In the Court of Appeal of Alberta

Citation: Arsopi v ARVOS GmbH, 2026 ABCA 49

Date: 20260220
Docket: 2401-0074AC
Registry: Calgary

2026 ABCA 49 (CanLII)

Between:

Arsopi, Industrias Metalurgicas Arlindo S. Pinho, SA and
Arsopi-Industrias Metalurgicas Arlindo S. Pinho, LDA

Appellants

\- and -

ARVOS GmbH

Respondent

The Court:

The Honourable Justice Bernette Ho
The Honourable Justice William T. de Wit
The Honourable Justice Jane Fagnan

Memorandum of Judgment

Appeal from the Order by
The Honourable Justice D.J. Reed
Dated the 20th day of February, 2024
Filed on the 27th day of September, 2024
(2024 ABKB 97, Docket: 1701 03144)

Memorandum of Judgment

The Court:

[1] This appeal requires the Court to consider the nature of claims advanced in Alberta under the *Tort-Feasors Act*, RSA 2000, c T-5 [*TFA*] through a third-party claim involving commercial parties who had agreed to arbitrate their disputes in, and pursuant to the law of, a foreign country.

[2] In *Orica Canada Inc v ARVOS GmbH*, 2024 ABKB 97 [Decision], the chambers judge stayed tort and contract claims but refused to stay the *TFA* claim. All claims were advanced through third-party proceedings commenced by ARVOS GmbH, a German corporation (ARVOS),[1] against the appellants, who are based in Portugal (collectively, Arsopi).

[3] Arsopi appeals, arguing that the chambers judge erred in failing to stay or strike the entirety of the third-party claim.

[4] We conclude that the appeal must be allowed because the chambers judge erred in his characterization of the *TFA* claim as being a claim between the plaintiff, Orica[2], and Arsopi, leading to his conclusion that the *TFA* claim fell outside the scope of the arbitration clause between ARVOS and Arsopi. However, Orica did not sue Arsopi directly and the *TFA* claim is fundamentally a claim between ARVOS and Arsopi. Consideration of the principles enunciated in in *Kaverit Steel and Crane Ltd v Kone Corporation*, 1992 ABCA 7 [*Kaverit*], leave to appeal to SCC refused, 22906 (24 September 1992), leads to the conclusion that the *TFA* claim falls within the scope of the arbitration clause as a dispute "arising out of or in connection with" the agreement between ARVOS and Arsopi and must also be stayed.

Background

[5] In May 2012, Orica Australia Pty Ltd (Orica Australia) engaged ARVOS to design and manufacture a waste heat exchanger and superheater (Equipment) to be installed at an ammonium nitrate plant located in Carseland, Alberta.

[6] ARVOS subsequently subcontracted with Arsopi to manufacture the Equipment. The subcontract between ARVOS and Arsopi incorporated ARVOS's general purchasing terms and conditions. Those terms and conditions stipulated the subcontract was governed by German law and that all disputes arising out of or in connection with the subcontract had to be arbitrated in Germany.

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[1] ARVOS GmbH was formerly known Alstom Power Energy Recovery GmbH, including during some of the key events, but there is no material distinction for the purposes of this decision.

[2] Orica Canada Inc and Orica International Pte Ltd are collectively referred to as Orica.

2026 ABCA 49 (CanLII)

2026 ABCA 49 (CanLII)

[7] The Equipment was delivered to Orica Australia, then sold to Orica Canada Inc, the operator of a plant producing ammonium nitrate and products for Orica International Pte Ltd.

[8] In late 2014, the plant had to be shutdown, allegedly due to issues with the Equipment.

[9] Orica filed a statement of claim in March 2017 against ARVOS, alleging defects in the Equipment caused the plant shutdown. Orica maintained the defects were attributable to ARVOS's negligence in carrying out its manufacturing duties and that ARVOS negligently misrepresented its abilities. This tortious conduct allegedly caused loss to Orica in the form of repair costs, lost carbon credits, lost business opportunities, lost revenue, and incremental supply and freight costs, among other things. Although Orica refers to Arsopi in the statement of claim, Arsopi was not named as a defendant.

[10] ARVOS filed a statement of defence denying liability. ARVOS also filed a third-party claim against Arsopi, maintaining that if ARVOS is liable to Orica, then Arsopi is liable to ARVOS because of common law obligations, contractual obligations, and statutory rights of contribution. In the third-party claim, ARVOS relied in part on a statutory right of contribution under the *TFA* that allows a tortfeasor who is named as a defendant, to recover contribution from any other tortfeasor who is not named as a defendant, but who would have also been liable to the plaintiff if it had been named as a defendant: *TFA*, s 3(1)(c).

[11] Arsopi filed an application to strike or stay the third-party claim against it pursuant to the *International Commercial Arbitration Act*, RSA 2000, c I-5 [*ICAA*], relying on the terms and conditions of the subcontract, including the following:

> **22. GOVERNING LAW AND CONTRACT LANGUAGE**
>
> 22.1 The Contract and any dispute in relation thereto shall be governed by and construed in accordance with the laws of Germany with the exception of its conflict of law provisions. [...]
>
> **23. DISPUTE RESOLUTION**
>
> All disputes arising out of or in connection with the Contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by three arbitrators appointed in accordance with the said Rules of Arbitration. The place of arbitration shall be in Frankfurt am Main, Germany. […]

[12] The key issue before the chambers judge was whether the third-party claim filed in Alberta should be stayed in favour of arbitration in Germany pursuant to the *ICAA*, on the basis that its subject matter fell within the scope of the arbitration clause. The chambers judge stayed the tort and contract claims in the third-party claim, but he declined to stay what he described as the Orica-Arsopi tortfeasor claim advanced under the *TFA*.

2026 ABCA 49 (CanLII)

[13] In the Decision, the chambers judge found that the law of Germany applied to the arbitration clause but also noted that foreign law is a question of fact that must be pleaded and proven on a balance of probabilities: Decision at paras 49–51. If it is not proven, then the law of the forum applies: Decision at para 50, citing *Phillips v Avena*, 2006 ABCA 19 at para 72 [*Phillips*].

[14] The chambers judge generally accepted the evidence of German law and he particularized what he accepted on a balance of probabilities: Decision at paras 52–53. He concluded, though, that he was "unable to find, on a balance of probabilities, that it is the law in Germany that ARVOS could issue a third party notice in Germany related to issues covered by the [arbitration clause], even if Orica and ARVOS were litigating in the German Courts": Decision at para 55.

[15] Notably, the chambers judge went on to write at paragraph 60:

> […] Orica are not parties to the [arbitration clause], and are strangers to the contracting documents between ARVOS and Arsopi. The tort claim against Arsopi advanced by ARVOS arises due to the operation of law under the *Tort-Feasors Act*, and the common law [citations omitted]. I find the [Orica-Arsopi] TFA Claim is not something that the [expert report] covers and is not within the [arbitration clause]. It is not expressly mentioned, and I find that the generalized references to the Third Party Claim in the [expert report] cannot encompass this particular claim due to nuances which [the expert] has not appreciated nor addressed. This is a claim whose genesis is in Canadian law.

[16] The foregoing makes clear that in considering whether the *TFA* claim fell within the scope of the arbitration clause, the chambers judge relied upon the fact that Orica was not a party to the agreement between ARVOS and Arsopi. He further noted that the basis of the *TFA* claim was the statutory claim for contribution under the *TFA* and under the common law, and concluded that the *TFA* claim was not contemplated by the arbitration clause. The *TFA* claim's genesis in Canadian law was reiterated by the chambers judge again later in the Decision when he wrote that the claim "is premised on a cause of action at law between Orica and Arsopi, and fall[s] outside the scope of the [arbitration clause]. It is governed by Canadian law": Decision at para 68.

[17] The chambers judge held "that claim must remain unaffected by, and is not subject to, the *ICAA*. It will not be stayed or struck. It will be heard and determined in Alberta": Decision at para 80. The chambers judge concluded the *TFA* claim "does not fall within the [arbitration clause] and that claim remains in the Third Party Claim for determination in this Action": Decision at para 98.

Grounds of appeal and standard of review

[18] Arsopi submits that the chambers judge erred by:

a. failing to apply the test set out in *Kaverit* properly or at all;

b. failing to find the *TFA* claim falls within the arbitration clause and is therefore subject to mandatory arbitration;

c. applying Canadian law rather than accepting the uncontradicted evidence of the appellants' expert that under German law the *TFA* claim falls within the arbitration clause and is therefore subject to mandatory arbitration;

d. failing to strike the *TFA* claim on the basis that it was barred by the limitation periods of German law, as set out in the uncontradicted expert evidence of the respondent; and

e. misapprehending and misinterpreting the appellants' expert evidence in a manner that goes to the very core of the outcome of the case.

2026 ABCA 49 (CanLII)

[19] Generally, the interpretation of a contract is a question of mixed fact and law, subject to the palpable and overriding error standard of review unless there is an extricable question of law, which would be reviewed for correctness: *Sattva Capital Corp v Creston Moly Corp*, 2014 SCC 53 at paras 50, 53 [*Sattva*]. Courts should be cautious in identifying extricable questions of law related to contractual interpretation, but such questions may include applying an incorrect principle, failing to consider a mandatory element of a legal test, or failing to consider a relevant factor: *Sattva* at para 53, quoting *King v Operating Engineers Training Institute of Manitoba Inc*, 2011 MBCA 80 at para 21; *Corner Brook (City) v Bailey*, 2021 SCC 29 at para 44; *Earthco Soil Mixtures Inc v Pine Valley Enterprises Inc*, 2024 SCC 20 at para 28.

Analysis

The *competence-competence* principle

[20] We note that that the *competence-competence* principle was raised for the first time in oral argument before the chambers judge.

[21] The chambers judge described the *competence-competence* principle as follows:

> In [*Peace River Hydro Partners v Petrowest Corp*, 2022 SCC 41 [*Peace River*]], the Supreme Court indicated that competence-competence is a principle that gives precedence to the arbitration process. It holds that as a general proposition "arbitrators should be allowed to exercise their power to rule first on their own jurisdiction" (at para. 39), and further stated that it is well established in Canada that a challenge to an arbitrator's jurisdiction should generally be decided at first instance by the arbitrator, which reflects the presumption that arbitrators have fact-

> finding expertise comparable to that of courts, and that parties intended an arbitrator to determine the validity and scope of their agreement.
>
> Decision at para 31.

[22] The chambers judge concluded that certain exceptions to this principle applied in this case: Decision at paras 28-42. His consideration of the *competence-competence* principle and his conclusion that it did not apply in the circumstances of this case were not raised on appeal. Therefore, neither was considered in deciding this matter. Nothing in this decision should be interpreted as a comment on or an endorsement of the chambers judge's analysis of this issue.

<u>The *Tort-Feasors Act* claim</u>

[23] The chambers judge found that the *TFA* claim was not addressed by the appellants' expert in her report, and therefore, the chambers judge must have concluded that foreign law regarding this claim was not proven on a balance of probabilities. As such, he was left to apply the law of Alberta, as he recognized at paragraph 50 of the Decision. Indeed, relative to the arbitration clause, he expressly wrote at paragraph 51:

> I must consider the evidence of [the expert], including the [expert report], and assess whether it permits me to find, on a balance of probabilities, German law as a fact for the purposes of such interpretation, failing which I must apply the law of the forum in interpreting this clause.

[24] Therefore, the chambers judge recognized he had to consider what meaning to give to the arbitration clause under the law of Alberta. In his analysis, however, the chambers judge found that the *TFA* claim was a statutory claim that had its genesis in Canadian law and fell outside of the scope of the arbitration agreement between ARVOS and Arsopi. Fundamental to the chambers judge's determination was his interpretation of the nature of the claim under section 3(1)(c) of the *TFA*. He described this claim as "[a] *Tort-Feasors Act* indemnity claim as between Orica and Arsopi due to a duty of care that Arsopi allegedly owed Orica and was breached": Decision at para 12.

[25] Under the common law, a plaintiff was entitled to hold any one tortfeasor liable for the entirety of the plaintiff's loss. As a result, a plaintiff could recover its entire loss from a single tortfeasor (Tortfeasor A), even when another tortfeasor was also responsible for that loss (Tortfeasor B). Tortfeasor A generally had no common law recourse against Tortfeasor B.

[26] Section 3(1)(c) of the *TFA*, and its equivalent provisions in other jurisdictions, was enacted to do away with the unfairness of this common law rule: Glanville L Williams, *Joint Torts and Contributory Negligence: A Study of Concurrent Fault in Great Britain, Ireland and the Common-Law Dominions* (London: Stevens and Sons Limited, 1951) at 80. This has been

2026 ABCA 49 (CanLII)

recognized in Alberta jurisprudence: *Canada Deposit Insurance Corp v Prisco*, 1996 CanLII 17968 at para 10 (ABCA) [*Prisco*]; *Wallace v Litwiniuk*, 2001 ABCA 118 at paras 25–29.

[27] Section 3(1)(c) of the *TFA* states:

> 3(1) When damage is suffered by any person as a result of a tort, whether a crime or not,
>
> […]
>
> (c) any tort-feasor liable in respect of that damage may recover contribution from any other tort-feasor who is or would, if sued, have been liable in respect of the same damage, whether as a joint tort-feasor or otherwise, but no person is entitled to recover contribution under this section from any person entitled to be indemnified by the person first mentioned in respect of the liability regarding which the contribution is sought.

[28] A claim may be advanced under this section based on common law duties allegedly owed by a third-party tortfeasor to the plaintiff in an action. Here, no one disputes that Orica could have named Arsopi as a defendant in the main action on the premise that Arsopi allegedly owed a duty of care to Orica as the known end user of the Equipment. The fact is that Orica chose not to and sued only ARVOS. ARVOS in turn relied upon the *TFA*, and could have continued in the litigation proceedings without issue but for the arbitration clause that prompted further consideration.

[29] The respondent submits that the chambers judge was correct in his characterization of the *TFA* claim as being one between Orica and Arsopi. In support of its position, the respondent relies on *Prisco* where Kerans JA for the Court considered whether a defendant tortfeasor who sued a third party was bound by the same limitation period as the plaintiff. As part of his analysis, Kerans JA considered the *TFA* that existed at the time and contained the same language in section 3(1)(c), and wrote:

> […] Alberta long ago enacted the *Tort-Feasors Act*, R.S.A. 1980, c. T-6, which permits one tortfeasor to raise against another tortfeasor, who allegedly contributed to the loss of the plaintiff, a cause of action *of the plaintiff*. The cause is derivative, by which I mean simply that, while it is statutory in nature, the statute says that the defendant can invoke against the third party only the claim that the plaintiff might have brought but did not. [emphasis in original]
>
> *Prisco* at para 10.

[30] In our view, the foregoing passage provides little support for the respondent's position. The comments were offered as *obiter* as the *TFA* did not squarely address the issue before the Court,

2026 ABCA 49 (CanLII)

which required a consideration of what limitation period applied under the *Limitation of Actions Act*, RSA 1980, c L-15 in the context of a tortfeasor claim.

2026 ABCA 49 (CanLII)

[31] Moreover, we observe that Alberta's limitations legislation has been amended since 1996 and, as a result, the comments in *Prisco* regarding the limitation periods for *TFA* claims are of little precedential value. Following one such amendment, Slatter J (as he was then) determined that the provisions of the new *Limitations Act*, RSA 2000, c L-12 [*Limitations Act*] changed the test for discoverability for a claim for contribution to be "the time when the Defendant knew or ought to have known that the Third Party had a duty to contribute to any damages suffered by the Plaintiff, for which the Defendant might be held jointly liable with the proposed Third Party": *Dean v Kociniak*, 2001 ABQB 412 at para 54 [*Dean*]. Slatter J made clear that the limitation period on the claim for contribution no longer began when the limitation period started to run against a plaintiff: *Dean* at para 42.

[32] The *Limitations Act* was further amended in 2014 to encode specific limitation periods for claims for contribution under the *TFA*, stipulating that a defendant tortfeasor's claim is not tied to a plaintiff's limitation period, lending further support that the chambers judge erred in characterizing the *TFA* claim as being between plaintiff and third party, or in this case, between Orica and Arsopi.

[33] Although the language of *Prisco* refers to "a cause of action of the plaintiff", in our view, these words are more appropriately considered in light of more recent jurisprudence from this Court which describes the requirement that the third-party tortfeasor be liable for the same damage suffered by the plaintiff as a condition precedent to the defendant tortfeasor advancing a *TFA* claim against a third-party tortfeasor: *Howalta Electrical Services Inc v CDI Career Development Institutes Ltd*, 2011 ABCA 234 at para 8 [*Howalta*]; see also Lewis Klar et al, *Remedies in Tort*, Jennifer Lietch & Allan C Hutchinson, eds (Toronto: Thomson Reuters Canada Limited, 2025) (loose-leaf updated October 2025) at §29:22.

[34] The respondent also relies upon *Canadian Natural Resources Limited v Arcelormittal Tubular Products Roman SA (Mittal Steel Roman SA)*, 2012 ABQB 679 [*CNRL QB*] which, in turn, relied on *Prisco*. However, the portion of *CNRL QB* addressing the ruling on the *TFA* claim was varied by this Court in *Arcelormittal Tubular Products Roman SA v Fluor Canada Ltd*, 2013 ABCA 279 at para 34 [*CNRL CA*], leave to appeal to SCC refused, 35568 (6 February 2014). Further, this Court in *CNRL CA* reiterated that liability to the plaintiff is a condition precedent of a *TFA* claim in order for the third-party tortfeasor to be liable to the defendant tortfeasor and for there to exist a right of contribution between the two tortfeasors: *CNRL CA* at para 32. Therefore, we do not consider *CNRL QB* to be helpful on this issue.

[35] Ultimately, we conclude the chambers judge erred in characterizing the *TFA* claim as being between Orica and Arsopi, rather than between ARVOS and Arsopi. This error led to a misapplication of the principle in *Kaverit* providing that absent consent, submission or governing

law directing otherwise, non-parties to an arbitration agreement cannot be bound by an agreement to arbitrate: *Kaverit* at paras 13–15, 21.

2026 ABCA 49 (CanLII)

[36] In our view, the *TFA* claim is a claim between ARVOS and Arsopi, both parties to and bound by the arbitration clause. We arrive at this conclusion for several reasons.

[37] First, the language of section 3(1)(c) of the *TFA* read in its plain and ordinary sense clearly provides a substantive right and remedy belonging to a defendant tortfeasor. In other words, section 3(1)(c) creates a substantive right in favour of Tortfeasor A, to be litigated as between Tortfeasor A and Tortfeasor B, to which the plaintiff will often be indifferent: see *Endean v St Joseph's General Hospital*, 2019 ONCA 181 at paras 48–49; Klar at §29:29. As already noted, Orica has sued ARVOS alone and having done so, now seems to be indifferent to Arsopi's participation in the Alberta litigation proceedings given Orica did not participate in these proceedings. If the status of the third-party claim mattered to Orica, one would expect they would have participated in some fashion or taken a position before the chambers judge or the panel of this Court.

[38] Also, this Court has previously commented that the statutory remedy provided by section 3(1)(c) of the *TFA* is between a defendant tortfeasor and third-party tortfeasor: *Howalta* at para 8; *CNRL CA* at para 32.

[39] Second, as the claimant in a *TFA* claim, the defendant tortfeasor has the burden of proof. The plaintiff in the action has no burden to prove the third-party tortfeasor is liable to it; its action is solely against the defendant tortfeasor. Rather, the defendant tortfeasor has the burden of proving that the third-party tortfeasor is liable for the same damage suffered by the plaintiff and to seek contribution from it: *Annett v Enterprise Rent-A-Car Canada Ltd*, 2019 ABQB 734 at paras 47, 244–246 [*Annett*].

[40] Third, the right to contribution only arises when one tortfeasor pays more than their fair share of the plaintiff's damages: Williams at 80; *Amoco Canada Petroleum Co Ltd v Propak Systems Ltd*, 2001 ABCA 110 at para 43; *Taylor v Canada (Health)*, 2009 ONCA 487 at para 20. In other words, the right to contribution only becomes available to a defendant tortfeasor when it shoulders more of the financial burden than it ought to.

[41] Fourth, a *TFA* claim is only joined with the principal claim for reasons of convenience. The *Alberta Rules of Court*, Alta Reg 124/2010 [*Rules*] prefer that a *TFA* claim be heard with the principal claim but allow for severance of the claims where appropriate: see r 3.46(3), 3.71. Third-party claims, such as a *TFA* claim, embody a claim that can be an independent action of its own right where the plaintiff would not be party to the action: *McNaughton v Baker*, 1988 CanLII 3036 (BCCA) at para 14; see eg *O'Connor Associates Environmental Inc v MEC OP LLC*, 2014 ABCA 140 at para 43.

2026 ABCA 49 (CanLII)

[42] This idea that a *TFA* claim is not dependent on a plaintiff's claim moving forward has long been supported by the jurisprudence. In *Bank of Montreal v Royal Bank of Canada*, [1933] SCR 311, 1933 CanLII 67 (SCC) [*BMO*], the Supreme Court of Canada described a third-party proceeding as "a substantive proceeding and not a mere incident of the principal action": *BMO* at 316. A dismissal of a third-party proceeding does not cause the principal action to fail, nor would resolution of the principal action necessarily force an end to the third-party proceeding. As long as the defendant tortfeasor has paid damages to the plaintiff, the defendant tortfeasor would have a right to recover any over payment from a liable third-party tortfeasor within the applicable limitation period: see eg *Annett* at paras 40, 47, 51; *Angeltvedt v Lawes*, 1997 ABCA 2 at para 4, citing *Stott v West Yorkshire Road Car Co Ltd*, [1971] 3 All ER 534 at 537-539. Similarly in *Enokhok Development Corporation Ltd v Alberta Treasury Branches*, 2011 ABCA 130 at paragraph 7, the Court noted that if a principal action was resolved by summary judgment, the defendant tortfeasor could still pursue the third-party claim against the third-party tortfeasor.

[43] Based on the foregoing, the chambers judge erred in characterizing the *TFA* claim as being between Orica and Arsopi. Rather, under Alberta law, a *TFA* claim is a right that belongs to a defendant tortfeasor, here being ARVOS.

The scope of the arbitration clause

[44] Given the conclusion that the *TFA* claim is a substantive right belonging to ARVOS, a question arises as to whether the chambers judge ought to have further considered the principles enunciated by this Court in *Kaverit*. The appellants submit that the chambers judge erred because he did not fully engage with those principles.

[45] In response, the respondent maintains that the trial judge was not required to apply *Kaverit* because German law governed the arbitration clause. However, this fails to account for the chambers judge's determination that the expert report did not consider the *TFA* claim, meaning that foreign law was not proven. As recognized by the chambers judge, if foreign law is not proven, the law of the forum must be applied: *Tolofson v Jensen*, [1994] 3 SCR 1022 at 1053, 1994 CanLII 44 (SCC); *Phillips* at para 72.

[46] In the alternative, the respondent submits that if *Kaverit* had to be considered, that would nevertheless lead to the conclusion that the *TFA* claim is not captured by the arbitration clause. The respondent relies on *Ferguson Bros of St Thomas v Manyan Inc*, 1999 CarswellOnt 1573, 88 ACWS (3d) 780 (ONSC) to suggest that the *TFA* claim does not depend on the contract between ARVOS and Arsopi, reiterating that the claim belongs to Orica under Alberta statute. In addition, the respondent maintains the claims identified in the third-party claim are too distant from the subcontract between ARVOS and Arsopi, and therefore, the *TFA* claim is not captured by the arbitration clause.

[47] We have already determined that the *TFA* claim is not properly characterized as a claim belonging to Orica. And, as for whether the *TFA* claim is too distant from the subcontract, that is

2026 ABCA 49 (CanLII)

the issue addressed in *Kaverit* and subsequent cases from this Court. In our view, the chambers judge should have applied the principles in *Kaverit* to determine whether the scope of the arbitration clause included the *TFA* claim based on its relationship to the subcontract and the subcontract's arbitration clause that provides, "[a]ll disputes arising out of or in connection with the Contract shall be finally settled" through arbitration.

[48] In *Kaverit*, this Court interpreted a clause similar to the arbitration clause in this case, which provided for mandatory arbitration in relation to "[a]ny dispute arising out of or in connection with this Agreement": *Kaverit* at para 3. The Court reasoned that this language contemplates claims in which the existence of the agreement is germane to the claim or a defence to it, in the sense that the contract is a necessary element: *Kaverit* at paras 30, 38. The Court also rejected the argument that only claims for breach of contract could be captured by the arbitration clause, and not tort claims: *Kaverit* at paras 25–26, 30.

[49] In *Agrium Inc v Babcock*, 2005 ABCA 82 [*Babcock*], the parties entered a construction contract containing an arbitration clause. After a dispute arose, the contractor filed a statement of claim and a notice of arbitration. The chambers judge found that the arbitration was time-barred but declined to strike the statement of claim: *Babcock* at para 5. On appeal, the Court considered *Kaverit* and concluded that the matters in the statement of claim fell within the scope of the arbitration clause. The Court also noted that the fact that arbitration was time-barred was not a basis to allow a party to litigate the claim, instead reasoning "[a] limitation period always has the consequence of denying a party a recourse": *Babcock* at para 16.

[50] In the more recent case of *Autoweld Systems Limited v CRC-Evans Pipeline International, Inc*, 2009 ABCA 366 [*Autoweld*], leave to appeal to SCC refused, 33487 (1 April 2010), this Court quoted its earlier findings in *Kaverit*, explaining:

> Whether a dispute is "in connection with" the contract, even though not strictly speaking under that contract, involves a consideration of the context. Where a contractually based claim is combined with a parallel claim in tort or in equity, the claims might be said to be "connected" if they rely "on the existence of a contractual obligation as a necessary element to create the claim, or to defeat it" […]
>
> *Autoweld* at para 5 [citations omitted]

[51] Applying these principles, the Court held that disputes over a settlement agreement that did not have an arbitration clause, were not sufficiently connected to the underlying licence agreement containing an arbitration clause: *Autoweld* at paras 6–7.

[52] These cases recognize that whether a given claim falls within the scope of an arbitration clause that applies to "disputes arising out of or in connection with" a contract, necessarily involves a consideration of the relationship of the claim being advanced to the terms of the contract. Importantly, as noted in *Autoweld*, the analysis is contextual. As in any contractual interpretation

exercise, the court is tasked with determining the objective intent of the parties at the time the contract was formed, based on a consideration of "the contract as a whole, giving the words used their ordinary and grammatical meaning, consistent with the surrounding circumstances known to the parties at the time of formation of the contract": *Sattva* at para 47; *IFP Technologies (Canada) Inc v EnCana Midstream and Marketing*, 2017 ABCA 157 at paras 79–84.

[53] Arbitration clauses should be interpreted in accordance with ordinary interpretation principles including the contract they are embedded in as well as the broader commercial arrangement they are a part of: J Kenneth McEwan & Ludmila B Herbst, *Commercial Arbitration in Canada: A Guide to Domestic and International Arbitrations* (Toronto: Thomson Reuters Canada Limited, 2025) (loose-leaf revision 2025-01) at §2:15. Indeed, the Supreme Court of Canada has recognized that the modern view expressed in Canadian arbitration legislation is that parties should be held to their contractual agreements to arbitrate: *Peace River* at para 49; *TELUS Communications Inc v Wellman*, 2019 SCC 19 at paras 50–52; see also McEwan & Herbst at §10:3; J Brian Casey, *Arbitration Law of Canada: Practice and Procedure*, 4th ed (New York: JurisNet, LCC, 2022) at §7.4; *ICAA*, s 10; *United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards*, 10 June 1958, 330 UNTS 38, art II(3); *UNCITRAL Model Law on International Commercial Arbitration (1985), with amendments as adopted in 2006* (Vienna: United Nations, 2008), art 8(1).

[54] Here, the phrase, "[a]ll disputes arising out of or in connection with the Contract" is broad and does not indicate an intention to limit arbitration to disputes about rights and obligations created within the four corners of the subcontract. If that was the intent, the parties could have referred to disputes "under" the contract to narrow the scope of the arbitration clause: see *Kaverit* at para 29.

[55] We also observe that the subcontract was an agreement between two sophisticated European corporations working together to facilitate the design and manufacture of the Equipment to be installed in the plant in Alberta. It is clear the parties turned their minds to the possibility that issues between them may arise, and to that end, ARVOS and Arsopi agreed to numerous procedures, rights and obligations in the subcontract that might become relevant if problems associated with the design and manufacture of the Equipment arose. For example, the subcontract includes a representation that Arsopi had the necessary expertise to perform the work. ARVOS was entitled to inspect the work at any reasonable time, including on delivery. The parties agreed to a specified defects period and there was a third-party indemnity clause.

[56] The foregoing provisions may be relevant to the advancement of, or defence against, a claim for contribution or indemnity by ARVOS against Arsopi pursuant to the *TFA*. Therefore, existence of the subcontract is germane to the claim and to the defence against it: *Kaverit* at paras 30, 38. Given that the parties rely on the existence of the subcontract as a necessary element in the determination of the *TFA* claim, the *TFA* claim is "connected" to the subcontract: *Kaverit* at para 30.

2026 ABCA 49 (CanLII)

2026 ABCA 49 (CanLII)

[57] We conclude that the *TFA* claim falls within the scope of the arbitration clause as a dispute "arising out of or in connection" with the subcontract: *Kaverit* at paras 30, 38; *Autoweld* at para 5. Therefore, we find it unnecessary to consider the remainder of the appellants' grounds of appeal, including the chambers judge's findings regarding German law and his interpretation of the appellants' expert report. We observe that the chambers judge's characterization of the *TFA* claim played a role in his interpretation of the appellants' expert report. If the chambers judge had characterized the *TFA* claim properly, he may have arrived at a different conclusion regarding the scope and applicability of the expert report and the respondent has not suggested a reasoning pathway that would lead to a different result in that event.

Should the third-party claim be stayed or struck?

[58] Arsopi submitted that the *TFA* claim should be struck, relying on rule 3.68 and *Babcock*. We disagree. For the same reasons provided by the chambers judge in respect of the other claims set out in the third-party claim, the appropriate response is to stay the *TFA* claim pursuant to section 10 of the *ICAA*. Accordingly, the entirety of the *TFA* claim is stayed.

Conclusion

[59] The appeal is allowed. The entirety of the third-party claim is stayed.

Appeal heard on October 15, 2025

Memorandum filed at Calgary, Alberta
this 20th day of February, 2026

Ho J.A.

de Wit J.A.

Fagnan J.A.

Appearances:

T.R. McDonald
R. Martz
for the Appellants

M. Schneider
T. Kemp
for the Respondent

2026 ABCA 49 (CanLII)