COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Seylynn (North Shore) Development Limited Partnership v. Seylynn (North Shore) MP Ltd.,* 2026 BCCA 78

Date: 20260211
Docket: CA50895

Between:

Seylynn (North Shore) Development Limited Partnership

Appellant
(Respondent)

And

Seylynn (North Shore) MP Ltd.

Respondent
(Claimant)

Before: The Honourable Justice Iyer
The Honourable Justice Gomery
The Honourable Justice Brundrett

On an application to vary: An Order of the Court of Appeal for British Columbia, dated December 19, 2025 (*Seylynn (North Shore) Development Limited Partnership v. Seylynn (North Shore) MP Ltd.*, Vancouver Docket CA50895).

Oral Reasons for Judgment

Counsel for the Appellant:	A.P. Morrison J.E. Shragge
Counsel for the Respondent:	P.J. Sullivan P. Parihar
Place and Date of Hearing:	Vancouver, British Columbia February 11, 2026
Place and Date of Judgment:	Vancouver, British Columbia February 11, 2026

Summary:

The appellant seeks to vary the dismissal of its application for leave to appeal an arbitral award. The chambers judge denied leave on the basis that the appellant had not identified a question of law arising from the award. Held: application dismissed. The legal question identified by the appellant is not a question arising from the award, and therefore the requirements of leave under the Arbitration Act are not satisfied.

GOMERY J.A.:

Overview

[1] The parties were participants in a residential property development in North Vancouver. The appellant ("LP") was the limited partnership undertaking the development. The respondent ("GP") was LP's general partner from its inception in late 2011 until it was removed in March 2021. Following GP's removal, a dispute arose as to its entitlement to management fees. This dispute went to arbitration and was resolved by the award of a three-person Arbitration Tribunal in July 2025.

[2] GP commenced the arbitration in February 2024. It sought an award of $5.4 million in respect of management fees it said it was owed. GP had already been paid management fees prior to its removal. LP contended that GP had been overpaid by approximately $1.05 million and, by counterclaim issued in May 2024, it sought an award in the amount of the overpayment. The Tribunal dismissed both claim and counterclaim. Considering that GP had achieved substantial but not complete success, it awarded GP costs of approximately $430,000, which was 75% of the amount sought by GP.

[3] LP sought leave to appeal the Tribunal's award of costs to GP. In unpublished reasons, Justice Warren refused leave to appeal. GP asks us to vary her decision and grant leave to appeal. No one contests the Tribunal's determination of the substantive dispute submitted to arbitration.

[4] This Court's jurisdiction to entertain an appeal from a decision of an arbitration tribunal is limited. An appeal only lies in respect of a "question of law arising out of an arbitration award": *Arbitration Act*, S.B.C. 2020, c. 2, s. 59(2). Leave

should be granted only where such a question of law can be clearly perceived and identified in the reasons: *Grewal v. Mann*, 2022 BCCA 30 at para. 32.

[5] It is not enough that the requirement of a question of law arising out of the award is satisfied. It is also incumbent on the appellant to persuade a justice to exercise their discretion to grant leave to appeal on one of the bases set out in s. 59(4) of the statute.

[6] Justice Warren refused leave because she considered that LP had not identified a question of law arising from the award. She did not go on to address whether, in the alternative, she would grant leave under s. 59(4) if this requirement were satisfied.

[7] LP maintains that Justice Warren erred in law in holding that the requirement is not satisfied. It submits that she failed to recognize an error of law in the Tribunal's reasoning.

[8] For the reasons that follow, I do not agree that Justice Warren erred. I agree with her that LP has failed to identify an error of law arising out of the award. Accordingly, I would dismiss the application to vary.

Legal Framework

[9] Section 50(2) of the *Arbitration Act* provides that, unless otherwise agreed by the parties, the costs of an arbitration are in the discretion of the tribunal. It goes on to expressly permit a tribunal to award legal fees, disbursements, and expenses actually incurred.

[10] The Tribunal accepted that its discretion was not unfettered and that the normal rule in arbitration is that the substantially successful party is entitled to indemnification costs of its reasonable fees and disbursements, unless there are special circumstances that warrant a deviation from the normal rule, citing *Allard v. The University of British Columbia*, 2021 BCSC 60.

[11] Justice Warren's refusal of leave is subject to review by a division of this Court pursuant to s. 29(1) of the *Court of Appeal Act*, S.B.C. 2021, c. 26. To the extent that a decision under review is discretionary, deference is owed. But no deference is owed in respect of legal determinations. The question of whether an applicant for leave to appeal an arbitral award has raised a question of law arising from the award is a legal determination: *Seylynn (North Shore) Phase II GP Ltd. v. Seylynn (North Shore) Properties Phase II Limited Partnership*, 2025 BCCA 330 at paras. 40–41 [*Seylynn Phase II*].

The Issue

[12] Analytically, the requirement of a question of law arising out of an award has two components. The first is the identification of a question of law. The second is recognition of the question as one that constituted a link in the chain of reasoning that led to the award.

[13] LP states its question of law as follows:

> Whether the retention of a benefit taken by a claimant is a monetary benefit that can ground a finding of substantial success, that in turn, can ground an award of costs, particularly where the claimant seeks but does not obtain an actual monetary judgment.

[14] Generality is the distinguishing characteristic of a question of law, as opposed to a question of fact or a question of the application of the law to the facts: *Teal Cedar Products Ltd. v British Columbia*, 2017 SCC 32 at para. 43; *Seylynn Phase II* at paras. 46–47. I agree with LP that the question posed by LP is a question of law because it implicates a general legal proposition.

[15] LP argues that the answer to this question is, no, retention of a monetary benefit cannot in law ground a finding of substantial success justifying an award of costs. The issue is whether the question is one arising from the award of costs to GP. Did the Tribunal hold that retention of a monetary benefit can ground a finding of substantial success and, if it did, was that holding clearly a link in the chain of reasoning that led to the costs award?

[16] In addressing this question, we must bear in mind the cautionary words offered by Justice Gascon speaking for a majority in the Supreme Court of Canada in *Teal Cedar* at para. 45:

> Courts must be vigilant in distinguishing between a party alleging that a legal test may have been altered in the course of its application (an extricable question of law; *Sattva*, at para. 53), and a party alleging that a legal test, which was unaltered, should have, when applied, resulted in a different outcome (a mixed question).

[17] It is worth noting that the issue is not whether the general legal proposition LP advances is correct. For present purposes, it suffices if it is legally arguable. The strength of the legal argument would fall to be considered in the exercise of the court's discretion to grant or refuse leave to appeal, not in determining, as a preliminary matter, whether an applicant for leave to appeal has identified a question of law arising out of the award.

The Award

[18] The parties made submissions concerning costs in anticipation of the award, without knowing how the substantive issues would be decided. Both sides identified three scenarios and addressed each in turn:

a) GP's claim would succeed and LP's counterclaim would be dismissed;

b) GP's claim would fail and LP's counterclaim would succeed; and

c) Both claim and counterclaim would fail.

[19] As it turned out, the outcome was the third scenario. Anticipating this possibility, GP sought its costs on a full indemnity basis on the basis that it would have achieved substantial success. LP opposed and submitted that GP sought be deprived of some of its costs even if it were considered to have achieved substantial success.

[20] The Tribunal gave the following reasons for viewing GP as the substantially successful party:

> 172. The Tribunal finds, for the purposes of determining the allocation of costs that the Claimant is the substantially successful party. The Claimant succeeded in its contractual claim for a variation of the Phase I PA resulting in its entitlement to retain the full amount of the Management Fees already taken as General Partner and in its defeating the Respondent's counterclaim. However, the Claimant was not entirely successful on the interpretation of the Phase I PA, as varied, i.e., the Claimant sought, but did not obtain, damages based on the Management Fee having been "locked-in" from the outset.
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> 173. As stated by the Respondent in its costs submission, "[c]osts are typically awarded to a party that is substantially successful", absent special circumstances. The Respondent also referred to *Cottrill v. Utopia Day Spas and Salons Ltd.*, 2019 BCCA [26], paras. 18, 19, as follows: "The BC Court of Appeal has consistently ruled that a party who obtains a monetary judgment is a successful party, even if the amount of the judgment is less (even significantly less) than the amount claimed". The Tribunal finds that the principle applies here. The Claimant obtained a monetary award by being permitted to retain the Management Fees and by defeating the Respondent's counterclaim, despite not obtaining a potentially larger monetary damages award had the "locked-in" Management Fee position been accepted.
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> [Emphasis added.]

[21] The Tribunal went on to limit GP to 75% of its indemnity costs, despite its substantial success, by reason of certain steps and positions taken by GP in the course of the proceeding.

Analysis

[22] LP submits that it was not in law open to the Tribunal to view the retention of the management fees GP had already been paid as a monetary benefit obtained by GP through the award, grounding a finding of substantial success. It says that the Tribunal recognized that a finding that GP had obtained a monetary benefit from the award was essential, relying on *Cottrill v. Utopia Day Spas and Salons Ltd.*, 2019 BCCA 26. It contends that the Tribunal altered and misapplied the law stated in *Cottrill* in concluding that GP was substantially successful. It describes "being permitted to retain the Management Fees and … defeating [LP's] counterclaim" as two sides of the same coin. It submits that the important point is that GP failed to fix liability on LP for the additional management fees it claimed.

[23] This was a case involving two distinct causes of action: the claim, and the counterclaim. In a case involving a single cause of action, there are two simple ways

that a party may achieve substantial success. A claimant may succeed in obtaining a judgment or award payable by the defendant, or a defendant may succeed by obtaining dismissal of the claim. *Cottrill* noted both possibilities at para. 18, in a passage cited by the Tribunal.

[24] The Tribunal did not rely simply on GP's retention of the management fees it had taken as an indicator of success. It emphasized that GP had defeated LP's counterclaim. In the paragraphs I have quoted, while the Tribunal twice refers to the retention of the management fees, in the same breath it adds that GP defeated the counterclaim. Defeating the counterclaim was a success for GP.

[25] Justice Warren observed:

> [48] The Tribunal referred to *Cottrill* in para. 173 of the Award and said that the principle that a party who obtains a monetary judgment is a successful party, even if the amount of the judgment is less than the amount claimed, applied. When read in context, it is apparent that the Tribunal was simply making the point that the fact that Seylynn GP did not succeed on every issue does not mean it was not substantially successful.
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> [49] While the Tribunal characterized Seylynn GP as having obtained a "monetary award" by being permitted to retain the management fees it had taken and by defeating the counterclaim, it did not apply any principle from *Cottrill* in doing that. *Cottrill* is not about the meaning of the term "monetary award" in this context. There is nothing in *Cottrill* that suggests that this characterization of the relief granted, in a case involving multiple discrete issues and a counterclaim for the return of money, reflects an error in law. Indeed, Seylynn LP has not identified any binding legal principle that the Tribunal failed to apply or applied incorrectly in characterizing the retention of a benefit taken by a claimant as a monetary award in the circumstances present here, or more generally, in finding that Seylynn GP achieved substantial success.

[26] Much of LP's argument before us is devoted to suggesting that its counterclaim was an afterthought of little significance in the context of the litigation as a whole. It says that there was no evidence that it had any intention of commencing independent proceedings to recover management fees that had been overpaid. It suggests that the counterclaim had little or no practical significance, because GP was effectively judgment proof.

[27] None of this addresses the question at hand. It was for the Tribunal to weigh and determine the significance of GP's success overall and in defeating the counterclaim, in the context of the arguments and issues presented to it for determination. Its assessment of the importance of the counterclaim is essentially factual, not legal.

[28] In short, I am not persuaded that LP's legal argument that retention of a monetary benefit cannot ground a finding of substantial success undermines the Tribunal's reasoning grounding this costs award. The legal question identified by LP is not a question arising from the award. I agree with Justice Warren, who put the point as follows at the conclusion of her reasons:

> [51] …As I have explained, the finding of substantial success was grounded in the Tribunal's determination that Seylynn GP was successful on the issue that was given the most weight and in defeating the counterclaim, and not simply because it retained a benefit.

[29] I offer no opinion as to whether LP is correct that retention of a monetary benefit without more cannot ground a finding of substantial success as that legal question is not one arising from the award.

Disposition

[30] For these reasons, I would dismiss the application to vary Justice Warren's dismissal of LP's application for leave to appeal.

[31] **IYER J.A.**: I agree.

[32] **BRUNDRETT J.A.**: I agree.

[33] **IYER J.A.**: The application is dismissed.

"The Honourable Justice Gomery"