CITATION: Aroma Franchise Company, Inc. et al v. Aroma Espresso Bar Canada Inc. et al, 2026 ONSC 768
COURT FILE NO.: CV-22-00689891-00CL
DATE: 20260209

2026 ONSC 768 (CanLII)

SUPERIOR COURT OF JUSTICE – ONTARIO
(COMMERCIAL LIST)

RE: AROMA FRANCHISE COMPANY, INC., SHEFA FRANCHISES LTD., AROMA ESPRESSO BAR LTD., AROMA USA, INC., YARIV SHEFA, OSHRAT KATRI and AROMA GLOBAL LTD., Applicants

AND:

AROMA ESPRESSO BAR CANADA INC., SHALVA INVESTMENTS LIMITED, 6605702 CANADA INC. and EARL GORMAN, Respondents

BEFORE: Justice J. Dietrich

COUNSEL: *Matthew J. Latella*, *Anton Rizor*, for the Applicants

Allan Dick, *Alison Fitzgerald, Daniel Hamson,* for the Respondents

HEARD: January 5-6, 2026

REASONS FOR DECISION

Introduction

[1] The Applicants, Aroma Franchise Company, Inc., Shefa Franchises Ltd., Aroma Espresso Bar Ltd., Aroma USA, Inc., Yariv Shefa, Oshrat Katri and Aroma Global Ltd. seek an order setting aside two international arbitral awards of P. David McCutcheon as arbitrator (the "**Arbitrator**") dated January 11, 2022 (the **"Final Award**") and dated October 11, 2022 (the "**Interest and Costs Award**" and together with the Final Award, the "**Awards**") on the basis that the Arbitrator made and the Awards contain errors of type embodied in Article 34, s. 2 of the *UNCITRAL Model Law on International Arbitration adopted in the International Commercial Arbitration Act, 2017*, S.O. 2017, c. 2, Sch. 5, (the "**Model Law**").

[2] As a result, the Applicants seek the Awards be set aside and a new arbitration be conducted by a new arbitrator.

[3] The Respondents take the position that there were either no defects in the Awards or that any defects were of a type that ought not to attract Court intervention.

[4] For the reasons set out below the application is dismissed.

2026 ONSC 768 (CanLII)

Background

The Underlying Dispute

[5] The "Aroma Espresso Bar" business began in Israel. The Applicant, Aroma Espresso Bar Ltd. ("**Aroma Israel**") is the ultimate parent company of the other corporate applicants including Aroma USA, Inc. ("**Aroma USA**").

[6] In August of 2007, the Applicant, Aroma USA entered into a master franchise agreement (the "**MFA**") with the Respondent, Aroma Espresso Bar Canada Inc. ("**Aroma Canada**") under which Aroma Canada was to be the master franchisee for Aroma Espresso Bars in Canada. It is common ground that Aroma USA assigned its rights under the MFA to another corporate applicant, Aroma Franchise Company, Inc. ("**Aroma Franchise**").

[7] At the time of entering into the MFA, Aroma USA was a 22.5% shareholder in Aroma Canada. The other two shareholders of Aroma Canada were the Respondent, Shalva Investments Limited ("**Shalva**"), a corporation controlled by the Respondent, Earl Gorman and 6605702 Canada Inc. ("**660**") a corporation owned and controlled by Anat Davidzon. Shalva held 67.5% of the shares in Aroma Canada and 660 held 10%.

[8] By the end of 2018, Aroma Canada had expanded to over 45 locations. However, Aroma Canada was never profitable and incurred operating losses.

[9] The Respondents took the position in the Arbitration that the profit of the Aroma Canada business was diverted to Aroma Franchise and Aroma Israel through royalties and franchise fees as well as significant profit on the supply of goods, including coffee, by Aroma Israel to Aroma Canada.

[10] Specifically, the Aroma Canada franchises sold a brewed coffee product that was purchased by Aroma Canada from Aroma Israel.

[11] There were attempts to renegotiate the MFA that were unsuccessful. In July of 2018, Ms. Davidzon resigned as managing partner for Aroma Canada and Mr. Gorman became interim Managing Partner. Mr. Gorman hired certain consultants to work with him in an attempt to have Aroma Canada become profitable.

[12] In early 2019, Aroma Canada sent a proposal to Aroma Franchise for an alternative coffee supplier. Aroma Canada was frustrated with the lack of response by Aroma Franchise and Aroma Israel to the proposal, which Aroma Canada estimated would result in significant savings for Aroma Canada. In March of 2019, Aroma Canada cancelled all coffee supply orders from Aroma Israel.

[13] On April 16, 2019, Aroma Franchise delivered a notice of pending termination of the MFA to Aroma Canada on the basis that the MFA did not permit Aroma Canada to purchase coffee from an alternative supplier without Aroma Franchise's approval (which had not been given) as well as additional alleged breaches including provisions relating to confidentiality and disclosure of third-party agreements.

[14] Aroma Canada disputed the termination and delivered a notice of request to arbitrate on May 8, 2019.

[15] Aroma Canada ceased operating in June of 2019.

[16] The underlying dispute between the parties centered on whether Aroma Canada or Aroma Franchise breached the terms of the MFA, whether the MFA was wrongfully terminated by Aroma Franchise, and whether various oppressive conduct occurred between the parties. The obligations of fair dealing under s. 3 of the *Arthur Wishart Act (Franchise Disclosure)*, 2000, S.O. 2000, c. 3 (the "**Act**") were also central to the dispute between the parties.

2026 ONSC 768 (CanLII)

The Arbitration

[17] The Arbitration consisted of several rounds of pleadings amendments, numerous case conferences, seven pre-hearing motions, extensive documentary production involving the review of hundreds of thousands of documents, examinations for discovery together with follow-up examinations, four weeks of *viva voce* testimony from twelve witnesses (mostly in the form of cross-examination as affidavits and expert reports were submitted as direct evidence), 125 pages of written closing submissions by each side, two days of oral closing submissions presented in September 2021, and supplementary written closing submissions at the request of the Arbitrator.

[18] In the Final Award, the Arbitrator described the issues as follows:

> 32.The Central issues in this case involve the interpretation of the MFA and the obligations of the parties to perform their obligations under the MFA as required by contract and statute.
>
> 33. The key legal issue is whether Aroma Israel had an enforceable right under the MFA to be the exclusive supplier of coffee under the MFA. Aroma Israel believed it had that right. Aroma Canada believed that the supply of coffee was open to change under the terms of the MFA.

[19] The Final Award is 329 paragraphs and 33 single spaced pages.

[20] As set out in the Final Award, Aroma Canada was successful in its claim that the MFA was wrongfully and unlawfully terminated by Aroma Franchise. The Arbitrator awarded $10,000,000.00 in damages (a portion of what was being claimed) and $200,000.00 in statutory bad faith damages. Aroma Franchise was successful in its claim for certain unpaid royalties. All other claims by all parties against each other were dismissed.

[21] Following delivery of the Final Award, on October 11, 2022, the Arbitrator rendered the Interest and Costs Award.

Procedural History

[22] The Applicants brought an application before this Court to set aside the Awards, on a number of basis, including on the basis that there was a reasonable apprehension of bias on the part of the Arbitrator.

[23] That application was heard in January 2023 by Justice Steele. In her decision, Justice Steele determined that the Awards were to be set aside on the basis of reasonable apprehension of bias and expressed views on certain of the other grounds raised. In paragraphs 93-97 of her decision, *Aroma Franchise Company Inc. et al. v. Aroma Espresso Bar Canada Inc. et al.*, 2023 ONSC 1827, she wrote:

> Other Grounds
>
> [93] The applicants raised other grounds to set aside the Arbitration Awards, including allegations that the Arbitrator exceeded his jurisdiction and failed to provide a reasoned award. As I have determined that the Awards are set aside on the basis of reasonable apprehension of bias, I will only briefly highlight my views on certain other grounds raised.
>
> [94] First, the applicants allege that the Arbitrator made jurisdictional errors in failing to follow the provisions of the MFA regarding the enforcement of the contract and in making an unexplained and incorrect "proper party" finding.
>
> [95] With regard to the applicants' position that the Arbitrator effectively re-wrote the MFA, it is my view that the Arbitrator did not exceed his jurisdiction in this regard. The Arbitrator interpreted the MFA. The applicants may disagree with his interpretation, but this is not a reviewable error.
>
> [96] The applicants argue the Arbitrator made an unexplained and incorrect proper party finding at paragraph 296 of the Final Award, with regard to Mr. Gorman. The Arbitrator stated that Mr. Gorman was not a proper party to the arbitration agreement in the MFA and the arbitration. The applicants state that the Arbitrator did not give the parties the opportunity to address this issue, and there was a breach of procedural fairness and natural justice contrary to article 34(2)(a)(ii) of the *Model Law*. I agree with the applicants that the statement that Mr. Gorman was not a proper party was not addressed by the parties at the arbitration. In this regard, there was a breach of procedural fairness.
>
> [97] The applicants also argue that the Arbitrator failed to provide a reasoned award, contrary to Article 31 of the *Model Law*. The applicants' position is that Arbitrator failed to address certain issues that were raised, and the Arbitrator failed to provide adequate reasons in respect of certain other issues. The respondents argue that arbitrators are required to seize the substance of the matter, dispose of the issues submitted, and address the relevant evidence and arguments. They are not required to refer to all the evidence they considered to arrive at their decision

2026 ONSC 768 (CanLII)

or address every argument advanced. I agree with the respondents. The Arbitrator did not fail to provide a reasoned award.

[24] As a result, a judgment was signed by Justice Steele, dated March 20, 2023, which ordered that the Awards be set aside and a new arbitration between the parties be conducted by a new arbitrator (the "**Order**").

[25] The respondents appealed the Order, and the Ontario Court of Appeal in *Aroma Franchise Company, Inc. v. Aroma Espresso Bar Canada Inc*., 2024 ONCA 839, overturned the Order. The focus of the Court of Appeal's decision was Justice Steele's finding regarding reasonable apprehension of bias. However, in the conclusion of the decision, the Court of Appeal wrote:

> [145] I would allow the appeal, set aside the judgment of the application judge, and reinstate the award of the Arbitrator, subject to the following.
>
> [146] The respondents' application raised a number of grounds attacking the awards in addition to a reasonable apprehension of bias – excess of jurisdiction, an improper finding that the appellant Earl Gorman was not a proper party to the arbitration, failure to limit the award to compensatory damages, failure to decide a key issue, and inadequate reasons. The application judge addressed the other grounds only briefly, expressing agreement with the respondents that the way the Arbitrator addressed the Gorman issue involved a breach of procedural fairness, and disagreeing with the suggestion that the Arbitrator exceeded his jurisdiction or failed to deliver a reasoned award. She did not specify a consequence to the finding about the Gorman issue and left undecided the issues of failure to limit the award to compensatory damages and failure to decide a key issue. Although the respondents asked us to delve into those issues and uphold the setting aside of the Arbitrator's awards on these grounds, it would not be appropriate to do so. The argument was made in one brief paragraph of the respondents' factum, without detail.
>
> [147] I would accordingly remit the matter to the Superior Court to determine the relief, if any, to which the respondents are entitled by reason of the Gorman issue and to decide any other issues the application judge did not adjudicate.

[26] The resulting order from the Court of Appeal provided that the appeal was allowed and "The following issues are remitted to the Superior Court to determine:

a. The consequences of the breach of procedural fairness regarding Earl Gorman as a proper party to the arbitration;

b. The arbitrator's alleged failure to limit the award to compensatory damages;

c. The arbitrator's alleged failure to address a key issue;

d. Any other issues the application judge did not adjudicate."

2026 ONSC 768 (CanLII)

[27] The parties disagree on whether the views expressed by Justice Steele that the Arbitrator did not exceed his jurisdiction or fail to provide a reasoned award were adjudications of those issues.

[28] The Applicants confirmed at the hearing that they are not pursuing issue b above – being the arbitrator's alleged failure to limit the award to compensatory damages.

[29] Both parties made submissions on whether the 'views' expressed by Justice Steele amounted to an adjudication of the relevant issues and therefore were referred back to me for determination by the Ontario Court of Appeal. However, as set out below, I have examined these issues independently and come to the same conclusions as Justice Steele. Accordingly, there is no purpose to my determining whether her views amounted to an adjudication.

Issues

[30] The issue to be determined is whether the Court should set-aside the Awards as provided for in Article 34 of the Model Law.

Analysis

[31] There is no dispute that Article 34 of the Model Law applies to the Awards. Article 34 provides:

> (1) Recourse to a court against an arbitral award may be made only by an application for setting aside in accordance with paragraphs (2) and (3) of this article.
>
> (2) An arbitral award may be set aside by the court specified in article 6 only if:
>
> (a) the party making the application furnishes proof that:
>
> (i) a party to the arbitration agreement referred to in article 7 was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of this State; or
>
> (ii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or
>
> (iii) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside; or

2026 ONSC 768 (CanLII)

(iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Law from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Law; or

…

(4) The court, when asked to set aside an award, may, where appropriate and so requested by a party, suspend the setting aside proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the arbitral tribunal's opinion will eliminate the grounds for setting aside.

2026 ONSC 768 (CanLII)

[32] The Applicants' arguments all fall under s. 2(a)(ii), (iii) and (iv) of Article 34 of the Model Law.

[33] First, s. 2(a)(ii) addresses the situation where the party making the application was unable to present his case. In this regard, the Applicants argue that in making a finding that Mr. Gorman was not a proper party to the Arbitration, without hearing from the parties on the matter, the Arbitrator did not permit the applicants to present their case on the matter.

[34] Second, s. 2(a)(iii) addresses the situation where the award deals with a dispute not falling within or contains decisions on matters beyond the scope of the submission to arbitration. In this regard, the Applicants submit that the Arbitrator exceeded his jurisdiction by modifying rather than interpreting the MFA.

[35] Third, s. 2(a)(iv) addresses situations where the arbitral procedure is not in accordance with the agreement of the parties. The Applicants submit that part of the agreement of the parties was, that in accordance with Chapter 31 s. 2 of the Model Law, the award shall state the reasons upon which it was based, unless the parties have agreed otherwise. The parties did not agree otherwise and therefore reasons were required. The Applicants submit that both Awards contained insufficient reasons for a variety of reasons, discussed below.

[36] I will address the arguments under each of s. 2(a)(ii), 2(a)(iii) and 2(a)(iv) of Article 34 of the Model Law. Following that I will address the appropriate remedy for any violations of those sections.

[37] In doing so, I recognize that the Ontario Court of Appeal stated in *Consolidated Contractors Group S.A.L. (Offshore) v. Ambatovy Minerals S.A.*, 2017 ONCA 939, at para. 20, leave to appeal refused, [2018] S.C.C.A. No. 46, at 2018 CanLII 99661 (SCC) [***Consolidated Contractors***], the grounds set out in Article 34 of the Model Law are narrow.

[38] Further, as summarized in *Consolidated Contractors* at paras. 23-24, (i) the Court cannot set aside an international arbitral award simply because it believes that the arbitral tribunal wrongly decided a point of fact or law; and (ii) the Court is to show a high degree of deference to the awards of international arbitral tribunals under the Model Law.

<u>Were the Applicants unable to present their case in accordance with s. 2(a)(ii) of Article 34 of the Model Law?</u>

[39] Part of the Applicants' claim in the underlying arbitration was against Mr. Gorman. As noted above, the arbitrator dismissed claims of oppression by both sides in the arbitration. After doing so, in para. 296 of the Final Award, the arbitrator wrote:

> "I reject the Respondents' claim to find personal liability on the part of Gorman. His conduct was aggressive both in tone and actions but it was clear that he was acting in his role as a representative of Aroma Canada and Shalva and there are no extraordinary circumstances sufficient to pierce the corporate veil. <u>Furthermore, he is not a proper party to the arbitration agreement in the MFA and not a proper party to this arbitration</u>". (Emphasis added).

[40] Although the Respondents had argued in the arbitration that Mr. Gorman was not a party to the MFA itself, neither party made submissions that Mr. Gorman was not a proper party to the arbitration.

[41] I am satisfied that the finding by the Arbitrator that Mr. Gorman was not a proper party to the arbitration, without hearing submissions from either side on that issue, is a matter falling within s. 2(a)(ii) of Article 34 of the Model Law in that the Applicants were unable to present their case on the issue.

<u>Did the Awards deal with a dispute not falling within or contain decisions on matters beyond the scope of the submission to arbitration in accordance with s. 2(a)(iii) of Article 34 of the Model Law?</u>

[42] The Applicants argue that the Arbitrator exceeded his jurisdiction and decided matters beyond the scope of the submissions to arbitration in accordance with s. 2(a)(iii) of Article 34 of the Model Law because the Arbitrator modified rather than interpreted the contract at issue.

[43] In this respect, the Applicants assert, and I agree, that on issues of jurisdiction the standard of review is one of correctness. As stated in *Mexico v. Cargill, Incorporated,* 2011 ONCA 622, 107 O.R. (3d) 528, at paras. 44-47:

> [44] It is important, however, to remember that the fact that the standard of review on jurisdictional questions is correctness does not give the courts a broad scope for intervention in the decisions of international arbitral tribunals. To the contrary, courts are expected to intervene only in rare circumstances where there is a true question of jurisdiction.
>
> [45] In the domestic law context, courts are warned to ensure that they take a narrow view of what constitutes a question of jurisdiction and to resist broadening the scope of the issue to effectively decide the merits of the case. This point was emphasized by Lebel J. in Dunsmuir, the leading case on standard of review in the administrative law context, in his discussion at para. 59:

2026 ONSC 768 (CanLII)

> These questions [of jurisdiction] will be narrow. We reiterate the caution of Dickson J. in that reviewing judges must not brand as jurisdictional issues that are doubtfully so. (Emphasis added)

> [46] This latter approach is magnified in the international arbitration context. Courts are warned to limit themselves in the strictest terms to intervene only rarely in decisions made by consensual, expert, international arbitration tribunals, including on issues of jurisdiction. In my view, the principle underlying the concept of a "powerful presumption" is that courts will intervene rarely because their intervention is limited to true jurisdictional errors. To the extent that the phrase "powerful presumption" may suggest that a reviewing court should presume that the tribunal was correct in determining the scope of its jurisdiction, the phrase is misleading. If courts were to defer to the decision of the tribunal on issues of true jurisdiction, that would effectively [page544] nullify the purpose and intent of the review authority of the court under art. 34(2)(a)(iii).

> [47] Therefore, courts are to be circumspect in their approach to determining whether an error alleged under art. 34(2)(a)(iii) properly falls within that provision and is a true question of jurisdiction. They are obliged to take a narrow view of the extent of any such question. And when they do identify such an issue, they are to carefully limit the issue they address to ensure that they do not, advertently or inadvertently, stray into the merits of the question that was decided by the tribunal. [Citations omitted.]

[44] Here, the Applicants rely on s. 17.4.2 of the MFA which provides that the “arbitrator shall be bound by, and shall strictly enforce the terms of this Agreement and shall not limit, expand or otherwise modify its terms”.

[45] The Applicants’ argument is essentially that the Arbitrator re-wrote the MFA contrary to s. 17.4.2 thereof, by finding that the cancellation of supply orders by Aroma Canada was a breach of the MFA, but then finding that despite that ongoing breach, Aroma Franchise’s termination of the MFA was wrongful. As such, the Applicants argue that the Arbitrator modified the MFA rather than interpreting it, which exceeded his jurisdiction.

[46] In para. 287 of the Final Award, the Arbitrator wrote:

> I find that the termination of the MFA by Aroma Franchise was not consistent with the purposes for which it was granted in the contract. I find that the termination of the MFA by Aroma Franchise was a wrongful breach of the MFA and the Act. The termination right was exercised in bad faith and arbitrarily for the following reasons:
>
> > a. Aroma Israel was motivated to take over the Aroma Canada Franchise business to protect the supply and price of its coffee which was a profitable business for Aroma Israel;

2026 ONSC 768 (CanLII)

b. Aroma USA and Aroma Franchise did not have a sole and exclusive right under the MFA to supply coffee to Aroma Canada. Aroma Israel knew that the MFA did not provide for the exclusive supply of its coffee to Aroma Canada.

c. The commercial objective of Aroma Canada was to have a financially viable and growing franchise business in Canada and to urgently fix the financial and operating problems in 2018;

d. The steps taken by the Aroma Parties to create an opportunity to terminate and take over the sub franchises including the secret RFQs, the financial analysis of the profitability of the business to Aroma Israel after termination, and the market analysis were taken with no regard for the ongoing operation of Aroma Canada under the MFA.

e. The parties knew that new and replacement products produced by Aroma Israel were to be approved using the process in section 7.6 the MFA

f. Aroma Israel thwarted the product approval process by refusing to engage in reviewing the changes in supply proposed by Aroma Canada or take any other steps to remedy the known financial problems at Aroma Canada.

g. Aroma Israel's refused to engage with Aroma Canada and its consultants made it impossible for necessary changes to be made to improve profitability including changes to the supply chain which would result in substantial cost savings.

h. The self-help efforts of Aroma Israel in early May 2019 to secretly meet with the sub franchisees without Aroma Canada during the period prior to the date set for termination was a wrongful interference with the sub franchise contracts and a breach of section 15.5 of the MFA which required notice to Aroma Canada after termination.

i. Only a few products had been changed by mid May 2019 and the coffee supply had not changed notwithstanding the cancellation of the orders.

j. The relationship was in place for 12 years and accommodations had been made by both parties from time to time in the supply chain and supply logistics including change to the price of coffee.

k. Prior negotiations about the pricing of coffee had taken considerable time and it could be reasonably anticipated by the parties that such negotiations could not reasonably happen in 30 days.

l. Aroma Israel did not respond to the Notice to Arbitrate or seek interim remedies. It went ahead with the termination in spite of the contractually available dispute resolution process.

2026 ONSC 768 (CanLII)

m. the arbitrary refusal of Aroma Franchise to engage in discussions with Aroma Canada and its consultants to address the franchise problems including the refusal by Yariv and Michel to come to Canada to meet with Aroma Canada and its consultants.

n. The breaches of the MFA by Aroma Franchise continued up to the Notice of Pending Termination and the lack of any meaningful engagement in any good faith cooperative efforts by Aroma Franchise to improve the financial condition of Aroma Canada was unfair, commercially unreasonable and failed to meet the standard of good faith.

o. The delay in responding to Aroma Canada after October 8, 2018 by Aroma Israel exacerbated the financial condition of Aroma Canada making it and the sub franchisees weaker and more vulnerable to takeover.

p. The plan by Aroma Israel to terminate the MFA after the October 2018 meeting created a poisoned business environment contrary to its obligations of contractual good faith and its duties under the Act;

q. The refusal of Aroma Franchise to engage in discussions foreclosed discussions of a range of strategies which might have been different from the consultants' strategies and might have included a discussion about exclusivity of coffee supply as it had in past negotiations.

r. The intention of Yariv evidenced by his statement that he would terminate the MFA if Aroma Canada tried to change the supply of coffee.

s. The agreement at the October 8, 2018 meeting that Aroma Canada could proceed with changes to the supply chain for products other than those supplied by Aroma Israel which were to be discussed subsequently

t. The cancellation of the product orders in the circumstances existing at March 2019 was not a breach a fundamental term of the MFA where Aroma Israel was in continuing breach of the MFA and Aroma Canada was still seeking to have discussions with Aroma Israel to settle the supply chain dispute. It was motivated by the desire of Aroma Canada to compel Aroma Israel to engage in the supply chain discussion and the larger discussion of changes that needed to be made to remedy the financial distress of Aroma Canada.

u. The Aroma Brand was not in jeopardy because the supply chain changes would have to meet the quality standards set by Aroma Israel if it had participated in the approval process."

[47] The Applicants argue that the MFA contained a very clear termination upon notice provision in s. 14.2 of the MFA, and that in accordance with s. 17.4.2, the MFA was to be strictly followed. Therefore, the Applicants submit that by finding that the termination of

2026 ONSC 768 (CanLII)

the MFA by Aroma Franchise was wrongful, the Arbitrator ignored the contractual terms and in the result modified the MFA. I do not agree.

[48] The Arbitrator explained the principles of contractual interpretation in paras. 34-40 of the Final Award. He also was cognizant of the principles set out in s. 3 of the Act (see paragraphs 41-44 of the Final Award).

[49] The Arbitrator then engaged in the exercise of fact finding so that he could interpret the MFA and the parties' obligations under the Act. That is what the Amended Amended Notice of Request to Arbitrate of Aroma Canada dated June 1, 2021, and the Amended Amended Response to Notice of Request to Arbitrate and Counterclaim of the Applicants dated July 2, 2021, sought.

[50] The Applicants may not agree with the interpretation of the MFA by the Arbitrator, but reading the Final Award as a whole shows that the Arbitrator did engage in an exercise of contractual interpretation and I am not satisfied that a true question of jurisdiction has been established.

[51] Accordingly, I am not satisfied that any grounds to set aside the Awards under s. 2(a)(iii) of Article 34 of the Model Law have been established.

<u>Did the Awards state the reasons on which it was based as contemplated by s. 2 of Article 31 of the Model Law in accordance with s. 2(a)(iv) of Article 34 of the Model Law?</u>

[52] There is no dispute that in this case that, in accordance with s. 2 of Article 31 of the Model Law, the award is to state the reasons on which it is based. Consequently, if the Awards do not provide reasons, that would amount to a situation contemplated by s. 2(a)(iv) of Article 34 of the Model Law, and the arbitral procedure would be in conflict with a provision of the Model Law.

[53] The requirement for reasons within the context of arbitration was discussed by J. Brian Casey, *Arbitration Law of Canada*, 4th ed., (Huntington, N.Y.: Juris, 2022), at pp. 527-529, his observations can be summarized as follows:

a. although it is possible to set aside an award for lack of a reasoned award, it is important that the set-aside application not be a disguised attempt at appeal;

b. it is also important to recognize that the test for finding inadequacy of reasons in a Court decision or a judicial review may not be the same as in a private consensual arbitration. Rather, the questions to ask are: did the tribunal make findings of conclusions of fact that logically support the award and did they deal with all the issues put to them that might impact on the award;

c. the reasons do not need to deal with each point made by a party in relation to essential issues or refer to all relevant evidence;

2026 ONSC 768 (CanLII)

d. suggestions that it is a serious irregularity in the reasons to fail to deal with certain evidence should be approached cautiously as the assessment and evaluation of evidence is a matter exclusively for the tribunal, not the Court. Where a tribunal has not referred to a piece of evidence there may be numerous reasons for such, and it not appropriate to conclude the tribunal had overlooked it – there may be other reasons including a different view of the importance, relevance or reliability of the evidence: see *UMS Holding Ltd. & Ors v Great Station Properties SA & Anor* [2017] EWHC 2398 (Comm) at 28 (HC, England and Wales);

e. the tribunal must answer the questions that have been submitted to it and give reasons, however, it is not reasonable to require the tribunal to answer each and every argument made by the parties: see *United Mexican States v. Metalclad Corporation*, 2001 BCSC 664, [***United Mexican v. Metalclad***] at para. 122; and

f. it is necessary to give some reason for reaching a decision on a particular issue to provide the parties with the comfort that the submissions were heard even if rejected: see *Alberta Cricket Association v. Alberta Cricket Council*, 2021 ONSC 8451 [***Alberta Cricket***].

[54] In *Alberta Cricket*, Perell, J. wrote the following at para. 55:

> Written reasons show the parties that the adjudicator has paid attention to their arguments and treated them fairly and with due process. Providing reasons for a decision removes the appearance of arbitrariness, makes the process transparent, and makes the decision-maker accountable because he or she is called on to explain and justify the decision. The question of the adequacy of reasons for decision is whether the reasons, viewed in light of the record and counsel's submissions on the live issues presented by the case, explain why the decision was reached, by establishing a logical connection between the evidence and the law on the one hand, and the decision on the other. The critical question is whether in the context of the record, the issues and the submissions of the parties, the judgment is sufficiently intelligible to show that the adjudicator understood the substance of the matter and addressed the necessary and critical issues. [Citations omitted.]

[55] In considering the *Arbitration Act*, R.S.B.C. 1996, c.55, the British Columbia Supreme Court recently in *Sound Contracting Ltd. v Campbell River (City)*, 2024 BCSC 933 [***Sound Contracting***] noted at para. 10 the following:

> The question… is not whether [the arbitrator] was right or wrong. It is whether he adequately explained the reasons for concluding the proceeding before him … It is a rule of procedural fairness (or "natural justice" in the older language used by the Arbitration Act, R.S.B.C. 1996, c. 55) that the losing party is entitled to understand not only that it lost, but why it lost. The reasons must be "sufficient". This is not supposed to be a standard that requires a level of analysis disproportionate to what is involved in the dispute. It is not, for example, necessary for an arbitrator to refer to all the arguments made, exhaustively survey the

2026 ONSC 768 (CanLII)

> jurisprudence or relevant legislative contractual and legislative provisions or make detailed findings on all constituent elements. But an arbitrator should be responsive to the live issues and provide an analysis of them that is intelligible to the parties and provides a basis for meaningful appellate review.

[56] Further, the Court in *Sound Contracting*, at para. 48, noted the following:

> Natural justice requires that an adjudicator give sufficient reasons so that the losing party knows why it lost and so an appellate or reviewing court can meaningfully conduct its review. But arbitration is a private form of dispute resolution. A key benefit to the parties is that it may provide a faster resolution for their disputes than would a court hearing. It is thus extremely important that the courts not impose unrealistic demands for legal analysis that may go beyond what private parties actually want and could undermine this decisive benefit of arbitration.

2026 ONSC 768 (CanLII)

[57] The reference to a meaningful appellate review is context specific. Under the relevant Arbitration act before the Court in *Sound Contracting* the question was one of 'arbitral error'. Here the context is set out in Article 34 of the Model Law.

[58] The Applicants take numerous issues with the adequacy of the reasons provided by the Arbitrator in both the Final Award and the Interest and Costs Award. The Applicants claims include, but are not limited to, that the Arbitrator:

a. failed to address one of the central claims of the Applicants justifying termination of the MFA: that the Respondents breached the confidentiality provisions of that agreement, doing so as part of their scheme to secretly knock-off the Applicants' products and take over the supply chain for the franchise system in Canada;

b. failed to provide a single citation to, or quotation from, any of the many hundreds of documents in evidence, omitting key evidence relied upon by the Applicants;

c. failed to provide any meaningful or balanced analysis of the tiny fraction (less than 3%) of documents to which he made only perfunctory and superficial references;

d. failed to quote from and hence failed to properly consider and analyze: 1) the MFA or 2) the Franchise Disclosure Document;

e. offered only passing reference to a tiny fraction of (and not a single citation to the transcripts of) the 18 days of oral testimony from a dozen witnesses;

f. failed to analyze and apply to the facts of the case—or even cite—the overwhelming majority of the extensive case law authorities relied upon and argued by the parties;

g. made deficient blanket credibility findings;

h. failed to address the critical evidence and key pleadings admissions;

i. failed to explain his finding of bad faith;

j. issued reasons which contained logical inconsistencies;

k. made unsupportable and unexplained damages findings; and

l. delivered the Interest/Costs Award well after the deadline for additional orders under the *UNCITRAL Arbitration Rules* (with article 1, paragraph 4, as adopted in 2013 and article 1, paragraph 5, as adopted in 2021) (the "**UNCITRAL Arbitration Rules**") with no explanation for extending that time and no evidence establishing it was "necessary" after months of delay by the Respondents in responding to the arbitrator to provide backup for and correct their costs claims.

2026 ONSC 768 (CanLII)

[59] It is not appropriate to address each alleged deficiency. As noted above, reasons do not need to deal with each point made by a party or refer to all relevant evidence related to the issues before Arbitrator. For example, the Arbitrator is not required to quote from the MFA to show that he was engaged in an exercise of contractual interpretation of that contract. In fact, the Final Award contains references to at least nine sections from the MFA in providing an overview of that contract. Simply because the Arbitrator chose to reference the relevant sections rather than replicate them in the Final Award does not mean that his reasons are insufficient.

[60] Rather, the question to ask is whether the Award is responsive to the live issues and provides an analysis of them that is intelligible to the parties and provides a basis for meaningful appellate review.

[61] In the Final Award, the Arbitrator:

a. outlined the central issues;

b. summarized the law of contractual interpretation including with reference to relevant case law including *Sattva Capital Corp. v. Creston Moly Corp* ., 2014 SCC 53, [2014] 2 S.C.R. 633;

c. summarized the relevant duties under the Act, including the context as submitted by the parties;

d. outlined the duty of good faith in contract;

e. provided an overview of the MFA;

f. provided context with respect to the Franchise Disclosure Document;

g. summarized the evidence regarding the exclusivity condition in the MFFA at issue;

h. explained the background and history of the parties relationship;

i. provided detailed factual findings from paras. 108 to 238 (covering approximately 10 single spaced pages) related to the period leading to the dispute at issue;

j. summarized the events relating to the termination of the MFA and those that followed related to Aroma Franchise's takeover of the Canadian franchises;

k. explained his findings regarding breaches of the MFA in paragraphs 273-288 of the decision, this included the following:

> 273. Section 14.2 of the MFA allows for a contractually agreed remedy of termination for any breach of the MFA. The commercial reality is that some breaches might be serious breaches going to the root of the contractual obligations while others are less significant and would not warrant a good faith and fair dealing termination of a long-standing relationship.
>
> 274. Although the scope of the clause is broad, I find that its purpose was to provide an ultimate remedy to the Master Franchisor to terminate within the context of the obligation of fair dealing and good faith under the Act. The consequence of losing all of the franchises without compensation as a result of a breach which was not fundamental to the performance of the contract in the context of the circumstances existing at the time is not a reasonable commercial outcome.
>
> 275. The Act applies the duty of fair dealing and good faith to both the performance and enforcement of the franchise agreement.
>
> 276. The broad contractual power of the franchisor to terminate for performance issues should be exercised fairly and honestly and not arbitrarily. The steps taken to exercise and enforce the power of termination should also be exercised fairly, honestly and not arbitrarily. I have concluded that Aroma Franchise acted arbitrarily and did not act honestly or fairly in exercising the power of termination and in enforcing the termination.

l. considered relevant case law including *2016 Alberta Ltd. v. 11180673 Canada Inc*, 2021 ONCA 590, 462 D.L.R. (4th) 291, and *Wastech Services Ltd. v. Greater Vancouver Sewerage and Drainage District,* 2021 SCC 7, [2021] 1 S.C.R. 32;

m. ultimately found that the termination of the MFA by Aroma Franchise wrongful;

n. explained his finding of no oppression by any party;

o. explained his finding for no personal liability on behalf of Mr. Gorman, and, as discussed above, found Mr. Gorman was not a proper party to the arbitration;

p. discussed the claim for and his finding on damages including why he preferred the 'but for' theory of damages put forward by Aroma Canada but also explained why

2026 ONSC 768 (CanLII)

certain modifications were made to the assumptions put forward by Mr. Soriano, the expert put forward by Aroma Canada. In this regard, in preferring the 'but for' theory put forward by Aroma Canada, the Arbitrator also recognized that the approach taken by the Applicant's expert, Mr. Low resulted in losses between 2019 and 2021, however, he did not accept that approach; and

q. explained why he rejected the Applicants' request for counterclaim damages in part (accepting certain damages for unpaid royalties).

2026 ONSC 768 (CanLII)

[62] One of the arguments put forward by the Applicants is that the reasons failed to address their claim that the Respondents breached the confidentiality provisions in the MFA. This allegation is related to Aroma Canada's attempt to locate alternate suppliers. In paras. 142-143 of the Final Award, the Arbitrator found that the Applicants were aware of Aroma Canada's efforts in this regard and did not write to Aroma Canada to object to same. Further, the Arbitrator referenced the "knock off" concerns (see para. 171), and referenced the fact that breach of duty of confidentiality was part of the April 16, 2019 notice of pending termination (para. 239). The Final Award shows the Arbitrator was alive to the issue, but it was clear that the focus the issues before the Arbitrator was the cancellation of coffee orders by Aroma Canada. In reviewing the Final Award in context, I am not satisfied that his failure to specifically deal with this one argument of the Applicants amounts to a failure to provide sufficient reasons.

[63] The Applicants also cite numerous examples of what they refer to as 'logical inconsistencies' within the Final Award as support for their argument that the reasons are not sufficient. These alleged logical inconsistencies do not go to the sufficiency of the reasons, but rather are challenges to the merits of the decision. It is not this Court's role to examine the correctness of the Arbitrator's reasons.

[64] Overall, reading the Final Award as a whole, I am satisfied that the requirement to provide reasons under s. 2 of Article 31 of the Model has been satisfied. It may be that the Applicants disagree with many of the conclusions reached and reasons given by the Arbitrator, however, the obligations to provide reasons is not intended to provide the Court with a 'back door' to review the merits of the decision of the Arbitrator.

[65] With respect to the Interest and Costs Award the Applicants argue that it was delivered after the deadline in the UNCITRAL Arbitration Rules for making additional awards. Although the Applicants admit that the Arbitrator can extend the time-limit 'if necessary', they argue that the Arbitrator provided no explanation and had no evidence to establish doing so was necessary. This argument was raised with the Arbitrator and is specifically referenced at para. 69 of the Interest and Costs Award: "Their first argument was that the Claimants had failed to lead sufficient evidence to establish that it is necessary to extend the period of time within which this Tribunal was to have made any additional award pursuant to Article 39 of the UNCITRAL Arbitration Rules (2021)." The Arbitrator then goes on to extend the time (see para. 71 of the Interest and Costs Award) and explains his reasoning for doing so (see para. 72-74 of the interest and Costs Award). As such, I am not persuaded that the Interest and Costs Award amounts to insufficient reasons in this regard.

[66] The Applicants also raised additional issues with the Interest and Costs Award, arguing that it was not based on actual dockets, did not treat unpursued or unsuccessful claims or counterclaims similarly between the parties, and did not hold the Respondents to an alleged admission (which was disputed by the Respondents) that Aroma Canada was fully responsible for all of the claimants' costs. I understand that the Applicants' may not agree with the decisions made by the Arbitrator in this regard, but it is not this Court's role to review the merits of the decision and I am not satisfied that these claims amount to a ground of intervention under Article 34 of the Model Law.

[67] Accordingly, I am not persuaded that any ground to set aside the Awards under s.2(a)(iv) of the Model Law has been established.

<u>What is the appropriate remedy for the breach of the Applicant's right to present their case under s. 2(a)(ii) as a result of the improper proper party finding?</u>

[68] In summary, the only ground that I have found which falls under Article 34 of the Model Law is the Arbitrator's finding in para. 296 of the Final Award that Mr. Gorman was not a proper party to the arbitration.

[69] The Court has discretion to set-aside an arbitral award under Article 34 of the Model Law. Section 2 is permissive in that the award 'may be set aside by the court' if one of the specified grounds is established. Further, as noted by Tysoe J. (as he was then) in *United Mexican v. Metalclad* at para. 129, the seriousness of the defect in the arbitral procedure should be considered when this Court is deciding whether to exercise its discretion to set aside an award under s. 34.

[70] I recognize that a breach of procedural fairness in not permitting a party to make submissions on a matter is serious. However, it is important to put the issue upon which submissions were not permitted into context within the matters at issue and the decision as a whole.

[71] In this case, the issue is whether Mr. Gorman, as representative of certain corporate respondents had personal liability. However, the Arbitrator separately found that there was no oppressive conduct on behalf of Mr. Gorman or others and no breach of the MFA or the duty of fair dealing by the relevant corporate respondents. The Arbitrator also found that there were no extraordinary circumstances which would justify a piercing of the corporate veil through to Mr. Gorman. Given those findings, it is not possible for Mr. Gorman to have had personal liability. Accordingly, a finding that Mr. Gorman was not a proper party to the arbitration was superfluous in the context of the other issues and findings within the arbitration.

[72] The situation before me is distinguishable from that addressed by Kimmel J. in *Mattamy (Downsview) Limited v. KSV Restructuring Inc. (Urbancorp),* 2023 ONSC 3013, where

2026 ONSC 768 (CanLII)

she addressed the effect of an arbitrator rejecting the admission of evidence on a point in issue without the opportunity for submissions on that issue. In that case, at para. 80, she wrote the following:

> Having found that there was a procedural unfairness and failure of natural justice, there is a strong line of authority (*Laroque*, *Baffinland*, *Nasjjec*, above) that states that where there is a finding of procedural unfairness, the Award must be set aside and the court should not engage in any assessment of whether the outcome would have been different if the procedural unfairness had not occurred. A new arbitration must be ordered.

[73] Unlike the situation before Kimmel J., in the present case, the comments of the Arbitrator were *obiter* in that they did not address a live issue. Having separately found that the relevant corporate respondents did not breach the MFA and that there was no oppressive conduct, the personal liability of Mr. Gorman, which was premised on liability on behalf of the relevant corporations under the MFA or on oppressive conduct, was no longer a live issue. As such, although there was a breach of procedural fairness in finding Mr. Gorman was not a proper party to the arbitration, in context, it was not material to the live issues.

[74] Accordingly, in exercising my discretion under s. 2 of Article 34 of the Model Law, I am not satisfied that ordering an entirely new arbitration is an appropriate remedy and I decline to do so.

Disposition

[75] For the reasons set out above the application is dismissed.

[76] If the parties are not able to resolve costs of this matter, the Respondents may email a cost submission of no more than three double-spaced pages to the Commercial List Office within 15 days of the date of this endorsement. The Applicants may deliver responding submissions of no more than three double-spaced pages within 15 days following the delivery of the Respondents submissions. No reply submissions are to be delivered without leave.

____

The Honourable Justice J. Dietrich

Date: February 09, 2026

2026 ONSC 768 (CanLII)