

COURT OF APPEAL FOR ONTARIO

CITATION: Bombardier Inc. v. Alstom Rail Sweden AB, 2025 ONCA 779

DATE: 20251113

DOCKET: M56341 (COA-25-CV-0936)

Roberts, Miller and Monahan JJ.A.

BETWEEN

Bombardier Inc.

Plaintiff  
(Appellant/Responding Party)

and

Alstom Rail Sweden AB

Defendant  
(Respondent/Moving Party)

Hugh Meighen and Benedict Wray, for the respondent/moving party

Orestes Pasparakis and Nadine Tawdy, for the appellant/responding party

Heard and rendered orally: November 12, 2025

REASONS FOR DECISION

[1] Bombardier Inc., the responding party on the motion, has appealed an order staying its action against the respondent and moving party, Alstom Rail Sweden AB, for breach of a provision in a 2017 share purchase agreement. The moving party seeks an order quashing the appeal on the basis that the motion judge's stay

order is temporary and therefore can only be appealed to the Divisional Court with leave.

[2] By way of background, the moving party successfully argued before the motion judge that the subject matter of the parties' dispute arguably concerned a matter that the parties agreed to submit to arbitration. The action was therefore stayed until further order of the court, pursuant to s. 9 of the *International Commercial Arbitration Act, 2017*, S.O. 2017, c. 2, Sched. 5 (the "ICAA"), in order to permit the arbitral tribunal to rule on its own jurisdiction.

[3] The moving party argues that this order is temporary and therefore interlocutory because the arbitral tribunal might decline jurisdiction, in which case the stay could be lifted.

[4] As this court held in *Husky Food Importers & Distributors Ltd. v. JH Whittaker & Sons Limited*, 2023 ONCA 260, 480 D.L.R. (4th) 517, at paras. 16 to 17, an order granting a stay of an action under s. 9 of the *ICAA* is generally final in nature for the purposes of determining the route of appeal under the *Courts of Justice Act*, R.S.O. 1990, c. C. 43. Such an order determines that the arbitral tribunal will decide the jurisdictional issue of whether the dispute can be resolved through arbitration or whether it should proceed in the Superior Court. The order is appropriately regarded as final because it effectively ends the action before the court. This is not

altered by the possibility that the stay could be lifted if the arbitral tribunal who hears the matter ultimately declines jurisdiction.

[5] The moving party also argues that the responding party treated the stay order as “temporary” in its costs submissions and the motion judge in his costs endorsement referred to the stay as interlocutory. Statements made in cost submissions do not alter the appropriate legal characterization of the order or alter the jurisdiction of this court. Moreover, as this court noted in *Paulpillai Estate v. Yusuf*, 2020 ONCA 655, at para. 16, leave to appeal to S.C.C. refused, 39881 (February 24, 2022), an appeal lies from the court’s order, not the reasons given for making the order. In this case, the motion judge’s characterization of the order as interlocutory for the purpose of making a subsequent costs order does not determine the legal nature of the underlying order in respect of determining the proper route of appeal.

[6] In any event, *Husky Food Importers* provides clarity to both litigants and courts on the proper appeal route in respect of stay orders under s. 9 of the *ICCA*. The approach urged upon us by the moving party would dilute that clarity, giving rise to uncertainty and ultimately wasteful litigation over the proper court in which to bring an appeal.

[7] The appeal is therefore appropriately before this court and the motion to quash is dismissed. The responding party is entitled to their costs in the amount of \$25,000 inclusive of disbursements and HST.

“L.B. Roberts J.A.”

“B.W. Miller J.A.”

“P.J. Monahan J.A.”