COURT OF APPEAL FOR ONTARIO

CITATION: Friel v. HUB International Limited, 2026 ONCA 313
DATE: 20260504
DOCKET: COA-25-CV-0685

Trotter, Zarnett, and Madsen JJ.A.

BETWEEN

Declan Friel

Applicant (Appellant)

and

HUB International Limited*, Hockey Parent Holdings L.P.*, Hockey Parent Inc.* and Hockey Investments L.P.

Respondents (Respondents*)

Ryan Wozniak and Kristopher Stone, for the appellant

Amanda McLachlan and Clare Murray, for the respondent

Heard: April 17, 2026

On appeal from the order of Justice Linda A. Shin of the Superior Court of Justice, dated June 5, 2025.

REASONS FOR DECISION

[1] The appellant, Declan Friel ("Mr. Friel") is a former employee of HUB International HKMB Limited ("HUB Ontario"), an Ontario corporation operating as an insurance brokerage in Ontario. HUB Ontario is not a party to this appeal.

[2] HUB Ontario is a subsidiary of the respondent, HUB International Limited ("HUB International"). HUB International and the respondent, Hockey Parent Inc. ("HPI") are owned by the respondent, Hockey Parent Holdings L.P ("HPH"). HUB International, HPI and HPH (collectively, the "respondents") are Delaware-based entities.

[3] Mr. Friel and the respondents are in a dispute about whether Mr. Friel is entitled to exercise his vested options into Class B shares in HPI.

[4] At issue on this appeal is not the substance of the dispute, but whether the motion judge erred in determining that the proper forum for the resolution of the dispute is the Court of Chancery of the State of Delaware (the "Delaware Court"), rather than under the dispute resolution provisions of Mr. Friel's employment agreement with HUB Ontario.

Brief Background

[5] Mr. Friel's employment with HUB Ontario commenced in 2012. His employment was governed by an agreement dated September 21, 2012 (the "Employment Agreement"), which set out, among other things, his wages and benefits. The Employment Agreement stipulated that it was governed exclusively by the laws of Ontario and that the parties agreed that "any claim, controversy, or dispute contemplated by or arising out of or in connection with this [Employment] Agreement" will be resolved by mediation-arbitration in accordance with the

Arbitration Act, 1991, S.O. 1991, c. 17 (the "ADR clause"). Schedule C to the Employment Agreement granted Mr. Friel certain options not at issue in this proceeding.

[6] Mr. Friel subsequently entered into an agreement dated October 2, 2013, with HPH to purchase Class A units in HPH, which incorporated an "Equityholders Agreement" dated as of October 2, 2013.

[7] In December 2014, Mr. Friel was granted an option by HPI to purchase Class B shares in HPI (the "options"). He entered into a share option agreement with HPI dated December 22, 2014 (the "Option Agreement") which provided that the options would vest and become exercisable on December 22, 2021.[1] The Option Agreement similarly incorporated an Equityholders Agreement dated as of July 1, 2014 (the "Equityholders Agreement"). The Equityholders Agreement included a forum selection clause that designated the Delaware Court as the forum for the resolution of any disputes.[2] Mr. Friel did not sign the Equityholders Agreement but did not dispute that it was available to him before he signed the Option Agreement.

[8] Mr. Friel resigned from HUB Ontario on December 23, 2021, one day after the Class B options vested, to work for a competitor. In March 2022, he served notice to exercise his vested options in HPI so as to acquire Class B shares

[1] Mr. Friel acquired additional options to purchase Class B shares in HPI pursuant to an agreement dated April 24, 2017, which also incorporated the terms and conditions of the Equityholders Agreement. This agreement is not subject to dispute.

[2] The Equityholders Agreement incorporated in the 2013 Agreement between Mr. Friel and HPH contained the same forum selection clause.

pursuant to the Option Agreement. The respondents notified Mr. Friel that while they did not dispute that the options had vested and that he was entitled to exercise them, his employment with a competitor constituted "misconduct" under the Equityholders Agreement. Therefore, according to the respondents, if he were to purchase the shares, they would be entitled to buy them back at cost, and any value would be forfeited.

[9] Mr. Friel commenced these proceedings in Ontario, seeking a declaration that the dispute about the options in HPI is governed by the ADR clause in the Employment Agreement, an order appointing an arbitrator, and a declaration that the forum selection clause in the Equityholders Agreement is unconscionable. The motion judge determined that the ADR clause did not apply to the options dispute and that the forum selection clause is valid and enforceable, giving the Delaware Court exclusive jurisdiction over the dispute.

Analysis

[10] Mr. Friel submits that the dispute about the options must be arbitrated in Ontario in accordance with the ADR clause in the Employment Agreement. He makes three arguments in support of this submission. First, he argues that the motion judge's determination of the appropriate forum required more than a superficial review of the record and ought to have been made by the arbitrator in accordance with the competence-competence principle. Second, he argues that the motion judge erred in concluding that the dispute is not "in connection with his

employment", failing to recognize that the Option Agreement was "obviously" "inextricably linked" with his employment. Finally, he argues that, in any event, the forum selection clause in the Equityholders Agreement, incorporated by reference into the Option Agreement, is unconscionable given the inequality of bargaining power between himself and the respondents.

[11] We do not accept these arguments.

[12] First, we see no error of law or palpable and overriding error of fact in the motion judge's finding that an exception to the competence-competence principle was engaged in this case. While a court should normally refer challenges to an arbitrator's jurisdiction to the arbitrator pursuant to the competence-competence principle, this principle is not absolute: *Peace River Hydro Partners v. Petrowest Corp.*, 2022 SCC 41, [2022] 3 S.C.R. 265, at paras. 41-42; *Seidel v. TELUS Communications Inc.*, 2011 SCC 15, [2011] 1 S.C.R. 531, at para. 29. Where, as here, the determination of arbitral jurisdiction involves questions of mixed fact and law requiring only a superficial examination of the evidentiary record, a court may resolve the issue of jurisdiction: *Peace River*, at para. 42; *Uber Technologies Inc. v. Heller*, 2020 SCC 16, [2020] 2 S.C.R. 118, at para. 32; *Dell Computer Corp. v. Union des consommateurs*, 2007 SCC 34, [2007] 2 S.C.R. 801, at paras. 84-85.

[13] In this case, the issue of jurisdiction turned on the interpretation of three contracts: the Employment Agreement, the Option Agreement, and the

Equityholders Agreement. The necessary legal conclusions flowed from this interpretation and there was no need to delve further into the record. The motion judge was thus well-placed to determine jurisdiction: *Uber*, at para. 36.

[14] Second, the motion judge did not err in her interpretation of the relevant clauses of the three agreements and resulting conclusion that the ADR clause in the Employment Agreement did not apply to the dispute. Examining the terms of the Option Agreement, she found that the grant of options to Mr. Friel in HPI was not part of his employment with HUB Ontario and that the dispute was therefore not "contemplated by" or "in connection with" the Employment Agreement. The Option Agreement unambiguously stated that the grant of options did not constitute employment compensation, was not a term or condition of employment and did not form part of the Employment Agreement.

[15] The Option Agreement also stated that if the optionee ceased to be an employee, the Option Agreement "shall not be interpreted to form an employment contract or relationship with the Company or any of its Affiliates". The Option Agreement went on to specify that the laws of the Delaware Court govern the Option Agreement in all respects. Further, while Mr. Friel did not sign the Equityholders Agreement establishing the applicable forum, he did not dispute that he had access to it before signing the Option Agreement.

[16] Moreover, the terms of the Employment Agreement did not support Mr. Friel's preferred reading. The Employment Agreement did not contain any reference to Mr. Friel's entitlement to equity other than Schedule C, which provided for a different grant of options in an entity not involved in this dispute, subject to conditions.

[17] The motion judge's reasons demonstrate that she read the agreements as a whole and gave effect to their clear and unambiguous language. We see no error in her conclusion that the ADR clause in the Employment Agreement does not apply to this dispute. Her conclusion is entitled to deference: *Sattva Capital Corp. v. Creston Moly Corp*., 2014 SCC 53, [2014] 2. S.C.R. 633, at paras. 50-52; *Fuller v. Aphria Inc.*, 2020 ONCA 403, 4 B.L.R. (6th) 161, at para. 48.

[18] Finally, the motion judge did not err in her conclusion that the forum selection clause is not unconscionable and therefore applies, giving the Delaware Court exclusive jurisdiction to resolve the dispute. While the respondents acknowledged an inequality of bargaining power, the motion judge found, and we agree, that this case is distinguishable from the authorities relied on by Mr. Friel, namely *Uber* and *Rose v. Carnival Corporation*, 2022 ONSC 6506. The motion judge held that the bargain was not improvident and there was no evidence that the forum selection clause would put a remedy out of Mr. Friel's reach in this dispute. These were conclusions available to the motion judge on the evidentiary record.

Disposition

[19] The appeal is dismissed. We award costs to the respondents fixed at $15,000, inclusive of H.S.T. and disbursements.

"Gary Trotter J.A."
"B. Zarnett J.A."
"L. Madsen J.A."