IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Desert Properties Inc. v. G&T Martini Holdings Ltd.,* 2024 BCSC 1050

Date: 20240618
Docket: S238227
Registry: Vancouver

Between:

Desert Properties Inc.

Petitioner

And

G&T Martini Holdings Ltd.

Respondent

Before: The Honourable Justice Edelmann

On judicial review from: An award of an arbitrator, dated November 3, 2023 (reissued with corrections on December 8, 2023).

Reasons for Judgment

Counsel for the Petitioner:	A. Cocks M. Pavlovic C. Spillane
Counsel for the Respondent:	S.R. Schachter, K.C. J. Parker
Place and Date of the Hearing:	Vancouver, B.C. March 14, 2024
Place and Date of Judgment:	Vancouver, B.C. June 18, 2024

[1] The petitioner Desert seeks to have a declaration made by an arbitrator set aside pursuant to s. 58(1)(c) of the *Arbitration Act,* S.B.C. 2020, c. 2. (the "*Act*"), alleging it was beyond the scope of the arbitration agreement.

[2] The arbitration at issue arose in relation to a real estate development in Langley. In a "Restated Subdivision and Servicing Agreement" (the "Servicing Agreement"), Desert agreed to sell certain lands to the respondent Martini and to pursue subdivision, rezoning, and servicing of those and other lands. The agreement was subject to an arbitration clause and Martini sought arbitration alleging that Desert breached the Servicing Agreement in various ways. The results of the arbitration are being challenged on multiple grounds by both parties in this Court and in the Court of Appeal.

[3] The only issue before me is a declaration relating to lands required for a sanitary pump station as part of the development. In the original development plan, land that was to be dedicated to the pump station was to be part of the land transferred by Desert to Martini under the Servicing Agreement. However, the Township of Langley later required the pump station to be in a different location. The location identified is on land owned (at least in part) by Martini adjacent to the development.

[4] There was a disagreement about whether Desert was required to compensate Martini if it allowed the pump station to be built on lands that were not part of the Servicing Agreement. Martini sought to arbitrate the issue under the Servicing Agreement. Desert consistently took the position that the issue was beyond the scope of the Servicing Agreement and therefore not subject to arbitration. The arbitrator disagreed and granted a declaration that if Martini were to dedicate some of its lands for a pump station, then Desert would be required to compensate Martini for those lands.

[5] The relevant points of the decision are paragraphs 190 and 193. In paragraph 190, the arbitrator makes the finding related to entitlement to compensation:

> 190. The dispute concerning the pump station lands arises under the Final Servicing Agreement. It is a core responsibility of Desert to service the Lands, which it admits includes providing the pump station. It is required, therefore, to do such acts as are necessary to build the pump station, including purchasing any necessary lands.

[6] The arbitrator then goes on to consider the amount of compensation that ought to be paid:

> Prior to this arbitration and until the hearing Martini advanced different theories on the amount of compensation to which it is entitled as a result of the loss of its land. However, I have been advised that the parties have agreed that should Martini be entitled to compensation it will be based on the wording of the Final Servicing Agreement the relevant section of which [...]

[7] The parties agree that the reference to the "Final Servicing Agreement" by the arbitrator in paragraph 193 of the decision is in error. The mechanism upon which the parties had agreed to calculate compensation was in fact taken from a “Mutual Undertaking to Readjust”, a separate agreement that was not subject to the arbitration clause.

[8] The Petitioner argues that the arbitrator exceeded the scope of the arbitrable agreement by relying on the Mutual Undertaking to Readjust as the basis of his determination that Martini had a right to be compensated. I disagree. In my view, it is clear that the arbitrator was interpreting the Servicing Agreement when deciding the issue of entitlement to compensation for the pump house lands in paragraph 190. I find the error in paragraph 193 to be of little importance as Desert does not dispute that the parties agreed on the appropriate manner to calculate the amount if compensation was due. The fact that the parties used a mechanism from another agreement to calculate the quantum of compensation does not put the decision on entitlement outside the scope of the arbitrable agreement. The crux of the arbitrator’s decision was on entitlement, and the amount of compensation that would be due was not in dispute.

[9] In making the declaration at issue the arbitrator was interpreting the contract that was subject to the arbitration clause, an exercise that was well within the scope of the arbitration agreement. Section 58(1)(c) of the *Arbitration Act* is therefore not

applicable. If, as alleged by Desert, the arbitrator erred in interpreting the Servicing Agreement, then that is an issue to be addressed under s. 59 by seeking leave at the Court of Appeal (see *BCIT (Student Association) v. BCIT*, 2000 BCCA 62 at paras. 14 and 15).

[10] The Petition is dismissed with costs to the respondent.

"The Honourable Justice Edelmann"