

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Math4Me Learning Inc. v. 1099615 B.C. Ltd.*,
2024 BCCA 369

Date: 20241031
Docket: CA49976

Between:

Math4Me Learning Inc., Ivneet Bains and Baldev Bains

Appellants
(Respondents)

And

1099615 B.C. Ltd., Nainee Grewal and Harsh Grewal

Respondents
(Claimants)

Before: The Honourable Madam Justice Bennett
(In Chambers)

On appeal from: An award of an Arbitrator under the *Arbitration Act*,
S.B.C. 2020, c. 2, dated January 27, 2023 (*1099615 B.C. Ltd. v. Math4Me Learning Inc.*, VanIAC File No. 2370-DCA-EP).

Oral Reasons for Judgment

The Appellant, appearing in person,
and as the representative for the Appellants:

I. Bains

Counsel for the Respondents:

F. Liedl Pierce

Place and Date of Hearing:

Vancouver, British Columbia
October 25, 2024

Place and Date of Judgment:

Vancouver, British Columbia
October 31, 2024

Summary:

The parties to this application were engaged in a franchise/license agreement to operate math tutoring centres. They went to arbitration to settle their dispute over the existence of a settlement agreement. The arbitrator found that such an agreement existed. The appellant filed an application for leave to appeal the arbitration award in this Court pursuant to s. 59 of the Arbitration Act, but outside of the 30-day time limit provided for by s. 60. That application has not yet been heard. The respondents apply to dismiss the appeal as abandoned or for want of jurisdiction because it was filed out of time.

Held: Application granted; the application for leave to appeal is quashed for want of jurisdiction. This Court has no discretion to extend the time limit for filing an application for leave to appeal provided for in the Arbitration Act.

[1] **BENNETT J.A.:** The appellant, Ivneet Bains (also representing the appellants Math4MeLearning Inc. and his mother, Baldev Bains) filed a notice of application for leave to appeal and an extension of time to file said appeal of an arbitral award. Mr. Bains is self-represented. The respondents seek to have that application dismissed as either abandoned or for want of jurisdiction.

Chronology

[2] Math4Me Learning Inc. (“Math4Me”) is a tutoring company that provides math and other educational tutoring services to primary and secondary students. Mr. Bains is the founder of Math4Me. The respondents entered into three licensing or franchise agreements with the appellants. Each agreement contained an arbitration clause. A dispute arose and the respondents commenced an arbitration.

[3] The arbitrator issued an award in favour of the respondents (although, as will become clear, the appellants take issue with this characterization), however, the decision was not delivered to the parties until December 20, 2023 because the appellants had not paid their share of the arbitration fee. The arbitrator withheld the decision, as he was entitled, until his fee was paid (*Arbitration Act*, S.B.C. 2020, c. 2, s. 52 [*Arbitration Act*]). The circumstances surrounding the payment of the fee was raised and will be addressed below. The appellants contend that the arbitrator changed his decision from being favourable to the appellants to being favourable to

the respondents because they did not pay his fee. They submitted no evidence to support that submission.

[4] The respondents filed a petition in the Supreme Court of British Columbia seeking recognition and enforcement of the award (*Arbitration Act*, s. 61) on February 15, 2024. In response to that application, filed March 18, 2024, the appellants stated that they “wished to appeal the Arbitration decision but have not done so due to absence of counsel at the time of the decision” and have “grounds to appeal the Arbitrator’s decision over jurisdictional issues, mishandling and dismissal of the Respondents’ [appellants on the appeal] evidence, and an error of law”. No application for leave to appeal or application to set aside the arbitral award had been filed.

[5] The appellants filed their notice of application for leave to appeal and extension of time application on June 28, 2024, shortly before the hearing of the petition. The application for extension was set for September 20, 2024 and then unilaterally adjourned to November 22, 2024. An application book was not filed until October 21, 2024, shortly before this application was heard, and the application for leave to appeal was also set for November 22, 2024.

[6] The petition was heard by Justice Giaschi, who made the enforcement order on July 3, 2024. However, the judge stayed the enforcement of his order pending the disposition of the appellant’s application in this Court. The enforcement order has not been appealed.

Position of the parties

[7] The respondents submit that there is no jurisdiction to extend the time to file an appeal under the *Arbitration Act*, and the appeal must therefore be dismissed. Alternatively, the appellants failed to comply with the filing deadlines under the *Court of Appeal Rules*, and the appeal should be dismissed as abandoned.

[8] The appellants seek to have everything adjourned to November 22 in order to give them more time to bring forward evidence of fraud on the part of the arbitrator

and the lawyers. They argue that during the period when the arbitrator withheld his decision, counsel (who was not counsel on the application) for the respondents sent emails seeking a default judgment as the appellants had not paid the arbitrator's fees. The arbitrator refused that request. They submit that evidence of fraud will alter the calculation of the filing time limits applicable to them. They submit that their lawyer withdrew during that period, and they have been self-represented since the decision was issued. They further submit that it is clearly in the interest of justice that they have an extension of time to file their application for leave to appeal, despite there being no statutory basis to grant an extension of time. The appellant Mr. Bains submits that he has a lawyer who will act for him and the other appellants in November but was unable to assist him with this application. He read parts of an email with the lawyer referral, but did not submit any document confirming that the lawyer was, in fact, retained.

Legal framework

[9] The *Arbitration Act* sets out the provisions for setting aside arbitral awards in the Supreme Court and appeals to the Court of Appeal:

Extent of judicial intervention

4 In matters governed by this Act,

- (a) a court must not intervene unless so provided in this Act, and
- (b) the following must not be questioned, reviewed or restrained by a proceeding under the *Judicial Review Procedure Act* or otherwise except to the extent provided in this Act:
 - (i) an arbitral proceeding of an arbitral tribunal or an order, ruling or arbitral award made by an arbitral tribunal;
 - (ii) a determination or direction by the designated appointing authority.

...

Applications for setting aside arbitral awards

58 (1) A Party may apply to the Supreme Court to set aside an arbitral award only on one or more of the following grounds:

- (a) a person entered into the arbitration agreement while under a legal incapacity;
- (b) the arbitration agreement is void, inoperative or incapable of being performed;

- (c) the arbitral award deals with a dispute not falling within the terms of the arbitration agreement or contains a decision on a matter that is beyond the scope of the arbitration agreement;
- (d) the composition of the arbitral tribunal was not in accordance with the arbitration agreement or this Act;
- (e) the subject matter of the dispute is not capable of resolution by arbitration under the law of British Columbia;
- (f) the applicant was not given proper notice of the arbitration or of the appointment of an arbitrator;
- (g) there are justifiable doubts as to the arbitrator's independence or impartiality;
- (h) the applicant has not given a reasonable opportunity to present its case or to answer the case presented against it;
- (i) the arbitral award was the result of fraud or corruption by a member of the arbitral tribunal or was obtained by fraudulent behaviour by a party or its representative in connection with the conduct of the arbitral proceeding.

(2) If the Supreme Court finds that the grounds described in subsection (1) (c) or (e) apply in respect of only part of the subject matter of the arbitral award, the court may set aside part of the arbitral award.

(3) For the purposes of subsection (1) (g), there are justifiable doubts as to the arbitrator's independence or impartiality only if there was a real danger of bias on the part of the arbitrator in conducting the arbitration.

(4) The Supreme Court must not set aside an arbitral award on grounds referred to in subsection (1) (g) if, before the award was made,

(a) the applicant was aware of the circumstances it relies upon to set aside the arbitral award and failed to follow the applicable procedure required by the arbitration agreement or this Act for seeking the removal of the arbitrator, or

(b) the court determined that substantially the same circumstances as are relied upon to set aside the arbitral award were not sufficient to justify the removal of the arbitrator.

(5) The Supreme Court must not set aside an arbitral award if the applicant is deemed under section 3 [*waiver of right to object*] to have waived the right to object on the grounds on which the applicant relies.

(6) A party may appeal a Supreme Court decision under this section to the Court of Appeal with leave of a justice of the Court of Appeal.

Appeals on questions of law

59 (1) There is no appeal to a court from an arbitral award other than as provided under this section.

(2) A party to an arbitration may appeal to the Court of Appeal on any question of law arising out of an arbitral award if

(a) all the parties to the arbitration consent, or

(b) subject to subsection (3), a justice of that court grants leave to appeal under subsection (4).

(3) A party to an arbitration may seek leave to appeal to the Court of Appeal on any question of law arising out of an arbitral award unless the arbitration agreement expressly states that the parties to the agreement may not appeal any question of law arising out of an arbitral award.

(4) On an application for leave under subsection (3), a justice of the Court of Appeal may grant leave if the justice determines that

(a) the importance of the result of the arbitration to the parties justifies the intervention of the court and the determination of the point of law may prevent a miscarriage of justice,

(b) the point of law is of importance to some class or body of persons of which the applicant is a member, or

(c) the point of law is of general or public importance.

(5) If a justice of the Court of Appeal grants leave to appeal under subsection (4), the justice may attach to the order granting leave conditions that the justice considers just.

(6) On an appeal to the Court of Appeal, the court may

(a) confirm, amend or set aside the arbitral award, or

(b) remit the arbitral award to the arbitrator together with the court's opinion on the question of law that was the subject of the appeal.

Time limit for applications to set aside and appeals

60 (1) Subject to subsection (2), an application to set aside an arbitral award under section 58 [*applications for setting aside arbitral awards*], an appeal under section 59 (2) (a) or an application for leave to appeal under section 59 (3) must be brought no more than 30 days after date on which the appellant or applicant receives the arbitral award, correction, interpretation or additional award on which the appeal or application is based.

(2) If the applicant alleges corruption or fraud, an application to set aside the arbitral award under section 58 must be brought within 30 days after the date on which the applicant first knew or reasonably ought to have known of the circumstances relied upon to set aside the award.

Discussion

[10] The *Arbitration Act* does not provide any statutory authority to extend the time to file an appeal (if by consent) or an application for leave to appeal in this Court. Decisions in this Court, and others, (see *Alberta (Director of Human Rights Commission v. Vegreville Autobody (1993) Ltd.*, 2018 ABCA 246 at para. 7, citing *Northern Sunrise (County) v. De Meyer*, 2009 ABCA 205 at para. 7) have held that if there is no authority in legislation that creates an appeal procedure, to grant an

extension of time to appeal, then there is no jurisdiction in the court to do so. For example, in *Cimolai v. British Columbia (Medical Services Commission)* (12 May 2022), Vancouver CA48235 (B.C.C.A.) (Chambers) aff'd 2022 BCCA 396, Justice Groberman, in a case involving an extension of time to appeal in the Supreme Court, found, at para. 9, that the Court had no authority to extend the time for appeal under the *Medicare Protection Act*, R.S.B.C. 1996, c. 286. Justice Groberman reasoned that “[a]ppeals are statutory in nature” and “[e]xtending statutory time limits is not part of the inherent jurisdiction of the Court”.

[11] In *Desert Properties Inc. v. G&T Martini Holdings Ltd.*, 2024 BCCA 24, Justice Newbury examined the issue in the context of the *Arbitration Act* and whether the time to file was affected by corrections made by the arbitrator resulting in a second issuance of the decision. While concluding that the issuance of a corrected decision will affect the 30-day time limit, Newbury J.A. confirmed at para. 25, that “[o]nce the 30-day period in s. 60(1) has expired, it is not open to the Court to extend it”, relying on *Cimolai* and s. 15 of the *Court of Appeal Act*, which confirms that where another enactment specifies a time limit in relation to the appeal, the statutory limitation applies (para. 28).

[12] The appellants raise fraud in their submission, seeking to invoke s. 58(1)(i) of the *Arbitration Act*. They contend that the time limit commences when they learned of or could reasonably have known of the fraud, relying on s. 60(2).

[13] The difficulty with that submission is that the fraud exception relates to setting aside arbitral awards in the Supreme Court pursuant to s. 58, not to an appeal in this Court. The appellants have not commenced an application in the Supreme Court to set aside the award.

[14] Mr. Bains, on behalf of the appellants, strongly contended that they should have the opportunity to make their application for extension and leave in this Court. Adjourning the application for an additional month, given the amount of time the appellants have already had to bring their application, is prejudicial to the respondents. The execution of the decision has been stayed since July. But more

importantly, the result is inevitable. This Court has held that there is no jurisdiction to extend the statutory right of appeal or leave to appeal under the *Arbitration Act* beyond the 30-day time limit. The *Court of Appeal Act* and *Rules* do not apply.

[15] The appellants may still bring an application in Supreme Court to set aside the arbitral award pursuant to the *Arbitration Act*, s. 58. How or whether such an application will be affected as a result of the recognition and enforcement order, I make no comment. The appellants may still bring an application to extend the time to appeal Justice Giaschi’s July 3, 2024 order recognizing the arbitral award. I also make no comment with respect to the likelihood of success of such an application.

[16] I therefore allow the application to dismiss the application for leave to appeal for want of jurisdiction and quash the application for leave to appeal and the concomitant application for an extension of time to file the application for leave. Therefore, the application currently set for November 22, 2024 will be taken off the appeal list.

[17] The respondents seek a lump sum costs order in the amount of \$1,000. It also seeks to dispense with Mr. Bains signature as he has not signed the order of Justice Giaschi from July 3, 2024. I would grant both orders.

“The Honourable Madam Justice Bennett”