

**CITATION:** *Lee Management Solutions Inc. v. Waterloo Standard Condominium Corporation*  
No. 744, 2026 ONSC 1378

**COURT FILE NO.:** CV-25-00753567-0000

**DATE:** 20260306

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** LEE MANAGEMENT SOLUTIONS, Respondent

**AND**

WATERLOO STANDARD CONDOMINIUM CORPORATION NO. 744,  
Applicant

**BEFORE:** Schabas J.

**COUNSEL:** *Michael Ruhl and Jonathan Pettit*, for the Respondent

*Megan Mackey*, for the Applicant

**HEARD:** March 2, 2026

**REASONS FOR JUDGMENT**

**Overview**

- [1] Pursuant to s. 45(1) of the *Arbitration Act, 1991*, S.O. 1991, c. 17, the applicant, Waterloo Standard Condominium Corporation No. 744 (the “Condominium”), seeks leave to appeal an Arbitral Award issued by Michael A. Spears (the “Arbitrator”), dated August 8, 2025.
- [2] The arbitration dealt with a dispute between the Condominium and its former management company, Lee Management Solutions Inc. (“Lee”), which arose when the Condominium terminated the contract for management services with Lee (the “Management Contract”).
- [3] The Management Contract had been entered into between Lee and the developer of the Condominium, or declarant, on December 15, 2022, one day before the developer turned over control of the Condominium to the consumers/purchasers of the Condominium’s units. About a year later, on December 12, 2023, the Condominium cancelled, or terminated, the Management Contract with Lee pursuant to s. 111 of the *Condominium Act, 1998*, SO 1998, c 19 (the “Act”). Lee did not dispute the Condominium’s right to terminate the contract but claimed that it is entitled to liquidated damages for “early termination” as provided in article 27 of the Management Contract in the amount of \$151,628.76.
- [4] The dispute was submitted to arbitration. The Arbitral Award addressed the “threshold issue” of whether the statutory right to terminate the contract under s. 111 of the *Act* relieves the Condominium from paying damages to Lee, or whether article 27 of the

Management Contract survives a contract termination permitted by statute. The Arbitrator found that the ability to terminate the contract permitted by s. 111 did not include the ability to terminate the liquidated damages clause and awarded liquidated damages to Lee of \$151,628.76. The liquidated damages reflect the amount due for the balance of the term of the Management Contract.

- [5] For the reasons that follow, I grant leave to appeal the Award and conclude that the Arbitrator erred in law in finding that the liquidated damages clause survived the statutory termination of the Management Contract. It follows that the appeal is allowed and the Award is set aside insofar as it holds that the Condominium is liable for liquidated damages to the Respondent.

### **Issues**

- [6] This application raises three issues:

- (a) whether the Award is final and binding and not subject to appeal;
- (b) whether the test for granting leave to appeal under s. 45(1) of the *Arbitration Act, 1991*, is met; and
- (c) whether the arbitrator erred in law in finding that the Condominium was liable to Lee for liquidated damages under the Contract.

#### **(a) Can the Award be appealed?**

- [7] The Respondent submits that the Condominium has no right to appeal. It refers to the arbitration agreement between the parties which refers in paragraphs 7 and 17 to the arbitrator making a “final award.” The recitals in the preamble to the arbitration agreement refer to the parties agreeing to an Award that “will be considered final and binding”, but that language is not found in the operative part of the agreement. The Respondent also refers to the Management Contract which says that any dispute with respect to the agreement shall be submitted to arbitration and, in a Schedule, provides that the decision of an arbitrator shall be “final and binding.”
- [8] The Court of Appeal has held that the words “final and binding” creates a bar to appealing a “final” order of a lower court: *Yorkville North Development Ltd. v. North York (City)* (C.A.), 1988 CanLII 4701 (ON CA); *Labourers' International Union of North America, Local 183 v. Carpenters and Allied Workers Local 27*, 1997 CanLII 1429 (ON CA); *Baffinland Iron Mines LP v. Tower-EBC G.P./S.E.N.C.*, 2023 ONCA 245 at paras. 35 and 42.
- [9] However, a “final” order does not create a bar; indeed, as the Court of Appeal observed in *Yorkville North*, a “final” order does not necessarily abrogate an appeal. Rather, in that case a statutory right of appeal existed from final orders of District Court judges; however, it was the term “final and binding” in the *Planning Act, 1983*, S.O. 1983, c. 1, under which the order being appealed had been made, that prevented an appeal.

- [10] In light of my conclusion below that s. 111 of the *Act* terminates the entirety of the Management Contract, the “final and binding” language in it does not assist the Respondent. The Condominium, once control is passed to the unit holders, is entitled to terminate the contract unconditionally. This includes the private dispute process that the developer agreed to with the management company which has the words “final and binding.”
- [11] On the other hand, the *Act* provides in s. 132 that any disagreement over a management contract shall be submitted to mediation and arbitration but the *Act* makes no mention of an award being final and binding.
- [12] The operative parts of the arbitration agreement do not state that the arbitration is “final and binding” either, and aside from two references to the arbitrator making a “final” award, there is no indication that the parties intended to bar an appeal or remedies under the *Arbitration Act, 1991*.
- [13] Furthermore, paragraph 21 of the arbitration agreement contemplates that there could be “court proceedings in relation to the arbitration or to any decision or award rendered by the arbitrator.” While that provision deals with immunity for the Arbitrator, it is not narrowly limited to an action against the Arbitrator but is broadly worded. Paragraph 21 would not have been necessary or would not have to have been so broadly drafted if the right of appeal was removed. Explicit language and express agreement must be present to remove rights of appeal. Neither exists here.
- [14] Accordingly, I do not accept the Respondent’s argument that the Condominium has no right to seek leave to appeal pursuant to s. 45(1) of the *Arbitration Act, 1991*.

**(b) Should leave to appeal be granted under s. 45(1) of the *Arbitration Act, 1991*?**

- [15] Section 45(1) of the *Arbitration Act, 1991* states as follows:

**45 (1)** If the arbitration agreement does not deal with appeals on questions of law, a party may appeal an award to the court on a question of law with leave, which the court shall grant only if it is satisfied that,

(a) the importance to the parties of the matters at stake in the arbitration justifies an appeal; and

(b) determination of the question of law at issue will significantly affect the rights of the parties.

- [16] Here, the tests are met and I find that leave should be granted.
- [17] First, the agreement does not address appeals, or “deal with appeals on questions of law.”
- [18] Second, the appeal raises a question of law, namely, the interpretation of s. 111 of the *Act*, and whether article 27 of the Management Contract survives a termination made pursuant

to s. 111. It is well-established that questions of statutory interpretation are questions of law, reviewed on a standard of correctness: *Harvey v. Talon International Inc.*, 2017 ONCA 267 at para. 32. The determination of this issue requires the Court to review the arbitrator’s interpretation of s. 111, which is a question of law.

- [19] Third, the matters at stake in the arbitration are of importance to the parties. There is a substantial sum of money at stake; this is not an arbitration about a minor dispute between neighbours but affects all owners in the Condominium.
- [20] Fourth, the determination of the question of law will determine the issue between the parties which will significantly affect their rights.
- [21] Although not part of the test, counsel advised that the question of law in this case – the meaning of “terminate an agreement” in s. 111 of the *Act* - has not been previously addressed by a Court. The importance of determining this issue may, therefore, transcend the parties as it will provide guidance to others who may be in similar situations.

(c) **Did the arbitrator err in law in finding that termination of the Management Contract under s. 111 of the *Condominium Act, 1998* did not terminate the liquidated damages clause?**

- [22] Section 111 of the *Condominium Act, 1998* states:

**111** (1) Subject to subsection (2), a corporation may, by resolution of the board, terminate an agreement under which it receives condominium management services and that it has entered into with a person before the owners elected a new board at a meeting held in accordance with subsection 43(1).

(2) To terminate an agreement, the board shall give at least 60 days notice in writing of the date of termination to the person with whom the corporation entered into the agreement.

- [23] It is well-accepted that the *Act* is consumer protection legislation: *Lexington on the Green Inc. v. Toronto Standard Condominium Corporation No. 1930*, 2010 ONCA 751 at para. 49. As consumer protection legislation, the *Act* must “be interpreted generously in favour of the consumer” to achieve its consumer protection objectives: *Harvey* at paras. 61-64.
- [24] The explicit purpose of s. 111 is to protect purchasers from being bound by agreements made by the developer. As O’Connor A.C.J.O. stated in *Lexington on the Green* at para. 42:

Sections 111 to 113 set out the means by which a board of directors elected by unit owners may terminate or apply to the court to terminate certain types of agreements entered into by the corporation before its election. The obvious purpose of these sections is to protect the purchasers of units against agreements entered into by a declarant-controlled board that a newly elected board does not consider to be in the best interests of the corporation. The concern is that the declarant-controlled board

may have entered into "sweetheart agreements" for the management of the condominium corporation or the provision of services that potentially have long-term and undesirable obligations for the condominium corporation. There are no limits in the Act on the reasons why a newly elected board may terminate or seek to terminate agreements under these sections. [Emphasis added]

- [25] A further indication of the consumer protection purpose of the *Act* is found in s. 176, which provides that the Act “prevails despite any agreement to the contrary.” Put another way, like other consumer protection legislation, one cannot contract out of the provisions of the *Act*.
- [26] There is no dispute that s. 111(2) was complied with in this case. The sole issue is whether s. 111(1) terminates all aspects of the Management Contract, including the liquidated damages clause.
- [27] The Arbitrator concluded that “the Condo cannot rely upon section 111 of the *Act* to resile from the termination provisions found in article 27 of the Contract, to which provisions it has agreed.” In my view that conclusion is wrong in law.
- [28] The Arbitrator was aware of the statements in *Lexington on the Green*, about ss. 111 and 112, and that the *Act* is consumer protection legislation. However, at para. 18 of his Award he relied on a decision of the Court of Appeal addressing a very different section of the previous *Condominium Act* in which the Court stated that consumer protection legislation enacted “to promote fair dealing between contracting parties, ought not to be applied in a manner which produces the opposite result by allowing a party to resile from an otherwise valid agreement on grounds that are unfair, unreasonable or capricious”: *Abdool v. Somerset Place Developments of Georgetown Ltd.*, 1992 CanLII 8658 at para. 41(ON CA).
- [29] Unlike the circumstances in *Abdool*, which dealt with the ability of a unit holder to get out of a purchase agreement they signed, the Management Contract was entered into on behalf of the Condominium by the developer. Once control of the Condominium passed to the unit holders, s. 111 allowed the Condominium to “terminate” the contract for any reason, as O’Connor A.C.J.O. noted in *Lexington on the Green. Abdool*, therefore, has no application to this case.
- [30] Later in his Award, at para. 28, the Arbitrator appears to justify his approach by finding that there was no “inequality of bargaining power”, noting that there “is no evidence of a relationship between the declarant and [Lee].” This misses the point. The section exists to protect the unit holders, who did not bargain for the contract in the first place, not the declarant, or Lee. In fact, s. 111 is there to protect the unit holders from “sweetheart agreements” between the declarant and managers: *Lexington on the Green* at para. 42.
- [31] The Arbitrator failed to properly address or interpret s. 111. He did not consider what the Legislature meant when it used the words “terminate an agreement” in the context of the purpose of the legislation. Instead, he reviewed the section by reference to unproclaimed amendments to the *Act*. He purported to apply principles from the federal *Interpretation*

*Act*, which has no application to the provincial *Condominium Act, 1998*. He ought to have considered Ontario’s *Legislation Act, 2006*, S.O. c. 21, Sch. F, which expressly states in s. 56 that a legislative amendment “does not imply anything about the previous state of the law” or that “the previous state of the law was different.” In any event, statutory interpretation requires that the actual legislation be considered, not legislation that is not in force.

[32] *Weller v. Reliance Home Comfort Limited Partnership*, 2012 ONCA 360, addressed the right of a consumer, established in a Regulation under the *Consumer Protection Act, 2002*, S.O. 2002, c. 30, Sch. A, to terminate a “remote”<sup>1</sup> consumer agreement where the supplier sought to amend the agreement. The Court considered whether such a termination could still have consequences for the consumer because the agreement contained a monetary penalty for termination – a situation very similar to this case.

[33] As the Court of Appeal noted at para. 15, “the main objective of consumer protection legislation ... is to protect consumers.” Rosenberg J.A. continued at para. 16:

I agree with the appellant that the right to terminate must be unconditional. An agreement that attaches conditions to the right to terminate does not provide the consumer with a true alternative to accepting the amendment. Depending upon the conditions for termination, the consumer could effectively be coerced into accepting the proposed amendment. Such an interpretation would be inconsistent with the consumer protection objective of the legislation. [Emphasis added]

[34] The same analysis applies to this case. The right to “terminate an agreement” in s. 111 of the *Act* is unconditional. It would make no sense, and be contrary to the purpose of s. 111, if the Condominium remained obligated to pay for the services in the contract after terminating it. Indeed, in this case there would be little point in terminating the contract.

[35] The Arbitrator’s reference to and reliance on promoting “efficiency and security in commercial transactions” in finding that the liquidated damages provision survives a termination, is also misplaced. Section 111 gives the Condominium the power to “terminate an agreement” on 60-days notice. The Arbitrator erred in law in conflating a statutory termination with a breach of contract.

[36] Management companies which enter into such contracts with declarants, must be assumed to know that when control passes to the unit holders, they have the right to terminate under s. 111. To conclude, as the Arbitrator did, that the management company can still rely on the contract to obtain liquidated damages would, in effect, allow for contracting out of the protective provision in s. 111, which is prohibited by s. 176 of the *Act*.

[37] The Arbitrator’s reliance on s. 75(2) of the *Act* is also misplaced. That section requires a declarant to pay the corporation for any shortfall in the amount of common expenses that may exceed the budgeted amount in the first year, “except for those attributable to the

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<sup>1</sup> An agreement entered into when the consumer and supplier are not present together: *Weller*, para. 3.

termination of any agreement under section 111 or 112.” The Arbitrator stated that this section “contemplates additional expense, such as liquidated damages” for termination of a management agreement. I do not agree. The section does not speak to liquidated damages, but to expense variances with the budget statement. In that context, it provides that if, as a result of terminating a management agreement entered into by the declarant, the corporation incurs additional management expenses – such as, for example, hiring a more expensive management company – the declarant is not obliged to pay for that additional expense.

**Conclusion**

- [38] Leave to appeal the Award is granted. The Award is set aside insofar as it ordered liquidated damages to be paid by the Applicant to the Respondent.
- [39] The Respondent shall pay costs of this appeal to the Applicant on a partial indemnity scale in the amount of \$14,000, inclusive of HST and disbursements.

Paul B. Schabas J.

**Date:** March 6, 2026