

CITATION: Fredericks v. South Western Insurance Group Limited, 2025 ONSC 4637
COURT FILE NO.: CV-24-00734064-0000
DATE: 20250811

ONTARIO SUPERIOR COURT OF JUSTICE

RE: Anthony Fredericks, Bibi Fredericks and 1000715830 Ontario Inc., Plaintiffs
(moving parties)

-and-

South Western Insurance Group Limited and Frank Newbould QC, Defendants
(responding parties)

BEFORE: Robert Centa J.

COUNSEL: Melvyn Solman and Faraaz A. Damji, for the plaintiffs

Arthur Hamilton and Laurie Livingstone, for the defendant South Western
Insurance Group Limited

No one appearing for the Hon. Frank Newbould

HEARD: August 8, 2025

ENDORSEMENT

- [1] The defendant, South Western Insurance Group, signed a share purchase agreement with the plaintiffs, Anthony Fredericks, Bibi Fredericks, and 1000715830 Ontario Inc. (collectively, the “Fredericks”). Through this transaction, the Fredericks sold two corporations to South Western for \$40 million. The share purchase agreement contained an arbitration agreement. After the transaction closed in January 2024, South Western claimed that the Fredericks had breached certain warranties and representations contained in the agreement and the parties could not agree on what, if any, post-closing adjustments were required.
- [2] In accordance with the dispute resolution provisions, the parties engaged independent accountants. In October 2024, the parties jointly retained the Hon. Frank Newbould, K.C., to act as arbitrator.
- [3] The arbitration proceeded smoothly until December 31, 2024, when the Fredericks discharged their counsel and retained their current counsel. The Fredericks then:
- a. commenced this action in the Superior Court of Justice; and
 - b. brought a motion in the arbitration challenging Mr. Newbould’s jurisdiction.

- [4] The action named South Western and Mr. Newbould as defendants. Mr. Newbould's only connection to the Fredericks is his agreement to serve as arbitrator of the parties' dispute under the share purchase agreement. In the action, the Fredericks seek orders:
- a. declaring that South Western owes \$1.25 million under the provisions of the share purchase agreement and an order compelling South Western to pay that amount to the Fredericks;
 - b. declaring that South Western will owe \$250,000 under the provisions of the share purchase agreement and an order compelling South Western to pay that amount shortly after the first anniversary of the closing of the transaction;
 - c. compelling South Western to pay damages for breach and dishonest performance of the share purchase agreement;
 - d. declaring that the Fredericks did not make any misrepresentations to South Western in the share purchase agreement; and
 - e. setting aside the arbitration agreement, preventing the arbitration from proceeding, and staying the arbitration permanently.

[5] South Western brought a motion to stay the action pursuant to s. 7(1) of the *Arbitration Act, 1991*, S.O. 1991, c. 17. The Fredericks brought a cross-motion to set aside the arbitration agreement. The motion and the cross-motion are scheduled to be heard on December 4, 2025.

[6] On March 21, 2025, the Fredericks' motion in the arbitration challenging the jurisdiction of Mr. Newbould was scheduled to be heard on August 25, 2025. On July 14, 2025, the Fredericks brought this motion asking the court to grant an injunction to prevent Mr. Newbould from hearing and deciding the Fredericks' challenge to his jurisdiction until the court determines the Fredericks' cross-motion to set aside the arbitration agreement.

A. *Test for an injunction*

[7] A party may seek an interlocutory injunction or mandatory order pursuant to s. 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, and Rule 40 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg 194. In general, a party seeking an interlocutory injunction must meet the test set out in *RJR — MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311, at p. 334, and demonstrate that:

- a. the action raises a serious question to be tried, in the sense that the claim is neither frivolous nor vexatious;
- b. the moving party would suffer irreparable harm if the court does not grant the injunction until the completion of the trial; and

- c. that the balance of convenience favoured granting the injunction because the moving party would suffer greater harm than the responding party if the injunction is not granted

[8] While strength in one part of the *RJR-MacDonald* test can make up for weakness in another, an injunction will not be issued if the moving party does not meet each prong in the test: *Haudenosaunee Development Institute v. Metrolinx*, 2023 ONCA 122, at para. 5.

[9] I dismiss the motion for an injunction.

B. *No serious question to be tried*

[10] The essential question raised by the Fredericks is whether the court or the arbitrator should first consider the question of whether the claims raised by South Western fall within the terms of the arbitration provisions of the share purchase agreement. The Fredericks have not raised a serious question to be tried.

[11] It is beyond any doubt that Mr. Newbould should be the first person to answer all questions related to his own jurisdiction and that he should do so free from interference by the court: *Dell Computer Corp. v. Union des consommateurs*, 2007 SCC 34, [2007] 2 S.C.R. 801, at para 84; *Uber Technologies Inc. v. Heller*, 2020 SCC 16, [2020] 2 S.C.R. 118, at para 122; *Lochan v. Binance Holdings Limited*, 2024 ONCA 784, 504 D.L.R. (4th) 527, at para 16; *Haas v. Gunasekaram*, 2016 ONCA 744, 62 B.L.R. (5th) 1, at paras 14-15; *Russian Federation v. Luxtona Limited*, 2023 ONCA 393, 483 D.L.R. (4th) 493, at para 32; *Ciano Trading & Services C.T. v. Skylink Aviation Inc.*, 2015 ONCA 89, at para 7; *Dancap Productions Inc. v. Key Brand Entertainment Inc.*, 2009 ONCA 135, 68 C.P.C. (6th) 34, at paras 32-34.

[12] Through the provisions of the *Arbitration Act*, the Legislature chose to protect the right of arbitrators to determine their own jurisdiction. The parties chose to submit their disputes to an arbitrator. The courts have adopted a posture of deference toward arbitrators and their work to reflect the choices made by the Legislature and to respect the decisions made by private actors.

[13] I see nothing in the case law cited by the Fredericks to support the proposition that the court should intervene in this arbitration at this time. There is nothing about the language of the share purchase agreement or the dispute resolution provisions that suggest that the court should intervene at this time. Even accepting that the “serious question to be tried” bar is low, this case does not meet that standard.

C. *No irreparable harm if an injunction is not granted*

[14] Second, the Fredericks have not demonstrated that they would suffer irreparable harm if the court does not grant an injunction. Irreparable harm is harm, "which either cannot be quantified in monetary terms or which cannot be cured, usually because one party cannot collect damages from the other." *RJR*, at para. 64.

- [15] If they do not obtain an injunction, Mr. Newbould will soon determine the Fredericks' challenge to his jurisdiction. On August 25, 2025, the Fredericks will be able to raise any argument they wish to make before Mr. Newbould. Depending on the outcome of the motion before Mr. Newbould, the parties will have any remedies available to them under the Act and the terms of their arbitration agreement. The action in the Superior Court will also continue toward the motions in December, if that is how the parties choose to proceed.
- [16] The Fredericks submit that irreparable harm will arise from the multiplicity of proceedings in the Superior Court and before the arbitrator. I do not accept that this constitutes irreparable harm. First, the Act contemplates that there will be occasions where an arbitration and an action will proceed in parallel. Second, any multiplicity of proceedings is a problem of the Fredericks' own making. Self-inflicted wounds will rarely be recognized as causing irreparable harm. Moreover, the Fredericks have identified no harm that cannot be compensated for by damages or an award of costs.

D. *Conclusion and costs*

- [17] Given my findings that the Fredericks have not met either of the first two stages of the test, it is unnecessary to consider the balance of convenience. I would not grant the extraordinary relief of interfering in an ongoing arbitration. The motion for an injunction is dismissed.
- [18] If the parties are not able to resolve costs of this motion, South Western may email its costs submission of no more than three double-spaced pages to my judicial assistant on or before August 18, 2025. The plaintiffs may deliver their responding submission of no more than three double-spaced pages on or before August 25, 2025. No reply submissions are to be delivered without leave.

Robert Centa J.

Date: August 11, 2025