any party to a submission, or any person claiming through or under him, commences any legal proceedings in any court against any other party to the submission in respect to ... any party to such legal proceedings may, at any time after appearance, and before delivering any pleadings, or taking any other steps in the proceedings, apply to that court to stay the proceedings, and that court, or a judge thereof, if satisfied that there is no sufficient reason why the matter should not be referred in accordance with the submission, and that the applicant was, at the time when the proceedings were commenced, and still remains, ready and willing to do all things necessary to the proper conduct of the arbitration, may make an order staying the proceedings. R.S., c. 19, s. 7.

[35] Mr. MacKenzie reiterated that a request to stay civil proceedings, as a result of a request for arbitration instead, must be made “before delivering any pleadings or taking any other steps in the proceeding”, and that the Defendants “at the time when the proceedings were commenced, and still remains, ready and willing to do all things necessary to the proper conduct of the arbitration”.

[36] I find as a fact that the Plaintiffs filed their pleadings on August 30, 2024, and they were served upon the Defendants on October 4, 2024.

[37] The Defendant’s Motion to Stay the civil proceedings herein was filed on February 24, 2025, and are consequently far past the filing of their Notice of Defence on October 25, 2024.

[38] Moreover, bearing in mind the Defendants have the burden here, they have also failed to establish that they were “at the time when the proceedings were

⁴ In oral argument Mr. Munro suggested that because the document/email contains “settlement privilege” protected communications - some communications were redacted – that therefore the above-noted communications were also covered thereby. Firstly, I note that the Shareholders Agreement expressly requires consideration be given to mediation and arbitration. Secondly, as the email suggests, this inability “to proceed to mediation” was “made ... known to [Plaintiff’s counsel] previously.” In all the circumstances I am not satisfied that its disclosure is legally prevented by “settlement privilege”- see inter alia, the reasons in *Sable Offshore Energy Inc. v. Ameron International Corp.*, 2013 SCC 37, [2013] 2 S.C.R. 623 and other cases on this issue.

commenced, and still remains, ready and willing to do all things necessary to the proper conduct of the arbitration”.

[39] Next, I will briefly consider whether by filing a Notice of Defence on October 25, 2024, the Defendants have attorned to the jurisdiction of the Court and does this preclude them from relying on the provisions of the Shareholder Agreement?

The Defendants’ attornment to the civil litigation process

[40] There was attornment to the civil litigation process by the Defendants.

[41] Justice Mona Lynch described “attornment” in *Wamboldt v Wamboldt Estate*, 2017 NSSC 288:

[12] The first question is whether the defendant submitted to the court’s jurisdiction during the course of the proceeding (s.4(b) of the *CJPTA*). If he did not, the next question is whether there is a real and substantial connection between the province and the facts on which the proceeding against the defendant is based (s.4(e) of the *CJPTA*).

[13] **The defendant submits that he did not attorn to the jurisdiction of the court by simply filing a defence which disputed jurisdiction and denied the substance of the claim. He submits that denial of the substance of the claim after first asserting lack of jurisdiction does not amount to attornment.**

[14] The plaintiff says that the defendant cannot have it both ways and the defendant should have filed a motion disputing jurisdiction before a defence was filed as set out in *Civil Procedure Rule 4.07*, which reads:

- 4.07** (1) A defendant who maintains that the court does not have jurisdiction over the subject of an action, or over the defendant, may make a motion to dismiss the action for want of jurisdiction.
- (2) A defendant does not submit to the jurisdiction of the court only by moving to dismiss the action for want of jurisdiction.
- (3) A judge who dismisses a motion for an order dismissing an action for want of jurisdiction must set a deadline by which the defendant may file a notice of defence, and the court may only grant judgment against the defendant after that time.

The plaintiff also submits that the defendant attorned to the jurisdiction of the court by filing a defence on the merits of the claim and not simply disputing the jurisdiction of the court.

[15] *Civil Procedure Rule 4.07* clearly anticipates that a defendant will make a motion to dismiss the action for want of jurisdiction prior to filing a notice of defence. *Rule 4.07(3)* requires a judge who dismisses the motion to set a deadline

for filing a notice of defence. Here, the notice of defence was filed prior to the motion to dismiss the action for want of jurisdiction.

[16] In **Newton v. Waterbury Newton**, 2011 NSCA 34, the court considered whether the defendant had attorned to the court's jurisdiction. While the defendant in the case took other steps in the proceeding, the court notes in para. 8 that the defence was not filed simply to avoid a default judgment and that the defence was not confined to a plea of want of jurisdiction, but "**denied the substance of the claim as well**" (emphasis added). They note in paragraph 9 that the chambers judge had concluded that *Rule 4.07(3)* assumes that a motion to dismiss must occur before the filing of a defence. The court noted again at paragraph 12 that the defendant's defence was not confined to contesting jurisdiction, but "**he denied the substance of the claim as well**" (emphasis added). The court dismissed the appeal from the Chambers judge's decision (2010 NSSC 359), which found that *Rule 4.07* does not permit the defendant to file a defence and then apply for a stay (para. 22) and that by filing a defence addressing the merits of the claims the defendant had attorned to the jurisdiction of the court (para. 23).

[17] The plaintiff also points to *Halsbury's Laws of Canada – Conflict of Laws Commencement of a Claim*, HCF-6 (2016 Reissue), Janet Walker:

Appearance to defend on the merits. Defendants who appear to defend the action on the merits implicitly consent to the jurisdiction of the court to determine the controversy. This is sometimes called "attornment". Entering an appearance solely to contest jurisdiction is not regarded as attornment. **The former practice of preserving the right to challenge jurisdiction by entering a conditional appearance has been replaced by the practice of determining jurisdictional challenges at the outset before a defendant enters a defence on the merits. Once a party takes steps to contest the merits of the claim, rather than the court's jurisdiction, even if those steps are taken in error, or with express notice of the intention to challenge jurisdiction, the party will be precluded from challenging the jurisdiction of the court, whether in respect of the whole of the claim or of a part of it.** In some circumstances, attornment may be regarded also as an acceptance of the court as a convenient forum. (emphasis added)

[18] While the defendant submits that the plaintiff was not taken by surprise or prejudiced by the claim challenging the jurisdiction of the court, that is not the test. Attorning to the jurisdiction of the court is not a technicality, as the defendant submits. The test is whether the party goes beyond challenging the jurisdiction of the court (**Fraser v. 4358376 Canada Inc.**, 2014 ONCA 553 at para. 14).

[19] Other cases support that the defendant has attorned to the jurisdiction of the court. In **M.J. Jones Inc. v. Kingsway General Insurance Co.** 2004 CanLII 6211 (ON CA), [2004] O.J. No. 3286 (ONCA) at paras. 20-22 the court says:

20 A foreign defendant is also precluded from contemporaneously disputing jurisdiction *simpliciter* and defending on the merits. Otherwise,

litigants would incur unnecessary litigation costs in a claim which, as it may turn out, the court did not have jurisdiction to determine in the first place.

21 Further, if foreign defendants were permitted to defend contemporaneously on the merits and to dispute jurisdiction, then, in addition to the possibility of unnecessary expense, a defendant could retreat if it appeared that the success of their defence was in jeopardy.

22 Accordingly, it is well-accepted law that a foreign defendant that engages on the merits of the action will be taken to have "attorned" to the domestic court's jurisdiction...

That was reiterated in **Strugarova v. Air France**, 2009 CarswellOnt 9412 (ONSC) at paras. 50 and 51:

50 With respect to the issue of attornment by the filing of a statement of defence, I am of the view that I am bound by the Ontario Court of Appeal's decision in *M.J. Jones Inc. v. Kingsway General Insurance Co.*, 2004 CanLII 6211 (ON CA), [2004] O.J. No. 3286 (Ont. C.A. [In Chambers]). In that case, the Ontario Court of Appeal was asked to determine whether or not the act of filing a statement of defence would constitute attornment, notwithstanding that the defendant was clearly disputing the forum for the hearing of the action. The Court of Appeal stated that the filing of statement of defence would constitute attornment to the jurisdiction where the defence was filed (see: paras. 19 to 22).

51 The Ontario Court of Appeal's approach is the same as the reasoning and the conclusion by the Court in *Vertzyas v. Singapore Airlines Ltd.*, *supra*. In that case, where the defendant had sought to defend proceedings both on jurisdictional issues and on the merits up to the date of hearing, the Court held that the combination of those acts constituted a submission to jurisdiction whereby the defendant waived its right to object to the jurisdiction of the Court (paras. 107 to 110).

[20] While the defendant was clear that he was disputing jurisdiction, he filed a defence on the merits and, by filing that defence, he attorned to the jurisdiction of the Supreme Court of Nova Scotia. Therefore, territorial competence has been proven.

[21] If I am wrong that by simply filing a defence which disputes jurisdiction, the defendant attorned to the jurisdiction of the court, I would have found that there is a real and substantial connection between Nova Scotia and the facts on which the proceedings against the defendant is based (s.4(e) *CJPTA*).

[42] The Notice of Defence filed herein on October 25, 2024, contains the following subheadings:

- No Munro Group Breach

- Agreement is Unclear and Ambiguous
- Unconscionability

[43] There is no hint therein that the Defendants were disputing the jurisdiction of the Court.

Conclusion

[44] The Defendants have filed a Notice of Motion to dismiss this Action in favour of Arbitration.

[45] However, they have attorned to this Court's jurisdiction, have not complied with section 7 of the *Arbitration Act* and have not discharged the evidentiary and persuasive burden to make their case.

[46] After a very careful and considered reflection on the arguments made by the parties, I am fully satisfied that it is appropriate to dismiss the Motion with costs.

Rosinski, J.