

COURT OF APPEAL FOR ONTARIO

CITATION: Sociedad Concesionaria Metropolitana de Salud S.A. v. Webuild
S.p.A., 2026 ONCA 28
DATE: 20260120
DOCKET: COA-24-CV-0942

Thorburn, Copeland and Gomery JJ.A.

BETWEEN

Sociedad Concesionaria Metropolitana de Salud S.A.

Applicant (Appellant)

and

Webuild S.p.A.

Respondent (Respondent)

Ira Nishisato, Hugh Meighen and Shereen Khalfan, for the appellant

Gordon Capern, Massimo Starnino, Kris Borg-Olivier and Greta Hoaken, for the respondent

Heard: September 2, 2025

On appeal from the order of Justice Jana Steele of the Superior Court of Justice, dated August 15, 2024, with reasons reported at 2024 ONSC 4491.

Thorburn J.A.:

OVERVIEW

[1] The issue on this appeal is whether a foreign arbitral award can be enforced in Ontario, not against the judgment debtor, but against a non-party to the arbitration who contests liability.

[2] A Chilean arbitrator awarded the appellant, Sociedad Concesionaria Metropolitana de Salud S.A. (“Sociedad”), damages against Astaldi S.p.A. (“Astaldi”) (the “Arbitration Award” or “Arbitral Award”).

[3] Following restructuring proceedings in Italy, some but not all of Astaldi’s assets were spun off to the respondent Webuild S.p.A. (“Webuild”) pursuant to a contract (the “Partial Spin-Off Agreement”). The parties dispute the interpretation of the Partial Spin-Off Agreement. Sociedad claims that Webuild acquired Astaldi’s liability for the Arbitral Award through the Partial Spin-Off Agreement. Webuild disagrees.

[4] In 2023, Sociedad brought an application before the Ontario Superior Court to enforce the Chilean Arbitral Award against Webuild although Webuild was not party to the Chilean arbitration. Webuild moved for an order staying or dismissing the proceedings for want of jurisdiction or on the basis that Ontario is *forum non conveniens*.

[5] Webuild argued that Sociedad’s ability to enforce the Arbitration Award against Webuild had not yet been determined, and that whether Webuild assumed Astaldi’s liabilities related to the arbitration was a threshold issue which must be decided before enforcement could be adjudicated.

[6] Invoking *forum non conveniens*, Webuild argued that the adjudication of liability should take place in Italy not Ontario as, among other things, (i) the

application would involve complex interpretations of Italian law, requiring substantial expert evidence; (ii) interpretations would involve expert witnesses in Italian law, Italian lay witnesses, and documents written in Italian; and (iii) Webuild was not a party to the arbitration.

[7] Sociedad argued that whether Webuild assumed Astaldi's arbitral liability is a question that ought to be determined by the judge hearing the enforcement application.

[8] The motion judge agreed with Webuild that liability and enforcement were severable issues, and that Italy was the appropriate forum to determine liability. As such, the motion judge granted a temporary stay of Sociedad's application proceedings pending determination of Webuild's liability by the Italian courts.

[9] On appeal, Sociedad submits, among other things, that the motion judge erred because: (i) the doctrine of *forum non conveniens* does not apply to recognition and enforcement proceedings; (ii) Ontario courts have considered the issue of liability within enforcement proceedings in the past; and (iii) if their Ontario application is stayed in favour of the Italian courts, Sociedad will lose its ability to enforce the award in Ontario. Webuild denies that the motion judge committed any error.

[10] For reasons that follow, I see no error in the motion judge’s decision that enforcement of the arbitral award must await the determination of liability by the Italian courts. I would therefore dismiss the appeal.

[11] I begin with an outline of the relevant facts in chronological order.

THE RELEVANT FACTS

(i) The Parties

[12] Sociedad is a Chilean company involved in construction and administration of public works concessions.

[13] Astaldi was an international construction group and engineering company. Its primary centre of business was in Italy. Astaldi also had a division in Chile (“ASC”) which was part of the same corporate entity. In 2018, Astaldi commenced restructuring proceedings, which were completed in 2021. Following completion of the restructuring proceedings, Astaldi ceased operational activity other than managing certain assets and changed its name to Astaris S.p.A.

[14] Webuild is a large multinational company, and is among the largest construction companies in Italy. Webuild is incorporated pursuant to the laws of Italy, headquartered in Italy, and listed on the Milan Stock Exchange.

[15] The motion judge found that “at all material times” Webuild and Astaldi were separate corporate entities, had separate boards of directors, and were

competitors in the construction and engineering market. She made this finding while noting that Webuild temporarily held a 65 percent stake in Astaldi as part of Webuild's participation in Astaldi's restructuring effort.

(ii) The Agreement between Sociedad and Astaldi to build a Hospital in Chile

[16] In 2015, Sociedad entered a contract with Astaldi's Chilean branch ASC to have ASC build a hospital in Chile. There were no other parties to the contract.

[17] By September 2018, ASC's work on the Chilean hospital project experienced significant slowdowns.

(iii) Astaldi Initiates *Concordato* Proceedings in Italy

[18] On September 28, 2018, Astaldi commenced restructuring proceedings in Italy (the *concordato preventivo con continuità aziendale*, or the "*Concordato*"), to enable Astaldi to continue certain business activities pursuant to Italy's bankruptcy laws. Astaldi's *Concordato* was among the largest and most complex in Italian history. The *Concordato* was completed in the bankruptcy court in Rome in July 2021.

[19] The *Concordato* is akin to a proceeding under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, in that the purpose is to generate a

preferable outcome for creditors and other stakeholders by avoiding liquidation and preserving the debtor's value-generating operations.

[20] The Astaldi *Concordato* debt was EUR 3.598 billion including EUR 3.4335 billion in unsecured debt.

(iv) Sociedad Terminates Contract with ASC and Commences Arbitration

[21] On January 2, 2019, after Astaldi ceased making payments to subcontractors and delayed progress on the Chilean hospital work, Sociedad notified ASC that it was terminating its contract. Shortly thereafter, both parties requested an arbitration before a Chilean arbitrator.

(v) ASC's Chilean *Reorganización* Proceedings Authorized by the Italian Courts

[22] On February 25, 2019, in Chile, ASC initiated proceedings under Chilean Law No. 20,720, which governs the reorganization and liquidation of insolvent companies (the "*Reorganización*").

[23] On March 27, 2019, Astaldi applied to the Rome Bankruptcy Court for authorization to formulate a separate proposal for a *Reorganización* of ASC in the Chilean courts to restructure its financial obligations to Chilean creditors. On March 29, 2019, the Rome Bankruptcy Court granted this authorization to Astaldi by order.

[24] The respondent submits that, in its application to the Rome Bankruptcy Court, an Italian document, Astaldi emphasized that the *Reorganización* “will not concern the debt ... to [Sociedad] ... assimilated to intra-group debt by reason of Astaldi's shareholding in [Sociedad] given that such types of debt are considered subordinated under Chilean law”.

(vi) Approval of the *Concordato* Proceedings

[25] On June 19, 2019, Astaldi submitted plans under the *Concordato* providing for the division of their business into two parts – “Earmarked Assets” and the “Continuity Business”.

[26] In their factum, Sociedad describes the Earmarked Assets as:

Certain activities of Astaldi related to the management under concession of infrastructure and other assets, which were to be transferred to a liquidation permitter, referred to as the “Patrimonio Destinato”, to be set up by Astaldi and to be used to satisfy its unsecured creditors.

[27] The Continuity Business is described as:

Astaldi's business relating to building, infrastructure construction, systems engineering, study, design, transportation, maintenance, facility management, and operation of complex systems, referred to as the “Patrimonio in Continuita”, which was to continue as a going concern.

[28] On July 17, 2020, these plans were approved, and by July 28, 2021, the *Concordato* was fully implemented and the Italian court closed the proceedings.

(vii) The Partial Spin-Off Agreement between Astaldi and Webuild

[29] Following the conclusion of the *Concordato*, Webuild acquired the Continuity Business.

[30] On July 29, 2021, Webuild and Astaldi executed the Partial Spin-Off Agreement pursuant to Italian law.

[31] Under the terms of the Partial Spin-Off Agreement, Astaldi's Continuity Business, but not the Earmarked Assets, was spun off to Webuild. The operative provision of the Partial Spin-Off Agreement, the effect of which the parties dispute, provides as follows:

As a result of the Spin-Off, all of the Astaldi equity investments, capital Assets, legal relationships (including *inter alia*, employment relationships) and liabilities (as a result of the debt settlement resulting from the execution of the Arrangement with Creditors) relating solely to the Spun-Off Assets will be assigned to Webuild.

[32] Sociedad claims that Webuild acquired Astaldi's liability for the Chilean project through the Partial Spin-Off Agreement. This assertion is hotly contested by Webuild.

(viii) Sociedad's Arbitration Award

[33] On December 30, 2021, the Chilean arbitrator awarded Sociedad damages against Astaldi in the amount of CAD\$188,162,659.94.

[34] The appellate courts of Chile upheld Astaldi's liability to Sociedad but varied the quantum of damages. The award is still outstanding.

[35] Webuild was not party to the arbitration and the award does not address Webuild's liability for the debts under the Arbitration Award.

(ix) Sociedad's Steps to Recover Damages

[36] Sociedad has not sought to enforce the Arbitration Award against Webuild in Italy, although Webuild is headquartered there and Italian law governs the central issue of whether Webuild acquired Astaldi's liabilities out of the Italian bankruptcy proceedings pursuant to the Partial Spin-Off Agreement.

[37] Instead, in 2023, Sociedad brought an application in Ontario for recognition and enforcement of the Arbitral Award against Webuild. Sociedad claimed that Webuild acquired Astaldi's liability for the Chilean project through the Partial Spin-Off Agreement and was legally obliged to pay Astaldi's damages.

[38] In response to Sociedad's Ontario application, Webuild denied that it was liable to pay Sociedad the underlying Chilean Arbitration Award against

Astaldi because (i) the Arbitral Award was an unsecured debt of Astaldi rooted in the Sociedad-ASC contract terminated in 2019, long before the execution of the Partial Spin-Off Agreement; and (ii) it is not covered by the Spin-Off Agreement, so it did not form part of Astaldi's assets transferred to Webuild.

[39] Sociedad has also commenced enforcement proceedings against Webuild in Quebec, Delaware, and Connecticut. The proceeding in Delaware has been dismissed but is being appealed by Sociedad.

[40] On March 1, 2024, Webuild filed a Writ of Summons in the Court of Rome (the "Italian proceeding") seeking a declaration that (i) the debt to Sociedad under the Arbitration Award was not transferred to Webuild by virtue of the Partial Spin-Off Agreement and remains with Astaldi; and (ii) the Arbitral Award is not enforceable against Webuild. Both Astaris and Sociedad are named as respondents in this Italian proceeding.

THE MOTION JUDGE'S DECISION

[41] In response to Sociedad's application to enforce the Chilean Arbitration Award against Webuild in Ontario, Webuild moved to stay the enforcement of the award against Webuild on the grounds that Ontario has no jurisdiction to enforce the award and in the alternative, that Ontario was not the convenient forum for addressing this dispute (*forum non conveniens*). Webuild argued

that the application depended on the resolution of whether Webuild was liable for the Award under Italian law.

[42] The motion judge granted Webuild's motion and stayed the application proceedings on the basis that Ontario is *forum non conveniens* for determining whether Webuild assumed Astaldi's liability. She did so under s. 106 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43.

[43] The motion judge held that the Italian courts are best placed to decide the issue of Webuild's liability because:

- a) Sociedad's underlying application was not a standard recognition and enforcement matter as Webuild was not party to the Chilean arbitration;
- b) the threshold issue before her was whether Webuild was liable for the Chilean Award against Astaldi (as enforcement follows a determination of liability);
- c) the *Concordato* and Partial Spin-Off Agreement were completed in Italy and are governed by Italian law;
- d) the parties' experts on Italian law disagreed about the scope of Webuild's acquisition of Astaldi's Continuity Business;
- e) the interpretation of the Partial Spin-Off Agreement would involve fact and expert witnesses from Italy who are more comfortable speaking Italian, and Italian documents which will require translation;

- f) Webuild has commenced proceedings in Italy where all relevant parties (Webuild, Sociedad, and Astaris) have been named; and
- g) there is a risk of multiplicity of proceedings as Sociedad has also commenced enforcement proceedings in Quebec, Delaware and Connecticut.

[44] The motion judge therefore temporarily stayed Sociedad's Ontario application pending the outcome of the proceedings in Italy. As it was not clear if liability would be established against Webuild, she held that Sociedad must pay the costs of the motion forthwith.

THE ISSUES

[45] Sociedad advances several issues on appeal which I would reframe as follows. It claims the motion judge erred by:

1. Misconstruing the *forum non conveniens* doctrine by (i) applying it to a recognition and enforcement proceeding, and (ii) severing the issues of liability and enforcement and applying the *forum* analysis only to the issue of liability;
2. Misapplying the *forum non conveniens* doctrine and wrongly concluding that Ontario is not the more convenient forum for deciding the issue of whether Webuild is liable to Sociedad for the Chilean Arbitral Award;

3. Treating the stay as a temporary stay when the effect of the order is to permanently stay the determination of liability for the Arbitral Award; and
4. Unfairly ordering that costs of the motion were payable forthwith.

ANALYSIS OF THE ISSUES

(a) Preliminary Issue: Whether the Order Below is Final or Interlocutory

[46] The parties dispute whether the order below is final or interlocutory and, as a result, whether this court has jurisdiction to hear this appeal.

[47] Prior to the hearing of this appeal, Lauwers J.A., as case management judge, directed that this appeal would proceed in the Court of Appeal. If the panel determined that the order under appeal is properly interlocutory, the panel would reconstitute itself as the Divisional Court to determine leave, and if granted, the merits of the appeal. The parties consented to this approach.

[48] A decision to grant or dismiss a stay for *forum non conveniens* is final for the purposes of appeal: *M.J. Jones Inc. v. Kingsway General Insurance Co.* (2003), 68 O.R. (3d) 131 (C.A.); *Airia Brands Inc. v. Air Canada*, 2017 ONCA 792, 417 D.L.R. (4th) 467, at para. 37. This is consistent with the general rule that granting a stay is final: *Halton Standard Condominium Corporation No. 550 v. Del Ridge (Appleby) Inc.*, 2023 ONCA 753, 169 O.R. (3d) 556, at para. 12.

[49] For the purposes of appellate jurisdiction, an order will be final if it ends the proceeding, even if “it does not finally determine another, quite possibly larger, issue between the parties which may be subsequently determined in some other proceeding or by some other process”: *Buck Brothers Ltd. v. Frontenac Builders Ltd.* (1994), 19 O.R. (3d) 97 (C.A.), 117 D.L.R. (4th) 373, at p. 377. Such is the case here.

[50] Therefore, I find that the order below is final pursuant to s. 6(1)(b) of the *Courts of Justice Act* for the purposes of determining the route of appeal.

(b) Whether the Motion Judge Misconstrued the *forum non conveniens* Doctrine and Erred in Severing Liability from Enforcement

[51] Sociedad submits that the motion judge erred in law in staying its application because the doctrine of *forum non conveniens* does not apply to recognition and enforcement actions. Sociedad also submits that the motion judge should not have severed liability from enforcement and stayed the proceedings on the basis that Ontario was *forum non conveniens* in respect of the liability issue.

[52] Sociedad notes that in *Chevron Corp. v. Yaiguaje*, 2015 SCC 42, [2015] 3 S.C.R. 69, at paras. 44-46, the Supreme Court held that:

[T]he purpose of an action for recognition and enforcement is not to evaluate the underlying claim that gave rise to the original dispute, but rather to assist in

enforcing an already-adjudicated obligation....[T]he enforcing court's role is not one of substance, but is instead one of facilitation...since enforcement concerns only local assets, 'there is no basis for staying the proceedings on the grounds that the forum is inappropriate'. [Emphasis added; citations omitted.]

[53] There is no question that this is an accurate statement of the law.

[54] In this case however, unlike *Chevron*, there is no “already-adjudicated obligation”. Webuild contests liability for the damage award against Astaldi. Without a decision on Webuild’s liability for the Astaldi debt, the Ontario court’s role is not one of “facilitation” but rather, one of adjudication and, if and only if liability is established, enforcement.

[55] I therefore agree with the respondent that this is not a standard recognition and enforcement case and given that the underlying obligation is hotly contested, it must be determined before an order for enforcement can be sought.

[56] The appellant cites caselaw on piercing the corporate veil for the proposition that it is not unusual for a court to determine third party liability at the enforcement stage of a foreign arbitral award. I am not persuaded that these cases are analogous to this situation.

[57] This case is distinguishable from *Chevron*. As noted by the motion judge, unlike in *Chevron*, Webuild and Astaldi are “not related companies.” Moreover, in *Chevron*, unlike this case, both liability and piercing the corporate

veil were subject to Canadian law. In this case, not only is liability a matter of Italian law, but Sociedad did not frame its case as one of piercing the corporate veil between Astaldi and Webuild: *Chevron* at para. 80.

[58] As such, the cases like *Chevron*, which dealt with piercing the corporate veil, are not applicable: see also *Roxford Enterprises S.A. v. Cuba (T.D.)*, [2003] 4 F.C. 1182, at para 25, citing *Canada (Minister of National Revenue) v. Gadbois*, 2002 FCA 228, 298 N.R. 374, para 29. Nor are the cases involving enforcement of an arbitral award against non-signatory parent companies or *alter egos* as there is no suggestion that Webuild is the parent company or *alter ego* of Astaldi: see *Xerox Canada Ltd. v. MPI Technologies Inc.*, 2006 CanLII 41006 (Ont. S.C.); *Air India Ltd. c. CC/Devas (Mauritius), Ltd.*, 2022 QCCA 1264.

[59] Similarly, the cases used to suggest that it was an error for the motion judge to sever liability from enforcement, are also distinguishable: see *Innis Estate v. Sunwing Travel Group Inc.*, 2024 ONSC 1102; *Check Group Canada Inc. v. Icer Canada Corp.*, 2010 NSSC 463, 299 N.S.R. (2d) 145; *SCP Distributors Canada, Inc. v. Silver Pacific Investments Inc.*, 2020 BCSC 1573. Generally, these cases involved courts declining to split actions or proceedings on the basis of fairness and efficiency where a plaintiff had claimed, on agreed facts, against multiple defendants, and one of the defendants attempted to have their claim litigated in a different forum than the

rest of the defendants. None of these cases involved the enforcement of arbitral awards, or the severance of liability from enforcement.

[60] The motion judge therefore did not err in finding that (i) the application was not purely a case of recognition and enforcement and (ii) *forum non conveniens* remains a valid consideration for the determination of Webuild's liability. Nor did she err in holding that liability must be determined before enforcement can be addressed. Enforcement is only applicable if liability is established. As such, if and when it is determined that Webuild is liable to pay Astaldi's damages obligation, that award can be enforced.

[61] I would therefore dismiss this ground of appeal.

(c) Whether the Motion Judge Erred by Misapplying the *forum non conveniens* Doctrine and Concluding that Ontario is Not the More Convenient Forum

[62] Sociedad further claims that the motion judge erred in applying the *forum non conveniens* doctrine, and was wrong to conclude that Italy, not Ontario, is the more appropriate forum to determine the threshold issue of liability. Specifically, Sociedad submits that (1) Italy is not a "competing forum" for the application; (2) the Italian courts do not have jurisdiction *simpliciter* over Sociedad; and (3) Italy is not a "clearly more appropriate" forum than Ontario.

[63] The Supreme Court in *Club Resorts Ltd. v. Van Breda*, 2012 SCC 17, [2012] 1 S.C.R. 572, at paras. 103-105, held that to apply *forum non conveniens*, there must be (i) an alternative forum, (ii) the alternative forum must have a connection with the subject matter of the litigation, using the analytical approach for real and substantial connection; and (iii) the alternative forum must be “clearly more appropriate”. A non-exhaustive list of factors has been identified for this analysis: *Van Breda*, at para. 105. Whatever factors are applied, both parties must be treated fairly and the process to resolve the litigation must be efficient. The burden to demonstrate that *forum non conveniens* should be applied, rests with the party raising it: *Van Breda*, at para. 103.

[64] Given the highly discretionary nature of the application of *forum non conveniens* to the record, significant deference is owed to the motion judge’s conclusion on this issue. This court should only intervene if it finds that she erred in principle, misapprehended or failed to take account of material evidence, or reached an unreasonable decision: *Haaretz.com v. Goldhar*, 2018 SCC 28, [2018] 2 S.C.R. 3; *Kyko Global Inc. v. M/S Crawford Bayley & Co.*, 2021 ONCA 736, at para. 14.

[65] I reject Sociedad’s submission that Webuild failed to demonstrate either of the first two *Van Breda* conditions listed above.

[66] First, I disagree with the appellant that Italy is not a “competing forum” because the issues in the Italian proceeding and the Ontario proceeding are not identical. It is not required that an identical proceeding be commenced in the alternative forum for *forum non conveniens* to apply; this was not the case in *Van Breda*, for example. The comparison is between the forums, not the proceedings.

[67] Second, *Van Breda* requires Webuild to demonstrate that Italy has a real and substantial connection over the subject matter of the litigation. It was open to the motion judge to find that, although Sociedad is a Chilean company, because the Partial Spin-Off Agreement was made in Italy between two Italian companies and is governed by Italian law, the presumptive connecting factors are established.

[68] The issue is thus whether there are sufficient factors to suggest that Ontario is clearly the more appropriate forum: *Van Breda*, at paras. 105, 109-11. As noted above, determination of the appropriate forum applies to the determination of liability not, as Sociedad suggests, “recognition and enforcement”.

[69] The motion judge identified that the following foreign legal issues would need to be addressed to resolve determination of liability: (i) whether Astaldi’s liabilities under the arbitration are unsecured debts or pre-deductible debts

under Italian bankruptcy law; and (ii) if they are pre-deductible debts, whether Webuild contractually assumed these liabilities. Resolving these issues will require interpretation of the Partial Spin-Off Agreement in light of the Italian *Concordato* proceeding.

[70] In assessing the appropriate forum with those issues in mind, the motion judge found: (i) the Partial Spin-Off Agreement was entered into in Italy pursuant to Italian law and approved by the Italian courts; (ii) the diverging expert evidence suggests that Italian bankruptcy issues related to the *Concordato* may be complex; (iii) witnesses are in Italy and do not speak English fluently requiring substantial resources for translation; and (iv) most of the relevant documents would need to be translated from Italian.

[71] Furthermore, the motion judge properly considered that there is a risk of conflicting judgments if the courts of Quebec, Delaware and Connecticut were to determine the threshold issue of liability on its merits as part of Sociedad's various recognition and enforcement proceedings.

[72] Finally, the motion judge did not fail to consider the potential prejudice to Sociedad as she referenced the effects of the delay on Sociedad's ability to enforce but found that it was not determinative.

[73] Taken together, these factors lead to the conclusion that Italy, not Ontario, is the most convenient forum for the determination of Webuild's

liability to Sociedad. The motion judge's findings on these factors are owed deference.

[74] For these reasons, although Sociedad claims the process may be more delayed if it proceeds in Italy, I see no error in the motion judge's conclusion that the more appropriate forum for determination of liability is Italy and that Sociedad may commence a proceeding in Italy or attend to the Italian courts in the existing proceeding in Italy.

(d) Whether the Motion Judge Erred in Treating the Stay as Temporary

[75] Sociedad claims the motion judge erred in law by applying the test for imposing a temporary stay when she effectively imposed a permanent stay on the issue subject to the *Hollinger*¹ test: the liability issue.

[76] The motion judge imposed the stay pursuant to s. 106 of the *Courts of Justice Act*.

[77] Section 106 provides that a court may, on its own initiative or on motion by any person, whether or not a party, stay any proceeding in the court on such terms as are considered just. A stay is a discretionary remedy under s. 106: *K.K. v. M.M.*, 2025 ONCA 446, 16 R.F.L. (9th) 1, at para. 39.

¹ *Hollinger International Inc. v. Hollinger Inc.* (2004), 11 C.P.C. (6th) 245 (Ont. S.C.), at para. 5, appeal quashed, 2004 CanLII 48063 (Ont. C.A.), and leave to appeal to Div. Ct. refused, 2005 CanLII 4582 (Div. Ct.).

[78] Appellate interference with a s. 106 discretionary order is only warranted where the judge has erred in law, seriously misapprehended the evidence, exercised their discretion based upon irrelevant or erroneous considerations, or failed to give any or sufficient weight to relevant considerations: *Yaiguaje v. Chevron Corporation*, 2013 ONCA 758, 118 O.R. (3d) 1, at para. 42, citing *Regal Constellation Hotel (Re)* (2004), 71 O.R. (3d) 355 (C.A.), at para. 22.

[79] I do not agree that the motion judge erred in law by applying the test for a temporary stay. A court may grant a stay explicitly on a temporary basis or make a stay conditional on subsequent events in the alternative forum, such as the continuation of a proceeding in the alternative forum: Janet Walker, *Canadian Conflict of Laws*, 7th ed. (Toronto: LexisNexis Canada, 2005) (loose-leaf updated 2025, release 118), vol. 1 at § 6.02[4].

[80] A stay is considered temporary if it is granted pending resolution of a foreign proceeding where the foreign proceeding would “substantially reduce the issues to be determined” or if success in the foreign proceeding could render the local proceeding “substantially moot” or otherwise have a “material” impact on the outstanding issues in the case: *Hollinger International Inc. v. Hollinger Inc.* (2004), 11 C.P.C. (6th) 245 (Ont. S.C.), at para. 5, appeal quashed, 2004 CanLII 48063 (Ont. C.A.), and leave to appeal to Div. Ct.

refused, 2005 CanLII 4582 (Div. Ct.); see also *Ainsworth Lumber Co. v. Canada (Attorney General)*, 2001 BCCA 105, 85 B.C.L.R. (3d) 62.

[81] The Italian proceeding could either (i) remove, substantially reduce or materially affect the issues to be determined in Sociedad's recognition and enforcement proceedings in Ontario by resolving the issue of liability; or (ii) render Sociedad's recognition and enforcement proceedings (which is the subject of the stay as confirmed by the motion judge's order), substantially moot.

[82] If Webuild is found liable for the Arbitral Award against Astaldi, Ontario courts may then enforce the damage award against Webuild's assets in Ontario. If, however, the Italian court decides that Webuild is not liable for the damage award, the enforcement proceedings in Ontario would be substantially moot. As a result, any stay of the enforcement proceedings is temporary as next steps must await the decision of the Italian court on the issue of liability. Thus, the motion judge correctly recognized this case as a situation where the *Hollinger* test would apply.

[83] Furthermore, the motion judge did not err in her application of the *Hollinger* test. According to *Hollinger*, a temporary stay pending the resolution of another proceeding may be granted where:

- (a) there is substantial overlap of issues in the two proceedings;
- (b) the two cases share the same factual background;

- (c) issuing a temporary stay will prevent unnecessary and costly duplication of judicial and legal resources; and
- (d) the temporary stay will result in an injustice to the party resisting the stay.

[84] As discussed by the motion judge, both the Italian and the Ontario proceedings address the overlapping issue of whether the liabilities related to the Arbitration Award were assumed by Webuild. The same facts apply in both proceedings and duplication of judicial and legal resources will be prevented as a result of the stay. The delay in Sociedad's ability to continue their enforcement proceedings can be compensated.

[85] Therefore, I see no error with the motion judge's characterization of the stay as temporary, and thus she did not err in applying the *Hollinger* test for a temporary stay.

(e) Whether the Motion Judge Unfairly Ordered Costs Payable Forthwith

[86] The motion judge ordered that as the successful party on the motion, Webuild was entitled to its costs payable forthwith. Sociedad took the position that requiring it to pay costs now would be unfair and that, as a result, any costs order should not be made until the parties return to the Ontario courts. Sociedad claims procedural unfairness because the motion judge rejected their position on costs without hearing their full submissions.

[87] After the hearing but prior to the issuance of the motion judge's decision, counsel for Webuild wrote to the court on behalf of the parties to advise that

the parties had agreed to fix the quantum of costs payable to the successful party on the motion at \$200,000.

[88] However, the parties disagreed on whether, if Webuild were successful on its motion, Sociedad would be entitled to defer payment until the determination of the ultimate question of liability and set off any costs ordered against it.

[89] The email from Webuild's counsel to the court provided a paragraph on each of the parties' positions regarding deferment and concluded with "[s]hould Her Honour find it of use, the parties can provide short briefs outlining their positions in further detail." The court confirmed that this email was forwarded to the attention of the motion judge.

[90] Further submissions from the parties were not requested, and the motion judge awarded Webuild its costs payable forthwith.

[91] I am not persuaded that Sociedad suffered any procedural unfairness.

[92] The email provided the motion judge with an understanding of each party's position on the issue. In her reasons, the motion judge acknowledged Sociedad's position as set out in the email. The motion judge did not find it necessary to ask for further submissions nor were they necessary in the circumstances as it is not yet clear whether the parties will be returning to the Ontario courts.

CONCLUSION

[93] Sociedad seeks to enforce a foreign arbitral award against a non-party to the arbitration. Whether the non-party is liable for the judgment debtor's obligation to Sociedad remains in question. As the liability of the non-party is a prerequisite to enforcement, the two issues are distinct.

[94] *Forum non conveniens* applies to the issue of liability. The motion judge considered, applied, and balanced the *forum non conveniens* factors, and reasonably concluded that Italy was the clearly more appropriate forum for the resolution of liability.

[95] This application of the correct *forum non conveniens* factors is owed significant deference. As such, it was open to her to stay Sociedad's application to enforce the Arbitral Award until such time as liability has been determined by an Italian court.

[96] I would therefore dismiss the appeal.

[97] I would award partial indemnity costs to the respondent in the amount of \$15,000 all inclusive as agreed by the parties.

Released: January 20, 2026 "J.A.T."

"Thorburn J.A."

"I agree. J. Copeland. J.A."

"I agree. S. Gomery J.A."