

CITATION: Stronach v. Stronach, 2025 ONSC 7158
COURT FILE NO.: CV-25-00749155-00CL
DATE: 20251222

ONTARIO SUPERIOR COURT OF JUSTICE

RE: BELINDA STRONACH, FRANK WALKER and NICOLE WALKER,
Applicants

- and -

ANDREW STRONACH and SELENA STRONACH,
Respondents

BEFORE: FL Myers J

COUNSEL: *Linda Plumpton, Gillian Dingle, and Alexandra Shelley, for the Applicants*

Marie Henein, Matthew Gourlay, and Alex Smith, for the Respondent Andrew Stronach

Fredrick R. Schumann, for the Respondent Selina Stronach

HEARD: December 16, 2025

ENDORSEMENT

The Proceedings

- [1] The Applicants seek to set aside the Award of Arbitrator Farley Cohen dated July 11, 2025. They also move to seal parts of the court file.
- [2] By endorsement dated December 16, 2025, I deferred consideration of the motion to seal parts of the Court file until the Applicants redact a version of their materials for public filing. Once the particular items requested to be sealed are identified specifically, the parties can speak to each other try to resolve the issue. Then, they will convene a case conference to make any further submissions that arise from the narrowing of the Applicants' request for sealing and from their discussions.

- [3] There is no reason to hold the decision on the merits pending the completion of the motion for a sealing order.
- [4] For the reasons that follow, the application to set aside Mr. Cohen's Award is dismissed.

The Arbitration Process

- [5] The parties have been combatants in litigation on the Commercial List for many years. Just prior to trial, they settled. The settlement agreement dated September 24, 2024, among other things, sets out the parties' agreement on their respective ownership shares of their family business. Then, the settlement agreement provides that the value of the agreed-upon share of business of the Respondents would be determined through a final-offer arbitration process.
- [6] The parties agreed that each side would present a final offer of the value of the Respondents' share of the business to the Arbitrator. The Arbitrator would then be required to choose one offer or the other as, "more representative of fair market value" of the Respondents' agreed percentage of the family business.
- [7] This type of process is also referred to as a "baseball arbitration" because of its very public use as the agreed process to arbitrate salaries of major league baseball players.
- [8] In a baseball arbitration, the arbitrator must just pick one offer or the other as the successful outcome. It is a binary choice. The arbitrator has no entitlement to split the difference or to find a value that differs from one or the other of the parties' final offers.
- [9] The parties agreed later that Mr. Cohen would be the Arbitrator. Mr. Cohen is a past Chair of the Canadian Institute of Chartered Business Valuators. He is a Fellow of the Chartered Institute of Arbitrators. He is among the most prominent professional business valuers in Canada.
- [10] As part of their settlement, the parties agreed on detailed terms to govern the arbitration process. They are set out in Schedule "C" to their settlement agreement.
- [11] The parties agreed that there would be no appeals allowed from the decision of the Arbitrator on any basis (i.e., questions of law, questions of fact, or questions of mixed law and fact).

- [12] For discovery, the parties agreed that there would be a dataroom into which each side would deposit documents. They also agreed that the Respondents would be entitled to conduct reasonable interviews of management of the business.
- [13] The parties agreed that there would be an evidentiary hearing of no more than five-days length before the Arbitrator. They agreed to exchange their proposed expert reports prior to making their final offers.
- [14] After hearing the parties' evidence and submissions, the Arbitrator was required to "render an award together with brief reasons for decision within 30 days of the completion of the hearing."
- [15] Paragraph 1 of Schedule "C" to the parties' settlement agreement is fundamental. It sets out the parties' agreement concerning the twenty-one paragraphs of specific details that follow (including the rules of the arbitration that I have summarized in the preceding four paragraphs). Paragraph 1 of Schedule "C" provides:
- The Parties shall submit the issue of the fair market value of [an agreed percentage] of the shares of [the Family Company] as at June 30...to a final offer arbitration on the terms set out herein. **Nothing herein shall be taken as restricting the arguments any party may make as to the methodology by which fair market value is to be determined.** [Emphasis added.]
- [16] I have used the term "Family Company" to protect confidentiality while a sealing order is under review.
- [17] Once Mr. Cohen was retained, the parties engaged in discussions with him about procedural aspects of the arbitration.
- [18] In the context of reviewing a disagreement over the parties' requests for document production for the dataroom, in an email dated December 20, 2024, Mr. Cohen asked to see some foundational documents for himself. He also asked for confirmation of three points. He asked about the parties' understanding of how they intended to treat the consolidation of the values of the Family Company's subsidiaries. He asked for confirmation of the dates and identities of the proposed interviews of management personnel. In addition, he asked for confirmation that:

Valuation reports will be Comprehensive Valuation Reports in accordance with the practice standards of the CICBV;

- [19] The CICBV is the Canadian Institute of Chartered Business Valuators. It has approved standards setting out different types of valuation reports. As its name suggests, a “Comprehensive Valuation Report” is the most detailed and highest standard of valuation report.
- [20] In very brief responding emails, both sides confirmed the three points raised by the Arbitrator.
- [21] By order dated May 1, 2025 entitled “Procedural Order #1,” the Arbitrator set out the process for the arbitration hearing. The order summarizes several of the terms of Schedule “C” to the parties’ settlement agreement. Paragraphs 7 and 8 of Procedural Order # 1 provide:
7. The Arbitrator has been provided with Terms Of Final Arbitration, Schedule C reflecting the settlement reached by the Parties which includes certain parameters of the Arbitration.
8. In accordance with Terms Of Final Arbitration, Schedule C, the Parties have submitted the issue of the fair market value of [an agreed percentage] of the shares of [the Family Company]...to a final offer arbitration. Nothing herein shall be taken as restricting the arguments any party may make as to the methodology by which fair market value is to be determined. Furthermore: [delineation of some specific terms followed]
- [22] Paragraph 21 of Procedural Order #1 provided:
21. Evidence of expert witnesses will consist of their reports, as filed, and the party that tendered that witness will have the option of conducting oral examination in chief, with cross examination to follow.
- [23] The Arbitrator made Procedural Order #1 just over four months after his email asking for confirmations of, among other things, the use of Comprehensive Valuation Reports. Yet the order makes no reference to any qualification or limitation on the types of expert evidence or reports to be adduced at the arbitration hearing. In addition, Procedural Order

#1 expressly adopts the last sentence from para. 1 of Schedule “C” to the parties’ settlement agreement. So at May 1, 2025 it remained clear that that despite other agreed terms of the arbitration, there were still no restrictions on the methodology by which fair market value was to be determined in the arbitration.

The Respondents’ Expert Evidence

- [24] There were a large number of expert reports delivered by the parties on a number of specific properties or issues. The issues in this application however focus on the parties’ principal valuation reports concerning the overall enterprise.
- [25] The Respondents delivered three valuations from: Innovation Capital, Spectrum Gaming Capital, and KSV Soriano Inc.
- [26] The KSV report was signed by Mr. Errol Soriano. He is a member of the CICBV. It is common ground that the other two reports were prepared by investment bankers with subject matter expertise in the specific types of business valued.
- [27] Mr. Soriano testified that his report was a Comprehensive Valuation Report under CICBV standards.
- [28] Mr. Soriano also testified that he had been instructed by the Respondents to take the values provided by the two investment bankers as a given rather than engaging in his own effort to value the parts of the business covered in the reports of the two others.
- [29] Neither Innovation Capital nor Spectrum Gaming Capital purported to deliver Comprehensive Valuation Reports under CICBV standards. The investment bankers who authored the reports were not chartered business valuers.
- [30] Mr. Soriano conceded that had he valued the businesses dealt with by the investment bankers, he would have done it differently. Moreover, he said he and his firm had the skills to conduct those valuations. He never made a determination that it was necessary for him to rely on others for those parts of his valuation. Mr. Soriano’s evidence was that he was not taking responsibility for the reasonableness of the assumptions contained in the investment bankers’ valuations. He agreed that this process of adopting valuation reports of others was “unusual.”
- [31] Mr. Soriano’s report did not provide an express opinion as to the value of the enterprise. Rather, he set out two ranges of values in relation to the

reports of the two investment bankers as adjusted for various reason by Mr. Soriano.

- [32] At the end of Mr. Soriano's oral testimony, on the final morning of the hearing, after he had been cross-examined, the Arbitrator pushed Mr. Soriano to give his opinion on the value of the Respondents' share of Family Company. He said that if required to provide an opinion, he would calculate the averages of the two ranges that he calculated as the adjusted values of the investment bankers. He would then take an average of those two averages as his opinion of value.
- [33] The Applicant's expert, Mr. Chris Polson of PricewaterhouseCoopers LLP testified that the KSV report did not comply with CICBV standards for a Comprehensive Valuation Report because of its uncritical reliance on the investment bankers' reports and because it did not contain an opinion as to value of the enterprise (among other things).

The Applicants' Complaints

- [34] The Applicants submit that the Arbitrator made an error relying on the KSV report. Throughout the arbitration, the Applicants sought to establish that despite Mr. Soriano saying his report was a Comprehensive Valuation Report under applicable CICBV standards, this was not true. I noted only two issues above (the use of third-party valuations without determining that it was necessary to do so and the failure of the valuator to set out his opinion of value in his report). There were many more reasons alleged by the Applicants to try to show that the KSV report was not a Comprehensive Valuation Report as described in CICBV standards.
- [35] In their factum, the Applicants submit that:
- The Arbitrator had no jurisdiction to consider non-CICBV compliant reports, regardless of his views as to certain of the methodologies they applied.
- [36] They also assert that in eliciting Mr. Soriano's opinion as to value, the Arbitrator denied them a fair process. They submit:
- The Arbitrator's questioning on this point denied the Applicants procedural fairness, by denying them the opportunity to address and respond to this new, crucial evidence.

- [37] The Applicants also submit that the Arbitrator erred by relying on his own calculations rather than just the evidence before him. They say he cherry-picked evidence in his Award.
- [38] They also assert that his reasons are opaque and do not demonstrate how he arrived at his conclusion on the evidence before him that the Respondent's offer is "more representative of fair market value."

The Applicable Law

- [39] The *Arbitration Act, 1991*, SO 1991, c. 17 provides, in part:

Equality and fairness

19 (1) In an arbitration, the parties shall be treated equally and fairly.

Idem

(2) Each party shall be given an opportunity to present a case and to respond to the other parties' cases.

Application of arbitration agreement, contract, and usages of trade

33 The arbitral tribunal shall decide the dispute in accordance with the arbitration agreement and the contract, if any, under which the dispute arose, and may also take into account any applicable usages of trade.

Setting aside award

46 (1) On a party's application, the court may set aside an award on any of the following grounds:

...

3. The award deals with a dispute that the arbitration agreement does not cover or contains a decision on a matter that is beyond the scope of the agreement.

...

6. The applicant was not treated equally and fairly, was not given an opportunity to present a case or to respond to another party's case, or was not given proper notice of the arbitration or of the appointment of an arbitrator.

- [40] The Applicants do not have a right to appeal the Award to the court. Parties who choose arbitration do so for a reason. If they choose to preclude appeals to the courts, that is their choice and it is one that courts respect.
- [41] Sections 33 and 46 (1)(3) of the statute speak to something different than an appeal. These sections preserve the parties' rights to ask a court to review an arbitration award where the arbitrator has exceeded the scope of the dispute the parties referred to him or her in their arbitration agreement.
- [42] In making a claim under ss. 46 (1)(3), the Applicants are not saying that Arbitrator made a simple mistake of fact or an error of law. Rather, they are claiming that he went completely off the rails. He resolved a dispute that was beyond what the arbitration agreement empowered to him to resolve.
- [43] Ms. Plumpton submits that the Arbitrator did not have jurisdiction to decide this arbitration based on valuation evidence that did not comply with CICBV standards applicable to a Comprehensive Valuation Report.
- [44] The concept of a "jurisdictional error" has been derided as a malleable term that could allow just about any error to be categorized as one going to the arbitrator's jurisdiction. Historically, litigants have argued that an arbitrator or a tribunal had no jurisdiction to be wrong on an issue of law, or to make an unreasonable decision, or a to make decision that the words of the arbitration agreement cannot reasonably bear, or to make a patently unreasonable decision. All these nebulous phrases have been utilized at various times to try to capture the concept of jurisdiction and jurisdictional error.
- [45] The Court of Appeal has adopted a much narrower view of the scope of s. 46 (1)(3). In *Alectra Utilities Corporation v. Solar Power Network Inc.*, 2019 ONCA 254 (CanLII), If s. 46 (1)(3) the Court of Appeal recognized that to allow review for any error that is alleged to be beyond an arbitrator's jurisdiction, would mean that the parties' agreement that there would be no appeals to the court would be meaningless.
- [46] In *Mensula Bancorp Inc. v. Halton Condominium Corporation No. 137*, 2022 ONCA 769 (CanLII), Zarnett JA described the very limited scope of review provided by s. 46 (3)(1):

[5] As explained in *Alectra Utilities Corporation v. Solar Power Network Inc.*, 2019 ONCA 254, 145 O.R. (3d)

481, leave to appeal refused, [2019] S.C.C.A. No. 202, s. 46(1)3 of the *Arbitration Act, 1991* provides a narrow basis upon which a court may interfere with an arbitration award. It does not create a right of appeal, nor contemplate a review of the correctness or reasonableness of the arbitrator's decision. It requires that the court not interfere with the arbitrator's award as long as the issue decided was properly before the arbitrator.

- [47] The Applicants also rely on their rights to be treated equally and fairly in accordance with the principles of the doctrines of *audi alteram partem*, natural justice, and procedural fairness.
- [48] They submit that the Arbitrator's reliance on a report that was not compliant with CICBV standards for a Comprehensive Valuation Report subjected them to unequal standards of proof. The Respondents say that they agreed to deliver a Comprehensive Valuation Report and they did so. They submit that the Arbitrator's decision to allow the Respondents to use a report that did not comply with CICBV standards was not fair.
- [49] The Applicants also submit that it was unfair for the Arbitrator to elicit a valuation opinion from Mr. Soriano at the very end of the evidence. They had no opportunity to respond or to cross-examine him on this fresh evidence. Moreover, as they had pitched a major part of their case on the failure of Mr. Soriano to comply with CICBV standards, it was unfair of the Arbitrator to give him the opportunity to bolster his report at the end of the day by eliciting from him an actual opinion of the value of the enterprise as required by the CICBV standards.
- [50] The principles of natural justice and procedural fairness are too well-known to need explanation here. The pillars of natural justice are described most recently by the Court of Appeal in *Vento Motorcycles, Inc. v. Mexico*, 2025 ONCA 82 (CanLII). The pillar of procedural fairness is drawn from the Supreme Court of Canada's leading authority *Baker v. Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC).
- [51] I add only the following about the assessment of procedural fairness in a review under ss. 19 and 46 (1)(6) of the *Arbitration Act, 1991*. In *Aquanta Group Inc. v. Lightbox Enterprises Ltd.*, 2023 ONSC 971 (CanLII), at para. 28, Akbarali J held:

[Section 46\(1\)\(6\)](#) of the [Arbitration Act, 1991](#) is not a do-over to protect a party from its own choices, but rather to protect a party from unfair or inequitable conduct by an arbitrator. Here, any limit on Aquanta's ability to fully present the case it wanted to present was a result of its own decisions and actions.

The Award

- [52] It is clear from the transcripts of the hearing that the issue of whether Mr. Soriano's report complied with CICBV standards for a Comprehensive Valuation Report was front and centre as a key plank in the Applicants' case.
- [53] As mentioned above, Mr. Polson gave evidence that Mr. Soriano's report did not comply with the relevant standards. Mr. Soriano and the authors of the two investment bankers' reports on which Mr. Soriano relied were all cross-examined extensively on the issue of whether their respective reports complied with the requirements of the CICBV.
- [54] Mr. Soriano explained why he was comfortable relying on the valuations completed by the investment bankers as he did. They were experts in their respective fields. He said he would have done it differently had he done the valuation himself. But he also said that he would have done PWC's valuation differently than how Mr. Polson conducted it. He explained how he dealt with the various CICBV standards that were put to him in cross-examination.
- [55] The Arbitrator was aware of the complaints made by the Applicants with KSV's report. He dealt with the issue in paras. 33 to 49 of his Award.
- [56] The Arbitrator noted first that both sides' experts relied on input from other experts in reaching their conclusions. PWC had relied on real estate appraisers and KSV had relied on real estate appraisers, the two investment bankers, a lawyer, and others.
- [57] The Arbitrator focused first on the land values and the differences in third-party appraisers' assumptions concerning future likely zoning to determine the highest and best uses of the various properties.
- [58] The Arbitrator then turned to the opinions relied upon by Mr. Soriano from two investment bankers. After discussing the substance of the valuations, he concluded:

48. Overall, I find that the value conclusions of Innovation and Spectrum for the operations of the Racing and Gaming businesses are too high, and do not reflect fair market value – they might be more akin to an opening asking price for a sale transaction.

49. Having said the above, given the techniques used by Innovation and Spectrum are acceptable in preparing fair market value assessments, subject to my comments above, and the additional analysis of other assets and liabilities relating to [the Family Company] undertaken by KSV, I do not find the reliance on these values by KSV to be fatal to its conclusions.

50. PwC performed its own valuation calculations. Although Mr. Polson acknowledged that PWC had other professionals in the US that might have more industry experience than he did, I find that Mr. Polson is qualified to undertake the required business valuations.

- [59] It is apparent that Mr. Cohen did not answer the question of whether KSV’s report was CICBV compliant. Rather, although he did not accept their opinions of value, he was satisfied with the valuation methodology used by the investment bankers. On that basis, he found that KSV’s reliance on the investment bankers’ reports, was not “fatal to its conclusions.”

Analysis

(1) The Applicants Waived the Right to Object to Issues concerning the Arbitrator’s Jurisdiction

- [60] There is also a procedural objection that precludes the jurisdictional submission being made by the Applicants. Subsections 4 (1) and 17 (5) of the statute provide:

Waiver of right to object

4 (1) A party who participates in an arbitration despite being aware of non-compliance with a provision of this Act, except one mentioned in section 3, or with the arbitration agreement, and does not object to the non-compliance within the time limit provided or, if none is provided, within a reasonable time, shall be deemed to have waived the right to object.

Time for objections, exceeding authority

17 (5) A party who has an objection that the arbitral tribunal is exceeding its authority shall make the objection as soon as the matter alleged to be beyond the tribunal's authority is raised during the arbitration.

- [61] If the Arbitrator was exceeding his authority in receiving a report that is not a CICBV compliant Comprehensive Valuation Report or if doing so amounted to non-compliance with the arbitration agreement (as amended), the Applicants were required to object as soon as the matter arose or within a reasonable time as most.
- [62] The Applicants knew that they believed that the KSV report did not comply with the CICBV requirements shortly after it was delivered in April, 2025. Mr. Polson from PWC said so expressly.
- [63] Had they raised the issue as one going to the Arbitrator's authority, he would have been required to rule on the issue under s. 17 (1). He could have ruled as a preliminary matter or in his award under s. 17 (7).
- [64] By failing to raise the issue as one of jurisdiction as now alleged, they denied the Arbitrator of the ability to rule on the point. They also denied the court of the benefit of the Arbitrator's ruling. This is inconsistent with the competence-competence principle under which the court defers assessing questions of an arbitrator's authority until after the arbitrator has considered it first. This is both an outcome that respects the parties' choice to proceed with arbitration; but it also benefits the court by ensuring that it has the arbitrator's assessment of the question available for the court to consider.
- [65] Instead of raising their jurisdiction objection on a timely basis as required, the Applicants made a choice to agree to allow the KSV report into evidence to then challenge it in their evidence and submissions. They hoped to undermine the KSV report on its merits so that the Respondents would then have no valid evidence left before the Arbitrator to compete against the PWC report.
- [66] The Applicants complain that they were denied procedural fairness by not knowing that a CICBV non-compliant report could be relied upon. If that was an issue for them after receiving the KSV report in April, they were obligated to raise it right away. They would have had a decision answering their objection months before the hearing started.
- [67] This is the exact issue that s. 4 (1) of the statute deals with. A party cannot have it both ways. If parties allege a fundamental defect in an arbitrator's authority or non-compliance with the arbitration agreement, they are required to speak up right away or forever hold their peace.
- [68] I am not suggesting that the Respondents did not know about the Applicants' position. Of course they did. The Applicants did not hide it.

As I wrote above, it was front and centre in their position at the arbitration. But in deciding to address the issue on the merits at the hearing rather than as one going to jurisdiction, they waived any entitlement to do so now under s. 46 (1)(3).

- [69] You can't agree to participate in an arbitration when you know of a reason to object to the arbitrator's authority and then wait to see if you win or lose before objecting. Rather, if you participate in an arbitration after knowing of a possible defect in the arbitrator's authority, you are taken to have been satisfied that the arbitrator had authority – otherwise you could not have participated.
- [70] I find that by failing to raise an objection on timely basis and participating in the hearing knowing of the issue, the Applicants waived any objection to the authority of the Arbitrator under s. 46 (1)(3), concerning whether valuation expert evidence was required to be in the form of a Comprehensive Valuation Report under CICBV standards.

(2) There was no Amendment to the Arbitration Agreement to Require only CICBV compliant Comprehensive Valuation Reports

- [71] It is not necessary to resolve this issue in view of my holding that the Applicants have waived this objection. I resolve it for completeness only.
- [72] The question before me under s. 46 (1)(3) is whether the Arbitrator's Award, "resolved a dispute that the arbitration agreement does not cover or contains a decision on a matter that is beyond the scope of the agreement." Put in the words of Zarnett JA, did the award decide an issue that was properly before the Arbitrator?
- [73] Of course it did. The issue put before the Arbitrator was to pick the offer that was, "more representative of fair market value" and that is exactly what he did.
- [74] Ms. Plumpton submits that the parties' responses to the Arbitrator's email of December 20, 2024 amended the parties' settlement agreement to require that valuation reports for the arbitration had to be Comprehensive Valuation Reports in accordance with the practice standards of the CICBV. She provided no case law authority to support the submission that discussions and even procedural agreements among the parties and an arbitrator amend the fundamental arbitration task laid out in the arbitration agreement.

- [75] It is apparent here that there was no such amendment for several reasons. First, an agreement requiring only CICBV compliant Comprehensive Valuation Reports is inconsistent with the specific confirmation in para. 1 of Schedule “C” that the agreed-upon terms and conditions for the arbitration shall not be taken “as restricting the arguments any party may make as to the methodology by which fair market value is to be determined.”
- [76] The amendment proposed is inconsistent with para. 1 of Schedule “C.” The Applicants purport to restrict the methodology for determining fair market value despite para. 1 providing the contrary. No one ever mentioned amending or deleting the second sentence of para. 1 of Schedule “C.” No one ever mentioned amending Schedule “C” at all.
- [77] Moreover, Procedural Order #1 was made more than four months after the email exchange about Comprehensive Valuation Reports and it did not contain any restrictions on the nature of experts’ reports to be delivered in evidence. To the contrary, it recited again that arguments on methodology to determine fair market value are unrestricted. Procedural Order #1 makes no mention of any requirement to adduce only CICBV compliant Comprehensive Valuation Reports. It makes no mention of the CICBV at all.
- [78] Finally, the Applicants’ conduct of the proceeding reflects a strategic choice that is simply inconsistent with the position they now assert. I know that I must be cautious about looking at subsequent conduct to interpret an agreement. But I am satisfied here, as I am about to discuss, the Applicants could not have conducted the arbitration proceeding as they did if there was a mandatory requirement in the arbitration agreement that the Arbitrator could only receive and rely upon CICBV compliant Comprehensive Valuation Reports.
- [79] Ms. Plumpton confirmed during the hearing before me that the Applicants did not object to the admission of the KSV report into evidence before the Arbitrator. That concession is fatal. They cannot have agreed that the KSV report was admissible if they say that it was non-compliant and it was a term of the Arbitrator’s jurisdiction that he could only receive CICBV Compliant Comprehensive Valuation Reports. The two positions are inconsistent and cannot live together. If the Applicants believed that the parties were only entitled to deliver Comprehensive Valuation Reports in accordance with CICBV standards, they could not have consented to the admission of the KSV report while asserting that it did not comply with the necessary standards.

- [80] Said more correctly under *Mensula Bancorp*, if the issue before the Arbitrator was to decide which final offer was more representative of fair market value of the Respondents' share of the Family Company based on evidence consisting only of CICBV compliant Comprehensive Valuation Reports, the Applicants could not have agreed that the KSV report was admissible. It could not have been admissible in evidence if there was such a term. And yet, they consented to its admission.
- [81] The Applicants position was that KSV's report was not CICBV compliant despite Mr. Soriano saying that it was. Their pitch to the Arbitrator was that the KSV report should not be relied upon by him because it did not comply with CICBV standards for a Comprehensive Valuation Report. They never submitted that the issue went to the Arbitrator's jurisdiction or that he was forbidden by the parties' arbitration agreement from hearing evidence that was not of the required quality.
- [82] The Arbitrator ruled that the methodology used by the investment bankers was a proper methodology although he did not accept their conclusions. In holding that KSV's reliance on the investment bankers' reports was not "fatal," he ruled that KSV's report was not excluded and was properly admitted into evidence before him.
- [83] As Zarnett JA discussed in *Mensula Bancorp*, at para. 48:
- Issues such as whether or not the arbitrator gave effect to plain language, went beyond the text, properly reconciled inconsistencies, or used surrounding circumstances beyond their proper limits were matters that affected only the quality of his interpretation – its correctness or reasonableness – and thus the manner in which he exercised his jurisdiction. Consistently with *Alectra*, whether there were errors in these areas was irrelevant and, if they occurred, did not result in a loss of jurisdiction.
- [84] It is not for this court to decide if the KSV report complied with CICBV standards or whether its methodologies were good, bad, or indifferent. In the absence of a term of the arbitration agreement limiting methodologies and precluding admission of the KSV report, how the Arbitrator dealt with resolving the issue put before him is not a consideration in this application under s. 46 (1)(3) of the *Arbitration Act, 1991*.

(3) There Was No Denial or Procedural Fairness

- [85] The procedural fairness arguments are readily dealt with as well. I note that the waiver provision of s. 4 of the statute does not preclude later reliance on procedural fairness under s. 46 (1)(6).
- [86] There was no procedural unfairness in this case.
- [87] The Applicants knew immediately that the Respondents delivered a report that the Applicants believed was not a proper report. They had every opportunity for months and at the hearing to object, raise the issue, and discover whether the Arbitrator agreed with their views about his authority under the settlement agreement. Instead, they chose to consent to the admissibility of the report and to challenge the contents at the hearing. This strategy failed. As discussed by Akbarali J. in *Aquanta*, an application under s. 46 (1)(3) “is not a do-over to protect a party from its own choices.”
- [88] As to the questioning by the Arbitrator, the Applicants have delivered no law to show that an arbitrator considering the value of an enterprise is not allowed to ask questions of an expert witness to flesh out the witnesses’ evidence and views. That this undermined one of their arguments under the CICBV standards is neither here nor there. The Arbitrator is allowed to ask questions even if they elicit evidence that a party does not find helpful to their case.
- [89] But then the Applicants submit that they were denied the opportunity to respond to this new evidence delivered after they had already cross-examined the witness. The simple answer to that is that they never asked to respond. They did not object to the evidence when it was elicited. They did not ask for leave to ask further questions that arose from the Arbitrator’s questioning the witness. This is a standard trial practice. If counsel wanted to cross-examine further, all she needed to do was to stand up and say so. If she wanted to deliver reply evidence, all she had to do was to say so.
- [90] The Arbitrator did not deny the Applicants any opportunity to make the case they wanted to make. They never asked to do anything more as a result of the questioning of the witness by the Arbitrator. There was no denial of procedural fairness. The parties all knew the case they had to meet and had all fair opportunities to make their cases. They chose their strategies and tactics.
- [91] The Arbitrator did not deny the Applicants any opportunity to put their evidence and submissions forward.

(4) Miscellaneous Matters

[92] The Arbitrator did not rely on his own calculations improperly. At paras. 31 and 32 of the Award he wrote:

31. In coming to my decision, I considered a number of scenarios, including all of the above scenarios as well as others, which included hybrid scenarios and reflecting varying potential real estate market values based on the appraisals presented, different discounts for risk, different timings on sales and redevelopment, as well as other adjustments.

32. While I did not prepare an independent valuation of the [the Respondents' share of the Family Company], I considered alternative calculations based on the evidence presented, and the calculations prepared by PwC and KSV.

[93] The Arbitrator was presented with a plethora of scenarios with many moving parts and multiple permutations and combinations. He looked at scenarios that he discussed in his Award and others. He considered alternative calculations "based on the evidence presented and the calculations prepared by PwC and KSV." He did not prepare his own valuation. I can see no basis for objecting to the Arbitrator looking at various permutations and combinations of different values in evidence on an assortment of different properties using the experts' calculations. It seems to me that that is what he was supposed to do.

[94] The Arbitrator also did not cherry-pick evidence to support his conclusions. The inference of this argument is that he picked evidence to support a pre-conceived outcome. There is no basis at all to support that argument.

[95] Schedule "C" to the settlement agreement required the Arbitrator to release his award within 30 days of the end of the hearing. He was obliged to release "brief reasons for decision."

[96] It is apparent that the parties agreed that the Arbitrator's reasons needn't be comprehensive as they required him to deliver the award within 30 days.

[97] At para. 20 of the Award, the Arbitrator explains the scope of the issues and evidence to which he refers:

20. During the course of this Arbitration, including at the Hearing, numerous issues were raised, and have been considered by me in reaching my decision as to which Final Offer is more representative of fair market value, and in preparing this Final Arbitral Award. The items that I considered material to my decision are discussed below; there were also many other valuation differences which are not specifically discussed below – these other items were either: (i) not materially different in value in the valuation reports; (ii) not material in quantum; or, (iii) not raised as issues by the Parties.

[98] So, of course the Award only deals with the evidence and issues that the Arbitrator found most compelling that led him to decide. That is exactly what he said he was doing. He discussed the most material issues that led him to find in favour of the Respondents. In my view, the Award provides far more than the “brief reasons” the parties sought.

[99] Finally, the Applicants submit that the Arbitrator’s reasons are insufficient to disclose his chain of reasoning that led him to find for the Respondents. I disagree. He found the appraisal values of the real estate provided by KSV’s appraisers to be more reasonable. He found the values of gaming assets presented by one of KSV’s investment bankers and by PWC more reasonable. He discussed concerns and adjustments needed to assess the valuation evidence of the racing assets. He put those outcomes together with a few more minor issues that he discussed, assessed the minority discount, and then compared his holdings to the offers presented by the parties.

[100] In a baseball arbitration, I do not know what more there is to say than “On my review of the evidence concerning fair market value of the Family Company, I find offer ‘X’ to be more representative of fair market value than offer ‘Y.’” The Arbitrator went through the most material elements of fair market value and then made his holding.

[101] I find the chain of reasoning intelligible. I see no basis to undermine the reasons or the Award.

Costs

- [102] The Respondents succeeded in this application and are presumptively entitled to their costs.
- [103] This application was very weak on its merits. The Applicants knew that there was no appeal from the Award. They agreed to let the KSV report into evidence to attack its weight. They did not object to its admissibility nor to the Arbitrator's authority to receive it. They could never get past waiver on the merits and their own acts were the answers to all fairness arguments.
- [104] The Respondents say that the Applicants just cannot accept a loss after years of litigating and despite a settlement designed to let the parties finally disentangle their affairs. The Arbitration was intended to be final and the Applicants had to know that their efforts under s. 46 were very unlikely to succeed. On that basis they ask for costs to be assessed on a substantial indemnity basis.
- [105] I cannot know the Applicants' motivations. These parties have been engaged in very expensive, acrimonious litigation for a long time. Other judges have commented on the extraordinary nature of the apparent antipathy between the siblings.
- [106] I am unable to discern any actions or behaviour in this application that can be characterized as "reprehensible" as that term is used by the Court of Appeal in *Mars Canada Inc. v. Bemco Cash & Carry Inc.*, 2018 ONCA 239 (CanLII) at para. 43.
- [107] Moreover, costs of the stay motion were not reserved to the main hearing. Where a hearing is concluded without costs and without costs being reserved, then the issue of costs is closed. Costs of the stay motion are not properly included in the costs before me now
- [108] The Respondents were joined in interest. Selina Stronach did not deliver evidence or a factum for this application. Her counsel dealt with the sealing order on behalf of both Respondents and with their submission on costs. Costs of the sealing order motion will be dealt with in that motion.
- [109] Counsel for Andrew Stronach, Selina Stronach's father, carried the response to the application for them both before me.
- [110] In my view the \$78,000 sought by Selina Stronach for partial indemnity costs for a watching brief is not reasonable. Considering proportionality especially, in my view, a reasonable party facing another party whose counsel has a watching brief cannot be expecting to pay nearly that much

in costs. The silent party has an interest in watching the proceedings to ensure her interests are protected – in this case by her father. But Selina had no independent role to play. Although these parties have no realistic limits on their ability to fund costs, it would not be an appropriate determination from the standpoint of access to justice and precedent to grant more in costs just because wealthy parties choose to spend more. Reasonableness and proportionality have to be the guiding factors.

- [111] On that basis, the Applicants are ordered to pay Selina Stronach costs of \$25,000 on a partial indemnity basis all-inclusive.
- [112] Andrew Stronach seeks costs of \$214,311 on a partial indemnity basis and \$321,466 on a substantial indemnity basis. I understand that includes about \$75,000 for the abortive stay motion.
- [113] The Applicants report costs of \$180,000 on a partial indemnity basis. They say they did the bulk of the administrative work putting together the eighteen volumes of Application Record for example. They adduced a single affidavit of an administrator just putting documents before the court.
- [114] The delta between the parties' partial indemnity costs is explained in the main by 60% (+/-) of the costs of the stay motion. I accept the reasonableness of the hours and rates incurred by the parties. There is no issue of proportionality or what a party might reasonably expect to pay when the costs of both sides are close to the same. Therefore, the Applicants will pay Andrew Stronach his costs on a partial indemnity basis fixed at \$180,000 all-inclusive.

Outcome

- [115] The application is dismissed. The Applicants shall pay costs on a partial indemnity basis to Selina Stronach fixed at \$25,000 all-inclusive and to Andrew Stronach in the amount of \$180,000 all-inclusive.
- [116] If asked, the court will give judgment enforcing the Award under s. 50 (3) of the *Arbitration Act, 1991*.

FL Myers J

Date: December 22, 2025