

Court of King's Bench of Alberta

Citation: Lutz v Lutz Estate, 2026 ABKB 198

Date: 20260316
Docket: 2503 05857
Registry: Edmonton

Between:

Ken Lutz and Brian Lutz

Applicants/
Respondents on the Cross-Application

- and -

**Nathan Lutz and Tyler Lutz in Their Capacities as
Personal Representatives of the Estate of John Andrew Valentine Lutz**

Respondents/
Applicants on the Cross-Application

**Reasons for Decision
of the
Honourable Justice Maureen J. McGuire**

[1] Egg Lake Farms is a family farm that has been owned and operated by the Lutz family for over a century. Currently, the farm is held in a family-owned corporation.

[2] In August 2008, the corporation and the three voting shareholders, who at that time, were Andrew Lutz and his two sons, John and Kenneth, entered into an agreement for the purpose of defining and qualifying their rights and obligations to each other and the terms and conditions under which they agreed to carry on their activities under the corporate structure.

[3] The 2008 Agreement contains two clauses that refer to arbitration. Paragraph 4.01 is a provision setting out the way in which the corporate shares are to be valued every year, and that

clause also states that “if the Shareholders disagree with the valuation determined, or if the surviving Shareholders and a personal representative of the deceased Shareholder disagree with the valuation determined, then valuation should be submitted for the determination by arbitration under this agreement.”

[4] Paragraph 6 of the Agreement is a broader arbitration clause. It says: “In the event that any dispute arises among the parties with reference to this Agreement or any matter arising hereunder, and upon which the parties cannot agree, then such dispute shall be referred to a single arbitrator in accordance with the provisions of the *Arbitration Act* or other similar legislation in force in the Province of Alberta from time to time.”

[5] John Lutz died May 3, 2016. Ken Lutz, together with his son, Brian, who currently holds some of what were originally Andrew Lutz’s shares, want to buy John’s shares pursuant to the terms of the 2008 Agreement which allows remaining shareholders to purchase upon death the shares of the deceased shareholder. There is a dispute between the Applicants and the Estate with respect to the valuation of the shares and also whether there is any obligation on the Estate to sell the shares to Ken and Brian.

[6] On March 6, 2025, Brian and Ken Lutz gave the Estate of John Lutz Notice to Arbitrate. In response, the Estate took the position that the 2008 Agreement was void, or alternatively voidable and declared void by the Estate. The Estate’s position is that if the 2008 Agreement is void then the arbitration clauses in the Agreement are also void. The Estate also takes the position that the Notice to Arbitrate is out of time and barred by the *Limitations Act*, RSA 2000, c L-12.

[7] The Applicants brought this application for an order appointing an arbitrator pursuant to s 10 of the *Arbitration Act*, RSA 2000, c A-43. The Estate opposes the application on the basis that the arbitration clause, together with the entire 2008 Agreement is void, and that the application is out of time.

[8] An arbitration agreement, as defined in the *Arbitration Act* is: “an agreement or part of an agreement by which 2 or more persons agree to submit a matter in dispute to arbitration.” Because an arbitration agreement can be a part of a larger agreement, it is a contract within a contract. Section 17(3) of the *Act* provides that: “If the arbitration agreement forms part of another agreement, it shall, for the purpose of a ruling on jurisdiction, be treated as an independent agreement that may survive even if the other agreement is found to be invalid.”

[9] The Respondent took the position on this application that s 17(3) does not have the meaning a plain reading of its words suggest. The Respondent relies on the common law statement articulated in *Harbour Assurance Co. Ltd. v Kansa General International Insurance Co. Ltd.*, [1992] 1 Lloyd’s L. Rep. 81 (QB Comm Div) that, “if there is an issue as to whether the arbitration agreement exists, that issue can only be resolved by the Court.” The Respondent argued that the Ontario chambers decision of *Bearlap Inc. v Joffe*, 2007 CanLII 49184 (ON SC) where that court accepted jurisdiction to determine the validity of the larger agreement in which the arbitration agreement was a part, is authority for the proposition that if the larger agreement is found to be invalid the arbitration clause within will also be invalid. The cases cited by the respondent do not support that conclusion. To the contrary, the arbitration doctrine of separability provides that an arbitration clause does not necessarily become invalid merely because the underlying agreement is found to be invalid (*Peace River Hydro Partners v Petrowest Corp*, 2022 SCC 41 per Jamal J at paras 221-23 and *Uber Technologies Inc v Heller*,

2020 SCC 16 at para 196). Section 17(3) is the legislative articulation of the doctrine of separability.

[10] The arguments of the Respondent with respect to invalidity of the larger agreement do not challenge the validity of the arbitration clauses as separate agreements. The Respondent does not dispute that the Deceased, John Lutz, signed the Agreement and no issue has been raised with respect to his capacity to enter into that Agreement. Whether or not there may be issues with respect to John's understanding of other parts of the Agreement, nothing suggests that he did not intend to be a party to the arbitration agreements contained within the larger agreement.

[11] The Respondent's alternative argument is that the Court should exercise discretionary jurisdiction to decide the issues of the validity of the larger agreement, and the applicability of the *Limitations Act*. Section 6 of the *Arbitration Act* precludes court intervention except: (a) to assist the arbitration process; (b) to ensure that arbitration is carried on in accordance with the arbitration agreement; (c) to prevent manifestly unfair or unequal treatment of a party to an arbitration agreement; or (d) to enforce awards. The Respondent has not shown that the appointment of an arbitrator and requiring the parties to abide by the arbitration agreement, would amount to manifestly unfair or unequal treatment.

[12] In *Dell Computer Corp v Union des consommateurs*, 2007 SCC 34 at paras 84-85, the Supreme Court has held that in any case involving an arbitration clause, even with respect to matters of jurisdiction, the dispute must be resolved first by the arbitrator. The Court should not intervene except where there is a challenge to jurisdiction based solely on a question of law. Where questions of mixed law and fact are concerned, the rule is the same unless the questions of fact require only superficial consideration of the documentary evidence. Even then, the Court's power to take jurisdiction over the matter is discretionary.

[13] As stated by our Court of Appeal in *EPCOR Power LP v Petrobank Energy and Resources Ltd*, 2010 ABCA 378 at para 24, the raising of a limitation period, while it may be a threshold question, is rarely a pure question of law. This case is no exception. The Respondent argues that, because John Lutz is deceased and this dispute is against the Estate, the limitation period must start on the date of his death. While the date of John's death, if the larger agreement is valid, may be the date the applicants gained the right to purchase shares, the question for limitations purposes in this case is when the applicants knew the estate would not comply with the contractual obligation to sell them, or knew the contractual mechanism for determining the value of the shares would be disputed. Thus, the question of whether the arbitration is barred by reason of delay is a question that will require a factual inquiry beyond the kind of limited or superficial consideration referred to in *Dell*.

[14] The Respondent further argued that the Court could resolve the issue of the invalidity of the larger agreement in its favour with only a superficial consideration of the facts, because the Agreement seems to contradict a trust document that predates the Agreement by about two months. The preamble to the Agreement in dispute makes reference to Andrew Lutz having and beneficially owning 100 Class A shares, whereas the trust document indicates that Andrew Lutz then held 60 of those shares in trust for Brian Lutz conditionally. Several affidavits have been filed as well as cross-examinations on those affidavits and unquestionably more than a superficial consideration of the evidence will be required to determine if there is any real inconsistency between the documents, and if so, what effect such an inconsistency may have on

all or any part of the Agreement that is in dispute in this case. All of this is a matter which, given the arbitration agreements contained within the Agreement, must be resolved by the arbitrator.

[15] The parties agreed that if an arbitrator was to be appointed, that arbitrator should be Hon. Robert A. Graesser, KC. I therefore make that appointment. The application for appointment of an arbitrator is granted, and the cross-application is dismissed.

Heard on the 12th day of March, 2026.

Dated at the City of Edmonton, Alberta this 16th day of March, 2026.

Maureen J. McGuire
J.C.K.B.A.

Appearances:

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