

CITATION: Specialty Life Inc. v. Daumier Financial Services Inc. et al, 2026 ONSC 5696
COURT FILE NO.: CV-25-00750714-00CL
COURT FILE NO.: CV-25-00749665-00CL
COURT FILE NO.: CL-25-00753629-0000
DATE: 20261008

SUPERIOR COURT OF JUSTICE – ONTARIO

COURT FILE NO.: CV-25-00750714-00CL

RE: Specialty Life Inc., Applicant

AND:

Daumier Financial Services Inc. and Daumier Financial Services Ltd.,
Respondents

COURT FILE NO.: CV-25-00749665-00CL

RE: Daumier Financial Services Inc. and Daumier Financial Services Ltd., Applicants

AND:

Specialty Life Inc., Respondent

COURT FILE NO.: CL-25-00753629-0000

RE: 13399613 Canada Inc., 14743334 Canada Inc., d/b/a Palmiches's Farm Inc.,
15019745 Canada Inc., and Michael Lue, Applicants

AND:

Specialty Life Inc., Daumier Financial Services Inc. and Daumier Financial
Services Ltd., Respondents

BEFORE: Cavanagh J.

COUNSEL: *Lawrence Thacker, Andrew Locatelli, Brendan Morrison and Ravneet Minhas,*
Counsel for Specialty Life Inc. the Applicant/Respondent, and Insurance
Supermarket Inc. (a plaintiff in a related civil action)

Nancy Tourgis and Joanne Iskander Salmoon, Counsel for Daumier Financial
Services Inc. and Daumier Financial Services Ltd., the Respondents/Applicants

Kishan Lakhani, Counsel for Michael Lue, 13399613 Canada Inc., 14743334
Canada Inc., d/b/a Palmiches's Farm Inc., and 15019745 Canada Inc., Applicants

HEARD: June 10, 2026

ENDORSEMENT

Introduction

[1] There are three applications before me. The applications are concerned with whether awards of an arbitral tribunal should be recognized and enforced by this Court.

[2] One application is brought by Specialty Life Inc. (“SLI”) (as court file number CV-25-00750714-00-CL). SLI seeks an order pursuant to section 50(1) of the *Arbitration Act, 1991* (the “*Arbitration Act*”) recognizing and enforcing the arbitral award issued on the merits on August 5, 2025 (the “Main Award”) and the arbitral award issued with respect to costs on June 13, 2024 (the “Costs Award”) by an arbitral tribunal consisting of the Hon. Frank J.C. Newbould K.C., Peter Roy, and Larry Lowenstein (chair) (the “Tribunal”).

[3] A second application is brought by Daumier Financial Services Inc. and Daumier Financial Services Ltd. (together, “Daumier”) (as court file number CV-25-00749665-00 CL). Daumier seeks an order that all decisions and awards made in the Arbitration, including the Main Award and the Costs Award, be set aside for lack of jurisdiction pursuant to s. 17(8) of the *Arbitration Act* and an order that such decisions and awards be set aside pursuant to s. 46 of the *Arbitration Act*.

[4] A third application is brought by 13399613 Canada Inc., 14743334 Canada Inc. d/b/a Palmiche’s Farm Inc., 15019745 Canada Inc., and Michael Lue (the “Lue Applicants”) (as court file number 25-00753629-0000). The Lue Applicants seek various relief including a declaration that the Arbitral Tribunal lacked jurisdiction make decisions and/or awards which affect them.

[5] For the following reasons, I dismiss Daumier’s application and the application by the Lue Applicants. I allow SLI’s application.

Background Facts

[6] Daumier was a broker for SLI and promoted SLI insurance policies to potential customers. Daumier entered into a Managing General Agreement dated May 20, 2021 with SLI (the “MGA”). The MGA includes an arbitration agreement.

[7] SLI and Daumier entered into a broker’s agreement on or about August 27, 2023 (the “2023 Agreement”). The 2023 Agreement does not include an arbitration agreement.

[8] On October 12, 2023, SLI sought and obtained an interim order for a *Mareva* injunction against Daumier and other defendants in a civil action. The *Mareva* injunction was continued on October 23, 2023. The Lue Applicants are defendants in the civil action.

[9] SLI commenced the arbitration by a Notice of Arbitration dated November 28, 2023. SLI claims damages for civil fraud and other causes of action against Daumier. Daumier, then represented by counsel, delivered a Response and Counterclaim dated August 9, 2024.

[10] On May 5, 2025, Daumier, then represented by its principal, Mr. De Zayas, moved to terminate or stay the Arbitration on various grounds. SLI brought a motion within the stay motion for disclosure of documents over which Daumier claimed privilege on the ground that the privilege

was waived. On June 9, 2025, the Tribunal issued an award on the privilege motion (the “Privilege Award”) and held that there was a deemed waived privilege by Daumier and ordered Daumier to disclose certain categories of documents.

[11] On June 25, 2025, the Court granted a motion by Daumier to vary the *Mareva* Order to release frozen assets for specified purposes. Daumier did not request release of frozen assets to pay for legal expenses of the Arbitration.

[12] The Privilege Award was recognized and enforced as an Order of this Court by Order dated July 10, 2025.

[13] On July 14, 2025, the Tribunal issued a procedural direction with respect to production of documents subject to the Privilege Award (the “Seventh Procedural Direction”).

[14] The stay motion was heard on July 16, 2025 and dismissed by the Tribunal on July 18, 2025 (the “Stay Dismissal Award”).

[15] On July 18, 2025, Daumier sought and obtained, on consent, an Order allowing Daumier to access frozen assets to defend the Arbitration.

[16] The Arbitration hearing began on July 21, 2025. A request by Daumier, through its counsel for this purpose, for an adjournment was denied (the “Adjournment Award”). Mr. De Zayas did not participate in the Arbitration.

[17] The Tribunal issued the Main Award dated August 5, 2025. The Tribunal found Daumier liable and awarded damages to SLI in the amount of \$52.4 million.

[18] On September 8, 2025, the Tribunal issued the Costs Award and awarded SLI costs in the amount of \$1,753,949.54.

Analysis

[19] Section 50(1) of the *Arbitration Act* provides that a person who is entitled to enforcement of an award made in Ontario or elsewhere in Canada may make an application to the court to that effect. Section 50(3) of the *Arbitration Act* provides that the court shall give a judgment enforcing an award made in Ontario unless (a) the thirty-day period for commencing an appeal or an application to set the award aside has not yet elapsed; (b) there is a pending appeal, application to set the award aside or application for a declaration of invalidity; (c) the award has been set aside or the arbitration is the subject of a declaration of invalidity; or (d) the award is a family arbitration award.

[20] The Awards made by the Tribunal are subject to applications by Daumier and by the Lue Applicants for an order that they be set aside. I first address the requested relief in these applications.

Daumier’s Application

[21] Daumier brings this application for an order pursuant to s. 46 of the *Arbitration Act* setting aside (i) the Privilege Award dated June 9, 2025, (ii) the Stay Dismissal Award dated July 18,

2025, (iii) the Adjournment Award dated July 21, 2025, (iv) the Main Award dated August 5, 2025, and (v) the Costs Award dated September 8, 2025. I refer to the awards, collectively, as the “Awards”.

[22] Section 46(1) of the *Arbitration Act* provides:

46 (1) On a party’s application, the court may set aside an award on any of the following grounds:

1. A party entered into the arbitration agreement while under a legal incapacity.
2. The arbitration agreement is invalid or has ceased to exist.
3. The award deals with a dispute that the arbitration agreement does not cover or contains a decision on a matter that is beyond the scope of the agreement.
4. The composition of the arbitral tribunal was not in accordance with the arbitration agreement or, if the agreement did not deal with that matter, was not in accordance with this Act.
5. The subject-matter of the dispute is not capable of being the subject of arbitration under Ontario law.
6. The applicant was not treated equally and fairly, was not given an opportunity to present a case or to respond to another party’s case, or was not given proper notice of the arbitration or of the appointment of an arbitrator.
7. The procedures followed in the arbitration did not comply with this Act.
8. An arbitrator has committed a corrupt or fraudulent act or there is a reasonable apprehension of bias.
9. The award was obtained by fraud.
10. The award is a family arbitration award that is not enforceable under the *Family Law Act* 1991, c. 17, s. 46 (1); 2006, c. 1, s. 1 (7).

[23] Daumier relies on s. 46(1)3, 6, 7, and 8 of the *Arbitration Act*.

S. 46(1)3: Should the awards be set aside because the Main Award contains a decision on a matter that is beyond the scope of the arbitration agreement?

[24] Section 46(1)3 of the *Arbitration Act* provides that the court may set aside an award on the ground that it deals with a dispute that the arbitration agreement does not cover or contains a decision on a matter that is beyond the scope of the agreement.

[25] SLI commenced the Arbitration pursuant to a Managing General Agent's Agreement with Daumier that was made as of May 20, 2021 (the "MGA Agreement"). The MGA Agreement contains, in section 37, an arbitration agreement which reads:

Any dispute, controversy or claim arising out of or relating to this Agreement including any question regarding its existence, interpretation, validity, breach or termination or the business relationship created by it shall be referred to and finally resolved by arbitration under the ADR Chambers Arbitration Rules. The place of the arbitration shall be Toronto, the Province of Ontario. There will be three arbitrators: each party will nominate one arbitrator and the nominated arbitrators will select a third arbitrator. The language of the arbitration will be English. There will be no appeal from the decision of the Arbitral Tribunal on questions of fact, law, or mixed fact and law.

[26] On these applications, Daumier takes the position that the Tribunal lacked jurisdiction to make an award in respect of any transactions, or any amounts paid by SLI to Daumier, from August 27, 2023, the effective date of an agreement named "Corporate Contract" between SLI and Daumier (named as the "Broker") (the "2023 Agreement") which does not contain an arbitration clause.

[27] The 2023 Agreement provides that SLI "appoints the Broker for the purpose of soliciting and submitting ... applications for insurance then offered by Specialty Life and the Broker hereby accepts such appointment on the terms and conditions contained in this Agreement". The 2023 Agreement contains an entire agreement clause which provides that any prior amounts due or owing by Daumier shall continue to be owing by Daumier to SLI, but that prior agreements between the parties respecting the subject matter of the 2023 Agreement are replaced by the 2023 Agreement. Daumier submits that some of the damages awarded by the Tribunal relate to the period of time after the 2023 Agreement became effective. Daumier submits that in making the Main Award, the Tribunal made an award on a matter that is beyond the scope of the MGA Agreement and that the Main Award should be set aside under s. 46(1)3 of the *Arbitration Act*.

[28] In SLI's Notice of Arbitration, it demands that the dispute that is the subject of the "Arbitration Claim" attached as Schedule "A" to the Notice of Arbitration be referred to arbitration. In the Arbitration Claim, SLI seeks damages in the amount of \$73,847,180.96 as against Daumier. SLI asserts that from the date of the MGA Agreement, SLI has paid Daumier for active Daumier-brokered policies an approximate total of \$73,847,180.96 in commissions and bonuses. This shows that SLI's claim for damages in the arbitration is in respect of all amounts it paid to Daumier in commissions and bonuses from the date of the MGA Agreement, which would include amounts paid by SLI to Daumier after August 27, 2023 when the 2023 Agreement became effective.

[29] In its Response and Counterclaim to Notice of Arbitration, Daumier does not challenge the jurisdiction or authority of the Tribunal to award damages in respect of payments made by SLI to Daumier after August 27, 2023.

[30] In the Stay Dismissal Decision, the Tribunal addressed the argument made by Daumier on its stay motion that the Tribunal lacked jurisdiction because the MGA Agreement was superseded

by the 2023 Agreement, which does not contain an arbitration clause. Daumier contended before the Tribunal that the 2023 Agreement nullifies the MGA Agreement and, therefore, there is no basis for the Arbitration to be carried out. The Tribunal did not accept this argument. The Tribunal held that the 2023 Agreement did not supersede or nullify the MGA Agreement as the subject matter of the MGA Agreement was different.

[31] The Tribunal, at para. 18 of the Stay Dismissal Award, held that Daumier, through its legal counsel, has acted under the understanding that the Tribunal has jurisdiction of the disputes in the Arbitration under the MGA Agreement. The Tribunal held that even if the effect of the Broker's Agreement was to deny any arbitral rights of SLI under the MGA Agreement (which it did not accept), Daumier has attorned to the jurisdiction of the Tribunal by taking the proceedings referred to in the Stay Dismissal Award. The Tribunal found that Daumier attorned to the jurisdiction of the Tribunal under the MGA.

[32] Subsection 17(3) of the *Arbitration Act* provides that a party who has an objection to the arbitral tribunal's jurisdiction to conduct the arbitration shall make the objection no later than the beginning of the hearing or, if there is no hearing, no later than the first occasion on which the party submits a statement to the tribunal. Subsection 17(4) of the *Arbitration Act* provides that the fact that a party has appointed or participated in the appointment of an arbitrator does not prevent the party from making an objection to jurisdiction.

[33] Subsection 17(5) of the *Arbitration Act* provides that "[a] party who has an objection that the arbitral tribunal is exceeding its authority shall make the objection as soon as the matter alleged to be beyond the tribunal's authority is raised during the arbitration". Subsection 17(6) provides that if the arbitral tribunal considers the delay [in making an objection that the arbitral tribunal is exceeding its authority] justified, a party may make an objection after the time referred to in subsection (5).

[34] SLI submits that Daumier waived its right to object to the Tribunal's jurisdiction by electing to participate in the arbitration – including by delivering a response and counterclaim, bringing motions, seeking adjournments, and seeking to vary the *Mareva* Order through the Tribunal. SLI submits that through its own conduct over almost two years, Daumier waived a right to object to the jurisdiction of the Tribunal and is now precluded from disputing that the Tribunal had jurisdiction over its claim.

[35] In support of this submission, SLI relies on *The Joseph Lebovic Charitable Foundation et al. v. Jewish Foundation of Greater Toronto*, 2024 ONSC 4400. In that case, the application judge heard and decided an application for a determination that the arbitrator erred in finding that he had jurisdiction over the relief claimed by the respondents (applicants in the arbitration). The application judge, at para. 31, referred to s. 46(1)3 of the *Arbitration Act* and held that the power conferred on the court thereunder is limited because the court shall not set aside an award on those grounds if the parties have agreed to the inclusion of the dispute or matter or waived the right to object to its inclusion. The application judge held that the applicant agreed to refer all matters in dispute to the arbitrator, consented to the jurisdiction of the arbitrator, and waived any jurisdictional objection it could raise. In her decision, the application judge, at para. 34, addressed the practical implications of the applicant's argument that two separate arbitration proceedings should be held to decide related issues involving the same facts, and rejected this argument where

parallel arbitration proceedings would be addressing the same facts, leading to delay, excess costs, confusion, and the potential for inconsistent findings.

[36] By defending SLI's claim and advancing a counterclaim, and by participating in the Arbitration, Daumier consented to the jurisdiction of the Tribunal over the claims by SLI in the Notice of Arbitration and waived its right to object to the jurisdiction of the Tribunal.

[37] I decline to set aside the Awards on the ground that any of them deals with a dispute that the arbitration agreement does not cover or contains a decision on a matter that is beyond the scope of the agreement.

Ss. 46(1)6, 7 and 8: Should the Awards be set aside because (i) Daumier was not treated equally and fairly, or was not given an opportunity to present a case or to respond to SLI's case, (ii) the procedures followed in the arbitration did not comply with the *Arbitration Act*, or (iii) there is a reasonable apprehension of bias?

[38] Daumier submits that the conduct of the Arbitration that resulted in the Awards did not accord with procedural fairness or the rules of natural justice and that the Awards should be set aside under s. 46(1) of the *Arbitration Act*. Daumier also submits that the Awards should be set aside under this provision because the procedures followed in the arbitration did not comply with the *Arbitration Act* and because there is a reasonable apprehension of bias on the part of the Tribunal.

[39] Daumier also relies on s. 19(1) and (2) of the *Arbitration Act*. Section 19(1) provides that in an arbitration, the parties shall be treated equally and fairly. This incorporates the requirements of natural justice and procedural fairness, and not only the right to be heard but the right to an independent and impartial hearing. When assessing the level of procedural fairness, courts examine various factors including sufficiency of opportunity granted to parties' counsel to present their case and the thoroughness of the procedure engaged by the parties. See *Mattamy (Downsview) Limited v KSV Restructuring Inc. (Urbancorp)*, 2023 ONSC 3013, at paras. 52-54.

[40] Section 19(2) provides that each party shall be given an opportunity to present a case and to respond to the other party's cases.

[41] If the Court determines that an applicant was denied natural justice or procedural fairness, any resulting award must be set aside, even if the procedural fairness would not have impacted the outcome. See *Competition Motors Ltd. v. Toyota Canada Inc.*, [2023] O.J. No. 5931, at para. 63.

[42] Daumier submits that the Tribunal denied Daumier procedural fairness and natural justice when it made the Privilege Award, the Seventh Procedural Award, the Stay Dismissal Award, and the Adjournment Award. Daumier submits that the conduct of the arbitration that resulted in these Awards did not accord with procedural fairness.

(a) Was Daumier denied procedural fairness or natural justice because it was not represented by legal counsel at the hearings that resulted in the Tribunal's Awards?

[43] With respect to these Awards, Daumier submits that the Tribunal failed to properly take into account that Daumier only obtained access to frozen funds to retain legal counsel on June 25, 2025 and, in the context of the ongoing Arbitration proceedings, this late access to funds did not

afford sufficient time for counsel to prepare for the Arbitration scheduled to begin on July 21, 2025. As a result, Daumier brought a motion on May 5, 2025 for various relief including an order staying or terminating the Arbitration. Daumier's motion was supported by the affidavit of Mr. De Zayas sworn May 19, 2025. In response, SLI moved for disclosure of materials to respond to Daumier's stay motion, including documents that, SLI contended, were those in respect of which Daumier had waived privilege. SLI's motion resulted in the Tribunal's Privilege Award. Daumier's motion for a stay was dismissed.

[44] The history of the Arbitration must be considered when addressing Daumier's submissions in relation to being unrepresented during the arbitral proceedings that resulted in these Awards.

[45] When SLI commenced the Arbitration, Daumier was represented by legal counsel. The Tribunal issued its First Procedural Direction on January 5, 2024, noting the arbitration agreement in the MGA Agreement. On January 22, 2024, the Tribunal issued its Second Procedural Direction in which it tentatively scheduled the arbitration hearing to commence on June 20, 2024. On August 9, 2024, Daumier delivered its response and counterclaim without objecting to the Tribunal's jurisdiction over SLI's claim or its counterclaim. On July 25, 2024, the Tribunal rescheduled the hearing to commence in February 2025. In early November 2024, counsel for Daumier (McCarthy) advised that the firm would no longer be acting for Daumier. Daumier retained new counsel (Loopstra). On December 16, 2024, the Tribunal issued its Sixth Procedural Direction, noting that the Loopstra firm was preparing materials for a motion to vary the *Mareva* order against Daumier to provide for the release frozen assets to use to pay legal costs. The Tribunal rescheduled the arbitration hearing to commence in July 2025 on a peremptory basis.

[46] On March 27, 2025, Loopstra advised that the firm would no longer represent Daumier in the Arbitration, but it would continue to represent Daumier (and other defendants) in SLI's civil action. Following Loopstra's withdrawal as legal counsel, Mr. De Zayas acted as the designated representative of Daumier. Rule 11.3 of the ADR Chambers Rules (the "ADRC Rules") allows a party to be represented by a non-lawyer. The Tribunal recognized that Daumier was no longer represented by legal counsel.

[47] SLI's motion that resulted in the Privilege Award was heard on June 5, 2025. Mr. De Zayas opposed SLI's motion and maintained that Daumier had not waived privilege. The Tribunal did not accept this position. The Privilege Award was released on June 9, 2025.

[48] Daumier's moved on June 20, 2025 in the civil action to vary the *Mareva* Order to access frozen funds to pay for reasonable legal fees. On this motion, Daumier did not seek access to frozen funds to pay for legal fees in the arbitration proceeding. The decision on this motion was released on June 25, 2025. The *Mareva* order was varied to allow Daumier to have access to the requested amount of frozen funds to pay costs awards and reasonable legal expenses for the civil action (including any motion or application that may be commenced in the civil action in respect of the arbitral proceeding).

[49] The motion that resulted in the Stay Dismissal Award was heard on July 16, 2025. The Stay Dismissal Award was issued on July 18, 2025.

[50] On July 18, 2025, this Court made an order, on consent and at the request of Daumier, to vary the June 25, 2025 endorsement to allow Daumier to access up to \$300,000 from frozen assets to pay any reasonable legal fees of Daumier in the arbitral proceedings.

[51] In these circumstances, the fact that Daumier was unrepresented on its motion for a stay of the Arbitration, including at the hearing that resulted in the Privilege Award, appears to have been related to its decision not to seek access to frozen funds to pay for legal representation for the arbitration. Daumier was not denied procedural fairness because it was not represented at the hearing that resulted in the Privilege Award or the Stay Dismissal Award.

[52] Daumier submits that during the time when it was unrepresented by legal counsel, and when Mr. De Zayas represented it, the Tribunal had a duty to ensure that it had a meaningful opportunity to present its case, regardless of its lack of legal representation. Daumier submits that this duty included an obligation to ensure that the unrepresented party has leeway for minor deficiencies in procedure or drafting and to ensure that procedural safeguards are in place to protect the unrepresented party.

[53] The Tribunal was in no position to ensure that Daumier had legal representation. The Tribunal did not deny Daumier natural justice or procedural fairness by proceeding with the Arbitration hearings. Daumier had ample notice of the hearing date when it was peremptorily set. Daumier chose not to seek access to frozen assets to pay legal expenses for the arbitration until after it was unsuccessful on its stay motion.

[54] In these circumstances, the Tribunal did not deny Daumier procedural fairness or natural justice by proceeding with the hearing at a time when Daumier was not represented by legal counsel.

- (b) Was Daumier denied natural justice or procedural fairness because the Tribunal failed to protect Daumier's privilege in communications with its former legal counsel and held that Daumier was deemed to have waived privilege over certain communications with its former legal counsel?

[55] Daumier submits that the Tribunal failed to give procedural fairness to Daumier when it made the Privilege Award, and this denial of procedural fairness requires that the Awards be set aside under s. 46(1)6 of the *Arbitration Act*.

[56] Daumier submits that the Tribunal denied Daumier procedural fairness by failing to guard Daumier's solicitor-client privilege in communications with its former counsel and allowing one inadvertent disclosure of a privileged communication to result in a finding that Daumier had completely waived privilege in respect of its communications with its former legal counsel. In support of this submission, Daumier cites *Bell et al. v. Smith et al.*, 1968 CanLII 17 (SCC) where, at p. 671, Spence J. approved the statement of Lord Chancellor Eldon in *Beer v. Wald* (1821), Jacob 77, 37 E.R. 779 that where the court knows the privilege of the client and where the lawyer does not protect the privilege, "the court will make him claim it".

[57] In the Privilege Decision, the Tribunal made reference to Mr. De Zaya's statements in Daumier's notice of motion for a stay, including references to communications with Daumier's former legal counsel, including an email from a lawyer at the McCarthy firm. The Tribunal noted that Mr. De Zayas was relying on part of his communications or lack thereof with the McCarthy firm without disclosing the rest of his communications which, it held, could present a misleading picture to the Tribunal. The Tribunal held that there has been a deemed waiver of privilege by Mr. De Zayas in disclosing some of his communications with Daumier's former legal counsel without disclosing all of them. The Tribunal ordered Mr. De Zayas to disclose to the Tribunal all of his

communications with McCarthy regarding four categories of communications. The Tribunal ordered that a notice be given to a lawyer at McCarthy to attend the hearing and provide documents relating to the four categories of communications.

[58] Contrary to Daumier's submissions, the Tribunal did not rely on only one email communication disclosed in Mr. De Zayas' affidavit. The Tribunal relied on Daumier's position in its motion for a stay.

[59] Given Daumier's position on the motion for a stay, Daumier was not denied procedural fairness by the Tribunal failing to guard Daumier's solicitor-client privilege in communications with its former counsel. The Tribunal found that Daumier's privilege had been waived.

[60] Daumier also submits that the unfairness to Daumier from the failure of the Tribunal to guard Daumier's solicitor-client privilege leads to a reasonable apprehension of bias as shown by the manner in which the June 5, 2025 Privilege Motion was addressed in the following ways:

- (a) SLI raised the issue by email rather than by a formal Notice of Motion;
- (b) The Tribunal did not require that the Privilege Motion be properly briefed; and
- (c) The Tribunal did not require the Privilege Motion be properly argued.

[61] Daumier made the same argument about the absence of a formal Notice of Motion in its written materials in opposition to SLI's motion. The Tribunal rejected this argument, noting that the ADR Chambers Arbitration rules do not require a document entitled Notice of Motion. The Tribunal decided that the Tribunal was entitled to consider SLI's written request as a motion and that Mr. De Zayas was given every opportunity to present Daumier's case regarding privilege and to respond to SLI's case regarding privilege. Daumier was not denied procedural fairness because SLI's motion was not brought with a formal notice of motion, was not properly briefed, or was not required to be properly argued.

[62] Daumier relies on the fact that former counsel to SLI was disqualified by an order dated March 27, 2026, in support of its submission that it was denied procedural fairness because communications that were otherwise privileged were disclosed to counsel for SLI pursuant to the direction of the Tribunal. Daumier submits that it was denied natural justice and procedural fairness because the Tribunal failed to consider that a waiver of privilege by Daumier would affect the privilege held by other parties who were not parties to the arbitration and made no submissions on the Privilege Motion.

[63] I disagree. The Lue Applicants were not parties to the arbitration and the Tribunal had no obligation to receive submissions from them. The Tribunal decided the issue before it and held that Daumier had clearly waived privilege. Daumier was not denied natural justice or procedural fairness for this reason. The disqualification decision did not find that former counsel for SLI received or used communications between Daumier and its former counsel in the arbitration in ways that were not permitted by the Tribunal.

[64] Daumier was not denied procedural fairness or natural justice in relation to the Privilege Award.

- (c) Was Daumier denied procedural fairness or natural justice because of the way the cross-examinations were conducted at the hearing of the stay motion? Were the cross-examinations conducted in a manner that disclose a reasonable apprehension of bias?

[65] At the hearing of the stay motion on July 16, 2025, Mr. De Zayas cross-examined Mr. Javaid of SLI. Daumier submits that his cross-examination was interrupted by the Tribunal members leaving Mr. De Zayas with no opportunity to obtain substantive answers from Mr. Javaid and that the allotted time, 45 minutes, was inadequate.

[66] Mr. De Zayas was cross-examined at this hearing Daumier submits that counsel for SLI was given one hour, more time than Mr. De Zayas was given to cross-examine, and that his objections were ignored by the Tribunal.

[67] In *Vento Motorcycles, Inc. v. Mexico*, 2025 ONCA 82, the Court of Appeal, at paras. 37-41, addressed the effect of procedural infirmities or irregularities in commercial arbitration and held that they do not necessarily raise the same concerns as they do in the exercise of public authority. The Court of Appeal held that countervailing concerns in the context of commercial arbitration limit the circumstances in which it is appropriate to set aside the award. Courts are to engage in what is essentially a balancing exercise, considering both the extent that the breach undermines the fairness or the appearance of fairness of the arbitration and the effect of the breach on the award itself. The Court held that the need for finality supplies the rationale for taking this approach.

[68] With respect to the cross-examination of Mr. Javaid, the transcript does not disclose interventions by members of the Tribunal that were such as to deny Mr. De Zayas a fair opportunity to ask proper questions. The Chairman explained to Mr. De Zayas the matters that were relevant to the examination and that the examination was not for the hearing of the Arbitration on its merits. The transcript does not show that the Tribunal acted as a proponent of SLI's case to the detriment of Daumier, or actively prevented Mr. De Zayas from pursuing relevant lines of questioning, as is alleged. The transcript shows that the Tribunal acted within the scope of its authority to control the process of the cross-examination, during which there were many objections to questions which called for rulings, which were made.

[69] With respect to the cross-examination of Mr. De Zayas, the fact that this took a few minutes longer than the cross-examination of Mr. Javaid does not show that Daumier was denied procedural fairness or natural justice. The transcript does not show interventions by the Tribunal or a failure to rule on objections by Mr. De Zayas.

[70] In any event, the interventions by the Tribunal, to the extent that they may have affected the cross-examinations, are not such as to warrant an order setting aside the Stay Dismissal Award or other Awards. The interventions do not undermine the fairness or appearance of fairness of the arbitration or such Awards. See *Vento*, at paras. 37-41.

[71] Daumier was not denied procedural fairness or natural justice because of the way the cross-examinations were conducted.

S. 46(1)8: Reasonable apprehension of bias

[72] Daumier submits that the record shows a reasonable apprehension of bias on the part of the Tribunal. Daumier submits that the Arbitral Award and other Awards must be set aside on this ground.

[73] The question to be asked is whether “an informed person viewing the matter realistically and practically ... [w]ould think it is more likely than not that [the decisionmaker], whether consciously or not, would not decide fairly”. See *Vento*, at para. 27.

[74] In support of this submission, Daumier points to:

- (a) the alleged failure of the Tribunal to ensure that Daumier, through Mr. De Zayas, were afforded a fair and impartial process, having regard to the fact that Daumier was unrepresented.
- (b) The Tribunal’s ruling on the Privilege Motion based on what Daumier submits was an inadvertent slip by Mr. De Zayas, and the Tribunal’s alleged failure to require proper briefing for and argument on this motion.
- (c) Alleged instances of procedural unfairness and denial of natural justice in relation to the Stay Dismissal Motion through the use of privileged communications, interference by the Tribunal in the conduct of cross-examinations,
- (d) The Tribunal’s decision not to grant an adjournment of the hearing when requested on July 21, 2025.

[75] The grounds upon which Daumier relies for its submission of a reasonable apprehension of bias on the part of the Tribunal have been addressed. The record does not support a conclusion that an informed person viewing the matter realistically and practically would think it is more likely than not that the Tribunal, whether consciously or not, would not decide fairly.

Conclusion on Daumier Application

[76] Daumier has failed to show that the Arbitration Award, or any of the Awards, should be set aside under s. 46(1) of the *Arbitration Act*.

Application by Lue Applicants

[77] The Lue Applicants were not parties to the arbitration between SLI and Daumier. The Lue applicants seek an order declaring that the Tribunal Arbitration lacked jurisdiction to make decisions and/or awards which affect them. They submit that the Tribunal did so without jurisdiction.

[78] The Lue Applicants rely on s. 48(1)(d) of the *Arbitration Act* which provides that “[a]t any stage during or after an arbitration, on the application of a party who has not participated in the arbitration, the court may grant a declaration that the arbitration is invalid because ... (d) the arbitration agreement does not apply to the dispute.”

[79] The Lue Applicants refer to paras. 87-93 of the Arbitration Award which read:

[87] SLI claims that a fraudulent conveyance has occurred by the use of funds to purchase several properties. In particular, properties were purchased from funds advanced by Daumier from funds received from SLI to purchase six properties in the name of 13399613 Canada Inc., a property in the name of Michael Lue, one property in the name of 14743334 Canada Inc. and two properties in the name of 15019745 Canada Inc.

[88] There is no security for the money used to buy these properties. Mr. De Zayas said in his cross-examination on his affidavit filed in response to the Mareva order that the amounts were advanced by loans. However, there are no loan documents and he said he could not tell what the loan terms were. It is quite evident that there are no loans and no means to get the property back.

[89] The *Fraudulent Conveyances Act* R.S.O. 1990, c. F-29 applies to this situation. It provides, in s. 2:

Every conveyance of real property or personal property and every bond, suit, judgment and execution heretofore or hereafter made with intent to defeat, hinder, delay or defraud creditors or others of their just and lawful actions, suits, debts, accounts, damages, penalties or forfeitures are void as against such other persons and their assigns.

[90] This Act is remedial legislation and is to be given a broad interpretation. Its principles are set out in *Incondo Building Corp. v. Sloan*, 2014 ONSC 4018 at paras. 43 to 57.

[91] There was no real consideration provided to Daumier for the advances used to purchase these properties. There is no doubt that the transfers were intended to defeat any attempt by Daumier or its creditors or future creditors, including any person such as SLI which has a legal or equitable claim against SLI (sic), to obtain the properties by lawful action. The shareholders of the numbered companies are Mr. De Zayas, his family or friends.

[92] We find that the transfers of properties to 13399613 Canada Inc., Michael Lue, 14743334 Canada Inc., and 15019745 Canada Inc. are void and we order a mandatory injunction requiring Daumier to take all steps necessary to sell the properties and return the money advanced to purchase the properties.

[93] We also find and order that the said properties are subject to a constructive trust for Daumier.

[80] The Lue Applicants are not parties to the arbitration who have not participated in the arbitration. They do not have status under s. 48(1)(d) to seek a declaration that the Arbitration Award is invalid.

[81] In its notice of application, SLI seeks an order recognizing and enforcing the Arbitration Award. SLI does not seek an order against non-parties to the arbitration. This is clear from SLI's main factum for its application where the order requested is only against Daumier.

[82] If the Lue applicants do have status to seek a declaration under s. 48(1)(d), I would decline to grant the requested declaration. In the arbitration, SLI sought an equitable remedy, a constructive trust, only against Daumier, as it was permitted to do under s. 31 of the *Arbitration Act*. The Tribunal's Arbitration Award of a constructive trust remedy and a mandatory injunction were made against Daumier. The Tribunal's finding that transfers of property to the Lue Applicants are void is effective only as against Daumier, to found the constructive trust remedy against it.

[83] To the extent that legal proceedings are brought for remedies against the Lue Applicants, they retain all defences available to them.

[84] I decline to grant the declaratory relief claimed by the Lue Applicants.

SLI's application for recognition and enforcement of the Arbitral Award and the Costs Award

[85] SLI brings an application for an Order pursuant to section 50(1) of the *Arbitration Act* recognizing and enforcing the Arbitral Award and the Costs Award.

[86] Section 50(3) of the *Arbitration Act* reads:

(3) The court shall give a judgment enforcing an award made in Ontario unless,

(a) the thirty-day period for commencing an appeal or an application to set the award aside has not yet elapsed;

(b) there is a pending appeal, application to set the award aside or application for a declaration of invalidity;

(c) the award has been set aside or the arbitration is the subject of a declaration of invalidity; or

(d) the award is a family arbitration award.

[87] I do not grant the application of Daumier to set aside the Arbitration Award, the Costs Award, or other Awards. As a result, I grant SLI's application for an order recognizing and enforcing the Arbitration Award and the Costs Award.

Disposition

[88] For these reasons:

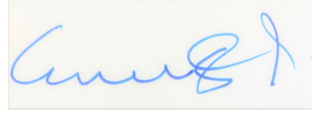
(a) Daumier's application is dismissed.

(b) The Lue Applicants' application is dismissed.

(c) SLI's application for an order recognizing and enforcing the Arbitration Award and the Costs Award is granted.

[89] SLI provided a draft Judgment to give effect to the relief sought in its notice of application. I ask counsel for SLI to provide me with an approved form of Judgment to be issued.

[90] If costs cannot be resolved, the parties may make written submissions (with reasonable page limits) according to a timetable agreed upon by counsel and approved by me.

A handwritten signature in blue ink, appearing to read "Cavanagh J.", is enclosed in a light gray rectangular box.

Cavanagh J.

Date: October 8, 2026