CITATION: Highbreed Financial Corporation v. Canada Tax Reviews Inc., 2025 ONSC 7014
COURT FILE NO.: CV-25-00747318-00CL
DATE: 20251216

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: HIGHBREED FINANCIAL CORPORATION, Applicant

AND:

CANADA TAX REVIEWS INC ., ABRAHAM SHOMER, 2313833 ONTARIO INC ., 2499969 ONTARIO INC ., 1000031025 ONTARIO INC. and CERTAIN LLOYD'S UNDERWRITERS, Respondents

BEFORE: Cavanagh J.

COUNSEL: *Cameron J. Wetmore and Melvyn L. Solmon*, for the Applicant

Nathanial Read-Ellis and David Ionis, for the Respondents Canada Tax Reviews Inc ., Abraham Shomer, 2499969 Ontario Inc ., 2313833 Ontario Inc. and 1000031025 Ontario Inc.

HEARD: December 2, 2025

ENDORSEMENT

Introduction

[1] The within application is brought by the Applicant, Highbreed Financial Corporation ("HBFC"), against the Respondents, Canada Tax Reviews Inc. ("CTR"), Abraham Shomer, 2313833 Ontario Inc., 2499969 Ontario Inc., 100031025 Ontario Inc., and Certain Lloyd's Underwriters.

[2] HBFC is a creditor and a 50% shareholder of CTR. George Douramakos is a director and a principal of HBFC .The other 50% shareholder of CTR is 2499969 Ontario Inc., a company owned and controlled by Mr. Shomer and his wife.

[3] In the Notice of Application, HBFC seeks: (a) a declaration that an Event of Default has occurred as defined in the Loan Agreement dated May 10, 2022 between HBFC and CTR and as defined in the General Security Agreement dated May 10, 2022, between the HBFC and CTR; (b) a judgment payable by CTR to HBFC in the principal amount of $2,355,339.18; (c) an order appointing a receiver and manager of all of the assets, undertakings and properties of CTR pursuant to section 243(1) of the *Bankruptcy and Insolvency Act* (the "BIA") section 101 of the *Courts of Justice Act* (the "CJA"); and other related relief.

[4] The Respondents CTR, Abraham Shomer, 2313833 Ontario Inc., 2499969 Ontario Inc., and 1000031025 Ontario Inc. (the "CTR Parties") brought a motion for an order staying the application pursuant to s. 7 of the *Arbitration Act, 1991* (the "*Arbitration Act*") on the ground that

the application is in respect of matters to be submitted to arbitration under an arbitration agreement in a Unanimous Shareholders Agreement dated May 10, 2022 to which HBFC and CTR are parties.

[5] HBFC submits that the application is in not respect of matters to be arbitrated under the Unanimous Shareholders Agreement. It submits that the application is brought by HBFC as a secured creditor of CTR pursuant to a Loan Agreement (with an entire agreement clause), promissory note, and general security agreement, and that it seeks relief only in this capacity, and not as an investor or shareholder of CTR. HFBC submits that this is clear, and not even arguable, from a superficial review of the relevant agreements and the undisputed facts in evidence.

[6] HFBC brought a motion by way of cross-motion for an order appointing an interim receiver of the assets, undertaking and properties of CTR under s. 47(1) of the BIA and s. 101 of the CJA. CTR opposes this motion.

[7] The two motions were heard together.

[8] For the following reasons, the motion by the CTR Parties is granted and the motion by HBFC is dismissed.

Factual Background

[9] HBFC is a holding company that loaned funds in the principal amount of $2,355,339.18 to CTR (the "Debt") and owns 50% of the common shares of CTR. HBFC has two directors, George Douramakos and his wife.

[10] CTR is a tax review and recovery company.

[11] Mr. Shomer is a director of CTR and is acting as the CEO exercising operational control and control of CTR's finances and banking. He indirectly owns 50% of the shares of CTR through a holding company.

[12] On May 10, 2022, HBFC and CTR entered a Loan Agreement, a General Security Agreement (the "GSA") and a promissory note in respect of an initial secured loan of $1,000,000. At the same time, HBFC also became a 50% shareholder of CTR. An Investment Agreement and a Unanimous Shareholders Agreement (the "USA") were executed.

[13] The USA provided for additional advances by HBFC to rank equal to the initial loan, as provided for in the USA: "HIGHBREED [HBFC] will fund the operating expense shortfalls of the Corporation as shareholder loans. Such loans will rank equal to the $1,000,000 loaned by HIGHBREED to the Corporation on May 6, 2022 (the "HighBreed Loan")."

[14] HBFC did make additional advances to CTR in the total amount of $1,355,339.18 between May, 2022 and June 2023.

[15] In the GSA, CTR gave a covenant to provide HBFC with complete access to information concerning the collateral and to examine and take extracts of CTR’s books and records and to provide HBFC with any information concerning the collateral, CTR, and its business as HBFC may reasonably request.

[16] HBFC made requests of CTR to provide information and records concerning CTR and its business over many months including from late 2023. On May 3, 2024, Mr. Douramakos and others attended at CTR's office for the purpose of reviewing records of CTR. HBFC's evidence is that only incomplete information was provided. CTR does not agree.

[17] On July 19, 2024, the lawyers for HPFC provided formal Notice of an Event of Default pursuant to the Loan Agreement and set out a specific list of information and records to be provided to HBFC within 5 days as required by the loan documents.

[18] HPFC's evidence is that CTR failed to provide the information and records requested in the 5 days and in the 15 days following this notice as required by the default provision in the Loan Agreement.

[19] On August 15, 2024, legal counsel for HBFC wrote to CTR and set out HBFC's position that an Event of Default had occurred. The letter demanded repayment of the debt and enclosed a Notice of Intention to Enforce Security pursuant to s. 244 of the BIA.

[20] On November 21, 2024, the lawyers for HBFC, on behalf of HBFC, wrote to counsel for CTR and gave notice with respect to further defaults under the GSA, including:

(a) notice of breach with respect to transfer of collateral under the GSA, and in particular with respect to the transfer to a company controlled by Mr. Shomer of ownership in a new automation tool that was essential to CTR's business;

(b) notice of breach that HBFC was not named as loss payee pursuant to the Lloyd's Policy; and,

(c) demand for CTR to provide copies of the insurance policies it was maintaining as required by the GSA in respect of the collateral.

[21] This application was commenced by Notice of Application issued on July 11, 2025.

Analysis

Motion by CTR Parties for a stay of this application

[22] I first address the motion by the CTR Parties for a stay of this application pursuant to section 7(1) of the *Arbitration Act, 1991* (the "*Arbitration Act*").

[23] Section 7(1) of the *Arbitration Act* provides:

> If a party to an arbitration agreement commences a proceeding in respect of a matter to be submitted to arbitration under the agreement, the court in which the proceeding is commenced shall, on the motion of another party to the arbitration agreement, stay the proceeding.

[24] In *Husky Food Importers & Distributors Ltd. v. JH Whittaker & Sons Limited*, 2023 ONCA 260, the Court of Appeal for Ontario, at para. 23, held, citing *Peace River Hydro Partners v. Petrowest Corp.,* 2022 SCC 41, that when making a request to stay an action under s. 7 of the Act,

the applicant must first establish the technical prerequisites for a mandatory stay of court proceedings on the "applicable standard of proof" and, if this is done, the party seeking to avoid arbitration then must show that one of the statutory exceptions applies, such that a stay should be refused.

[25] The technical prerequisites concern whether the stay applicant has established the arbitration agreement engages the mandatory stay provisions. As the Supreme Court of Canada observed in *Peace Rive*r, at para. 83, provincial legislation typically contains four relevant technical prerequisites:

(a) an arbitration agreement exists;

(b) court proceedings have been commenced by a "party" to the arbitration agreement;

(c) the court proceedings are in respect of a matter that the parties agreed to submit to arbitration; and

(d) the party applying for a stay in favour of arbitration does so before taking any "step" in the court proceedings.

[26] If all the technical prerequisites are met, the stay provision is engaged. The court should then move on to the second component of the analysis, which concerns the statutory exceptions to granting a stay. See *Husky*, at para. 25.

[27] In *Peace River Hydro Partners v. Petrowest Corp.,* 2022 SCC 41, the Supreme Court of Canada, at para. 84, confirmed the standard of proof applicable to establishing the technical prerequisites to a mandatory stay. To satisfy this component, the applicant must only establish an "arguable case" that the technical prerequisites are met. In *Peace River*, at para. 85, the Supreme Court of Canada adopted a statement by the Court of Appeal for British Columbia in *Clayworth v. Octaform Systems Inc*., 2020 BCCA 117, 446 D.L.R. (4th) 626, at para. 30, that under the "arguable case" standard, "there is room for a judge to dismiss a stay application when there is no nexus between the claims and the matters reserved for arbitration, while referring to the arbitrator any legitimate question of the scope of the arbitration jurisdiction".

[28] In *Husky*, the Court of Appeal, at para. 19, citing *Peace River* and other authorities, confirmed that absent legislated exceptions, a court normally should refer challenges to an arbitrator's jurisdiction to the arbitrator. The Court held that this follows from the adoption of the competence-competence principle that gives precedence to the arbitration process. The Court of Appeal confirmed that a court may resolve a challenge to an arbitrator's jurisdiction if the challenge involves pure questions of law or questions of mixed fact and law that require only superficial consideration of the evidentiary record. Where questions of fact alone are in dispute, a court should normally refer the case to arbitration.

[29] In *Uber Technologies Inc. v. Heller*, 2020 SCC 16, the Supreme Court of Canada held, at para. 36, that when determining whether a challenge to an arbitrator's jurisdiction can be determined from a superficial review of the record, the essential question is whether the necessary legal conclusions can be drawn from facts that are either evident on the face of the record or undisputed by the parties.

[30] On this motion, there is no issue about the technical prerequisites for a mandatory stay of court proceedings, other than the third one.

[31] In respect of this technical prerequisite, the CTR Parties submit that there is at least an arguable case that this application is in respect of matters that the parties agreed to submit to arbitration pursuant to the arbitration agreement in the USA. HBFC, on the other hand, submits that this application is not in respect of a matter that the parties agreed to submit to arbitration and that whether this technical prerequisite is met can be resolved on a review of the relevant contractual provisions, interpreted according to the principles in *Sattva Capital Corp. v. Creston Moly Corp*., 2014 SCC 53, and the undisputed facts.

[32] The Arbitration Agreement in Article 9.1 of the USA reads:

> All disputes, disagreements, controversies, questions or claims arising out of or relating to this Agreement, including with respect to the formation, execution, validity, application, interpretation, performance, breach, termination or enforcement of this Agreement, and any dispute relating to conduct claimed to be oppressive or unfairly prejudicial, but excluding any dispute over the Fair Value of Shares, (each a "**Dispute**") will be determined by a sole arbitrator (the "**Arbitrator**") under the *Arbitration Act, 1991* (Ontario) (the "**Arbitration Act**").

[33] In *Woolcock v. Bushert*, 2004 CanLII 35081, the Court of Appeal addressed the interpretation of an arbitration agreement where the parties agreed that "any dispute or controversy between the parties ... relating to the interpretation or the implementation of any provision(s) of this Agreement shall be resolved by arbitration". The Court, at para. 21, accepted that this language suggests that the scope of the clause is to be widely construed. The Court, at para. 23, held that the words "relating to" in the arbitration agreement "enjoy a wide compass" and, so long as the matter in dispute is referable to the interpretation or implementation of some provision of the agreement, it is arbitrable.

[34] HBFC submits that the parties organized their legal relationships using five agreements: (a) the Loan Agreement, (i) the Promissory Note, (ii) the General Security Agreement ("GSA"), (b) the Investment Agreement, and (c) the Unanimous Shareholders agreement ("USA").

[35] HBFC submits that the lending and security relationship was created and governed by the Loan Agreement, the Promissory Note and the GSA, and the shareholder and corporate governance relationship was created and controlled by the Investment Agreement and the USA. HBFC submits that the agreements have different purposes, impose different obligations, and contain different remedies.

[36] HBFC relies on the entire agreement clause in the Loan Agreement which, at section 4.1, reads:

> This Agreement contains the whole agreement between the parties in respect of the subject matter hereof and there are no warranties, representations, terms, conditions or collateral agreements, express,

> implied or statutory, other than as expressly set forth in this Agreement.

[37] HBFC observes that the Loan Agreement, in section 1.1, defines an "Event of Default" as "the occurrence of any material breach of any of the Loan Documents, which remains unresolved ... within five Business days of written notice ... unless the Borrower is in the process of remedying such default ... in which case [there are] an additional ten Business Days ...". HBFC points to section 2.5.3 of the Loan Agreement which provides that an Event of Default results in acceleration of the entire debt making all principal, interest and fees "due and payable without demand".

[38] HBFC notes that under the GSA, CTR granted HBFC a general and continuing security interest in its present and after-acquired property, assets and undertaking as security for all present and future obligations of CTR under the Loan Agreement. The GSA imposes inspection, information-sharing, and books-and-records obligations tied to protection of the Collateral (as defined), including a requirement to insure the Collateral with HBFC as loss payee. The GSA provides that upon the occurrence of an Event of Default that is continuing, HBFC may proceed to realize upon the Collateral including by applying to a court of competent jurisdiction for the appointment of a Receiver (as defined), which includes an interim receiver. The GSA provides that the parties attorn to the non-exclusive jurisdiction of the courts of Ontario.

[39] HBFC submits that, taken together, the Loan Agreement, Promissory Note and GSA provide for a complete commercial lending relationship, with their own definitions, covenants, default rules, and enforcement rights. HBFC submits that these agreements do not incorporate the arbitration clause in the USA and expressly contemplate court-based enforcement, including the right to seek a court-appointed interim receiver and receiver.

[40] The CTR Parties submit that the provision in the GSA providing that HBFC "may" apply to a court for the appointment of a receiver does not reserve this power exclusively to a court. The CTR Parties submit that the attornment provision in the GSA is expressly non-exclusive, and does not preclude the jurisdiction of an arbitrator to decide issues relating to the GSA and the USA. These provisions of the GSA do not, on a superficial reading, clearly oust the jurisdiction of an arbitrator.

[41] The CTR Parties rely on the fact that the five agreements were made at the same time and with the same effective date of May 10, 2022. The CTR Parties submit that the five agreements were made as part of one overall transaction and they are deeply interrelated. The CTR Parties submit that the Loan Agreement, Promissory Note and GSA must be interpreted together with the Investment Agreement and the USA. The CTR Parties submit that, according to the principles in *Sattva*, the interpretations of these agreements involve issues of mixed fact and law in which principles of contractual interpretation are applied to the words of these contracts, considered in light of the surrounding circumstances when these agreements were made.

[42] Under the Investment Agreement, HBFC agreed to subscribe for and purchase common shares in the capital of CTR. HBFC, as a shareholder, was subject to the USA. The Investment Agreement references the "Loan Agreements" to be entered into and the promissory note and security documents scheduled thereto, and appends forms of these documents as an exhibit to the Investment Agreement. The Investment Agreement includes a "Disclosure Schedule" as an exhibit which states the quantum of CTR's debts which HBFC agreed to pay on closing. The Investment

Agreement provides that the "Exhibits", including the Loan Agreements, "are an integral part to this Investment Agreement". The Investment Agreement also references the "Shareholders' Agreement", that is, the USA.

[43] The Investment Agreement includes an entire agreement clause at section 7.11 that applies to all of the five agreements. It reads:

> Entire Agreement and Amendments. This Investment Agreement (including Exhibits) together with the Shareholders' Agreement and such other ancillary agreements delivered in connection herewith and therewith, contain the entire agreement of the parties hereto relating to the subject matter hereof and there are no representations, covenants or other agreements relating to the subject matter hereof except as stated or referred to herein. This Investment Agreement may be amended or modified in any respect by written instrument only if executed by all the parties hereto.

[44] The Loan Agreement provides in section 2.1 that HBFC agrees to make available to CTR on closing "a loan in the principal amount of up to One Million Dollars ($1,000,000) (the "Loan")." The same loan is also provided for by the USA. Under the USA, the "Highbreed Loan" is a defined term and means "the $1,000,000 loaned by HIGHBREED to the Corporation on May 6, 2022". Under the USA, HBFC also agreed to fund the operating expense shortfalls of CTR as shareholder loans to rank equal to the Highbreed Loan. The additional shareholder loans form part of the indebtedness claimed by HBFC in this application.

[45] The CTC Parties also rely on section 4.4.2 of the USA which provides that in the event that CTC, once paying all expenses and overheads (not including the Highbreed Loan), has cash which may be distributed to the Shareholders ("Distributable Cash"), the Board will distribute/pay the Distributable Cash as set out in this section, which provides for a priority payment to Mr. Shomer's holding company as a shareholder of Class A common shares in the amount of $1,000,000 before repayment of the "Highbreed Loan". The CTC Parties submit that under this provision, repayment of loans owed to HBFC is subordinate to a priority $1 million distribution to Mr. Shomer's holding company, and that HBFC, by bringing its application, is seeking to jump the queue in the payment waterfall. HBFC disputes this interpretation of section 4.4.2 of the USA which, it submits, on a plain reading, has no application in the circumstances.

[46] HBFC submits that courts in Ontario have considered language similar to the entire agreement clause in the Loan Agreement and found that a mandatory arbitration clause in another agreement is not engaged. HBFC submits that I should follow these other cases.

[47] In support of this submission, HBFC cites *Geraghty v. Halcyon Waterspring Inc*., [1998] O.J. No. 585. In *Geraghty*, a former employee of a company brought an action for wrongful dismissal. The plaintiff was subject to an employment agreement with an entire agreement clause. He was also a former shareholder of the company and subject to a share exchange agreement, also with an entire agreement clause, as well as a mandatory arbitration clause. The plaintiff moved for a stay of the company's counterclaim in which they made claims for damages for breach of the share exchange agreement. The company argued that the arbitration clause was inapplicable but, if it applied, the plaintiff's claim should also be stayed, arguing that the employment agreement is

also subject to the arbitration clause in the share exchange agreement. The Master held that each of the employment agreement and the share exchange agreement had an entire agreement clause stating that each agreement stands alone, such that the arbitration clause in the share exchange has no application to the employment agreement.

[48] In *Geraghty*, neither the employment agreement or the share exchange agreement included an entire agreement clause like the one in the Investment Agreement which provides that the agreements in question, together, contain the entire agreement of the parties relating to the subject matter thereof. The entire agreement clause in the Investment Agreement applies to all five agreements to which HBFC is subject. In addition, in *Geraghty*, the Master does not refer to the "arguable case" standard of proof, and does not appear to have applied this standard in making his decision.

[49] HBFC also cites *Lansens v. Onbelay Automotive Coatings Corp*., 2006 CanLII 51177 (ON SC). In *Lansens*, the defendants to a wrongful dismissal action moved to stay the action on the ground that the issues in the action were within the ambit of an arbitration clause in a share purchase agreement. The employment agreement contained an entire agreement clause. The share purchase agreement contained a broadly structured clause entitling either party to indemnification from the opposite party. This agreement provided that where any party has a claim for indemnification, the claim must be resolved through binding arbitration. The motion judge held that the share purchase agreement does not govern the employment of the plaintiff. He referenced a clause in the employment agreement by which the parties attorned to the non-exclusive jurisdiction of the Ontario courts. The motion judge held that the employment agreement is a separate and distinct contract from the share purchase agreement and, as a result, disputes between the parties to the employment agreement are not covered by the arbitration clause in the share purchase agreement.

[50] In *Lansens*, the motion judge does not refer to the "arguable case" standard of proof that applies on a motion such as this. The motion judge cites *Mantini v. Smith Lyons LLP*, 2003 CanLII 20875, a decision of the Court of Appeal. In *Mantini*, at paras. 17 and 29, the Court of Appeal describes the approach to be taken on a motion to stay a court proceeding in favour of arbitration and does not refer to the "arguable case" standard of proof. In addition, the facts in *Lansens* were different than those on the motion before me because the claim in *Lansens* under the employment agreement did not include one relating to an obligation created by the share purchase agreement, whereas HBFC's claim includes repayment of a debt obligation that, in part, includes shareholder loans made under the USA. The motion judge in *Lansens* concluded that the employment agreement was not part of the share purchase agreement. There was no entire agreement clause in either agreement that is like the entire agreement clause in the Investment Agreement. For these reasons, this case is distinguishable.

[51] HBFC also cites *Dynatec Mining Ltd. v. PCL Civil Constructors*, [1996] O.J. No. 29. In *Dynatec*, the applicant, a subcontractor under a general contract between the general contractor and the owner, wished to arbitrate disputes with the general contractor under the arbitration clause in the general contract which, it submitted, were incorporated by reference into the subcontract. The application judge construed the subcontract to determine whether the arbitration clause was so incorporated. The application judge held that there are no grounds to support a finding that the arbitration provision was incorporated into the subcontract and that the evidence of the parties' intentions as gleaned from the contract document leads to the opposite conclusion.

[52] In *Dynatec*, the application was not brought under the *Arbitration Act*, but under rule 14.05(3)(d) of the *Rules of Civil Procedure* for the determination of rights that depend on the interpretation of a contract. The application judge did not apply the "arguable case" standard of proof that applies on the motion before me. I am not called on to decide on a balance of probabilities whether the application is in respect of a matter that the parties agreed to submit to arbitration. The decision in *Dynatec*, which was made in an application brought on different grounds, is distinguishable.

[53] HBFC submits that even if the loan documents and the USA are treated as interrelated agreements that were made together for purposes of a single transaction, the arbitration clause in the USA does not override the express language of the Loan Agreement and the GSA assigning certain disputes to the courts.

[54] In support of this submission, HBFC cites *Allied Accounting v. Pacey*, 2017 ONSC 4388. In *Allied*, the defendant was an accountant who provided services to the plaintiff under a contract and she was also a shareholder of the plaintiff and subject to a shareholders' agreement. The plaintiff sued the defendant alleging conduct that was contrary to the services contract and the shareholders' agreement, which included an arbitration clause. The defendant moved to stay the action in favour of arbitration. The plaintiff responded that the shareholders' agreement, properly interpreted, provided that the plaintiff was entitled to seek the relief claimed from a "court of competent jurisdiction" such that the mandatory arbitration clause was not engaged. The motion judge agreed. The motion judge's reasons included that the shareholders' agreement was subject to the former *Arbitration Act* which did not provide for an arbitral tribunal to order injunctions and other equitable remedies, such that the section in this agreement providing for recourse to a court of competent jurisdiction was necessary to fill a legislative gap.

[55] On the motion before me, there is no legislative gap to be filled by the five agreements. There were two contracts in question in *Allied* which are different than the five contracts before me on this motion. The motion judge in *Allied* was able to determine from a superficial review of the shareholders' agreement that s. 7(1) of the *Arbitration Act* had not been triggered. The decision in *Allied* does not assist me to determine whether, based on a superficial review of the USA and the other documents in evidence, the CTR parties have failed to establish that there is an arguable case that the HBFC's application is in respect of a matter that the parties agreed to submit to arbitration.

[56] In *Sankar v. Bell Mobility Inc*., 2016 ONCA 242, the Court of Appeal addressed whether the motion judge was entitled to rely on other contractual documents, in addition to the terms of the relevant service agreements, when he interpreted those agreements. Strathy J.A., writing for the Court, at para. 22, held that the motion judge was entitled to rely on other documents that formed part of the contractual relationship between the parties. Strathy J.A. noted, at para. 23, that it is well-settled that where parties enter into interrelated agreements, the court is required to look to all those agreements to determine their construction.

[57] I accept that the entire agreement clause in the Loan Agreement is narrower than the entire agreement clause in the Investment Agreement. Nevertheless, it is at least arguable that the five agreements were made as part of one transaction and that each should be interpreted having regard to the other agreements. The interpretation of each agreement raises issues of mixed fact and law which would require consideration of the surrounding circumstances for all of the agreements,

including the USA. It is arguable that the entire agreement clause in the Loan Agreement must be interpreted having regard to the other agreements, including the more comprehensive entire agreement clause in the Investment Agreement.

[58] In its Notice of Application, HBFC seeks a declaration that an Event of Default has occurred as defined in the Loan Agreement. The Loan Agreement provides that an "Event of Default" means the occurrence of any material breach of any of the "Loan Documents" (the Loan Agreement, Promissory Note, and GSA) which is not remedied as provided for. To succeed on the claims made in the Notice of Application, HBFC will be required to prove that a material breach of the Loan Documents occurred. The CTR Parties deny that there were breaches that were material.

[59] In its Notice of Application, HBFC pleads that on February 5, 2025, HBFC requested in writing that CTR provide certain financial information and that CTR failed to provide the requested information. This pleading is included in the grounds for the relief claimed, that is, judgment for the amount of the secured debt claimed by HBFC and the appointment of a receiver. The letter in question, sent by Mr. Douramakos to Mr. Shomer of CTR, is in the application record of HBFC and it reads that the request for information is made "[t]o evaluate your request for additional cash injections". CTR submits the letter, on its face, was written by HBFC in its capacity as a shareholder, where its rights would be governed by the USA, and not as a secured creditor of CTR.

[60] In its Notice of Application, HBFC pleads that on July 19, 2024, its legal counsel wrote to Mr. Shomer and CTS and provided Notice of an Event of Default and set out a specific list of information and records to be provided to HPFC within 5 days as required by the Loan Documents. The letter, included as evidence in HBFC's application record, reads that it is written by the author as a member of the firm of lawyers for HBFC and Mr. Douramakos, and that it provides a final opportunity for CTR to provide Mr. Douramakos and HBFC "with access to complete and accurate financial information as required for supervision and management of CTR and as required pursuant to the terms of the Loan Agreement and GSA". CTR submits that the text of the letter shows that it was sent by counsel for HBFC and Mr. Douramakos in their respective capacities as a shareholder and director of CTR, where their rights would be governed by the USA, and by counsel for HBFC, in its capacity as a creditor of CTR.

[61] I have held that it is arguable that the five agreements are interrelated agreements that are part of a single transaction and each should be interpreted having regard to the provisions of the other agreements. Given this, it is also arguable that the question of whether, under the GSA ,there was a material breach of the "Loan Documents" by CTR of its obligation to provide information and records to HBFC would require consideration of the rights and obligations of the parties under all of the five agreements, including the USA. Determination of the validity of the position of CTR with respect to the so-called payment waterfall in section 4.4.2 of the USA requires an interpretation of this provision in accordance with the principles in *Sattva*.

[62] The CTR Parties submits that CTR's defences to HBFC's application include (i) that HBFC lacks clean hands in seeking equitable relief because it has improperly and unlawfully appropriated a corporate opportunity of CTR, and (ii) the defence of set-off based on alleged breaches by HPFC of its contractual obligation under the USA to fund operating expense shortfalls of CTR. HBFC has commenced an arbitration proceeding against HBFC (and its parent) in which it claims

damages in the amount of $5 million for breach of contract based, in part, on the alleged breach by HPFC of its obligation under the USA to fund CTR's operating shortfalls and capital expenditures.

[63] In *Dalimpex Ltd. v. Janicki,* 2003 CarswellOnt 1998, one of the questions before the Court of Appeal was whether the disputes between the parties fell within the scope of an arbitration agreement. The Divisional Court had held that in answering this question, the motion judge erred in focussing entirely on the claims made by the plaintiff without considering the defences raised by a defendant in determining whether the subject matter of the action was within the arbitration clause. The Court of Appeal, at para. 43, accepted the analysis and conclusion of the Divisional Court, except where the court appeared to make a definitive finding that the dispute between the plaintiff and this defendant is covered by the arbitration clause. The Court of Appeal held that it was preferable to leave the matter for final determination by the arbitral tribunal.

[64] The USA, and not the Loan Agreement, provides for HBFC to make shareholder loans to CTR over and above the $1 million loan, to fund operating expense shortfalls. These shareholder loans represent a significant part of the overall indebtedness claimed by HBFC against CTR in the application. The USA also provides for HBFC, in certain circumstances, to use commercially reasonable efforts to procure required funding for capital expenditure that has been approved by the Board. Mr. Shomer's evidence is that HBFC breached its funding obligation under the USA in May 2023. The CTC Parties submit that CTC it suffered damages, and that it has a defence of set off to HBFC's claim in this application for payment of a debt. Mr. Douramakos denies that HBFC breached its obligation to finance operating shortfalls of CTR. He relies on CTR's failure to provide financial information which would allow HBFC, a secured creditor, to assess whether its collateral is at risk as a proper basis for HBFC to decline to make further loan advances while this failure was ongoing.

[65] I am required to consider the defences of CTR to the claims made by HBFC in this application and, when I do so, I conclude that CTR's claim for damages for breach of the USA arguably gives rise to a defence of set off, the validity of which, arguably, is a matter to be submitted to arbitration under the USA. See *Dalimpex*, at para. 43.

[66] In its Notice of Application, HBFC pleads that to induce HBFC to invest in CTR and to loan funds to CTR, Mr. Shomer, a director and officer of CTR, made particular representations to HBFC about CTR's liabilities which he knew were false. HBFC pleads that the appointment of a receiver is appropriate, in part, as a result of Mr. Shomer acting fraudulently with respect to the representations. Mr. Douramakos confirms in his first affidavit that the representations were made in the Investment Agreement. They are not made in the Loan Agreement or the GSA. HBFC's reliance on alleged misrepresentations based on representations in the Investment Agreement, which is related to the USA, arguably creates a nexus between the claims made in the Notice of Application and the matters reserved for arbitration in the USA.

[67] I am satisfied that the CTR Parties have established an arguable case that HBFC's application for the relief claimed in its Notice of Application is, at least in part, in respect of "disputes, disagreements, controversies, questions or claims arising out of or relating to" the USA, including with respect to the "interpretation, performance, breach, ... or enforcement" of the USA. Whether HBFC's application is in respect of such disputes etc. arising out of or related to the USA cannot be determined from a superficial review of the applicable agreements or the balance of the

evidentiary record. I am unable to conclude that is no nexus between the claims made by HBFC in the Notice of Application and the matters reserved for arbitration under the USA. A challenge to the arbitrator's jurisdiction must be resolved first by the arbitrator. This gives effect to the competence-competence principle. See *Husky*, at para. 19.

[68] The CTR Parties have established on the "arguable case" standard of proof that the technical prerequisites to a mandatory stay are met. The stay provision is engaged.

[69] In *Husky*, at para. 25, the Court of Appeal directs that if all the technical prerequisites are met, the court should move on to the second component of the analysis, which concerns the statutory exceptions to granting a stay of the court proceeding. The *Arbitration Act* provides for such statutory exceptions in s. 7(2) which provides that a court may refuse to stay the proceeding in any of the specified cases. One of these cases is where the subject matter of the dispute is not capable of being the subject of arbitration under Ontario law.

[70] In the USA, the parties agreed that section 7(2) of the *Arbitration Act* will not apply to the arbitration of a Dispute (as defined). HBFC submits that this agreement does not remove the Court's discretion to refuse a stay because s. 48(1) of the *Arbitration Act* gives the Court the power to stay an arbitration at any stage on the same grounds as those in s. 7(2). HBFC cites s. 3 of the *Arbitration Act* which provides that the parties to an arbitration agreement may not agree to vary or exclude s. 48 of the *Arbitration Act*.

[71] HBFC submits that I should refuse a stay because the subject matter of the dispute is not capable of being the subject of arbitration under Ontario law. HBFC submits that arbitration would deprive it of the court-supervised process required for secured enforcement of its rights under the Loan Agreement and the GSA, delay protection of collateral, and lack the necessary powers *vis-à-vis* third parties.

[72] Section 48(1) of the *Arbitration Act* authorizes a court to grant a declaration that the arbitration is invalid "[a]t any stage during or after an arbitration". No arbitration of the claims made by HBFC in the Notice of Application has commenced and, therefore, s. 48(1) of the *Arbitration Act* does not apply. The parties agreed to exclude the application of s. 7(2) of the *Arbitration Act* and they are not precluded from doing so under s. 3. The statutory exceptions in s. 7(2) do not apply to allow me to refuse to stay the application.

[73] In *Randhawa v. Randhawa*, 2021 ONSC 3643, the court addressed whether an arbitrator has jurisdiction to appoint an inspector under the Ontario *Business Corporations Act*. The respondent argued that the arbitrator lacked jurisdiction to do so because the statute reserves this power to the court and because the inspector was to have the power to investigate a non-party to the arbitration agreement. The application judge held, at paras. 8-9, that statutory remedies can be pursued through arbitration. The application judge decided that the arbitrator had jurisdiction to appoint an inspector. The application judge agreed that an arbitrator has no jurisdiction to empower an inspector to exercise powers vis-à-vis persons who are not parties to the arbitration agreement. The application judge, at paras. 30-31, held that an arbitrator would be able to make necessary factual findings to support an application to court, and that the arbitrator in that case had acted properly in directing the parties to the court if the inspector's powers were intended to affect non-parties to the arbitration agreement.

[74] On the authority of *Randhawa* and cases cited in that decision, an arbitrator would have jurisdiction to appoint a person to act as a receiver to obtain access to information from CTR and to preserve the assets of CTR. An arbitrator would be able to make necessary factual findings and to direct the parties to court, if it is necessary for a receiver to be appointed to exercise powers affecting persons who are not parties to the arbitration agreement.

[75] For these reasons, the application should be stayed under s. 7(1) of the *Arbitration Act*.

Motion by HBFC for appointment of an interim receiver

[76] HPFC moves for an order appointing an interim receiver pursuant to s. 47 of the BIA and s. 101 of the *Courts of Justice Act*.

Background Facts

[77] HBFC's evidence is that it loaned funds in the principal amount of $2,355,339.18 to CTR and owns 50% of the common shares of CTR. HBFC's evidence is that CTR defaulted on its obligation to provide information and, on July 19, 2024, HBFC, through its legal counsel, provided formal notice of an event of default pursuant to the Loan Agreement and set out a specific list of information and records to be provided to HBFC as required by the loan documents. HPFC's evidence is that CTR failed to provide the requested information and records as required by the default provision in the Loan Agreement.

[78] On August 15, 2024, legal counsel for HBFC notified CTR that an Event of Default under the Loan Agreement had been made, demanded repayment of the debt, and sent a Notice of Intention to Enforce Security pursuant to s. 244 of the BIA.

[79] HBFC's evidence is that CTR continues to refuse and fail to provide the requested information and records including:

(a) Copies of the supporting documents for e-transfers, wire transfers or any other form of disbursement of funds out of the CTR Accounts;

(b) A copy of CTR's contract with Digital Research Labs;

(c) Copies of the contracts with several of CTR's service providers;

(d) Full particulars of any advances to CTR from two persons including dates and amounts and details of the accounts advances were deposited into; and,

(e) Copies of all emails sent or received by CTR or its agents with respect to any contracts of insurance or insurance claims.

[80] HBFC submits that CTR interfered with enforcement of its security in respect of proceeds of insurance from a claim for coverage for a business interruption loss under an insurance policy with Lloyd's by refusing to agree that any proceeds paid pursuant to this policy be made payable to HBFC.

[81] HBFC relies on evidence that on July 25, 2024, after the July 19, 2024 request for information and records, a payment was made pursuant to the Lloyd's policy to CTR in the amount of $102,590.63. The 2024 payment was not disclosed to HBFC until August 23, 2024.

[82] After service of the Notice of Application, the parties agreed that the final payment pursuant to the policy be paid into escrow pending further determination by the court. This is reflected in an Order dated September 25, 2025.

[83] HBFC relies on the provisions of the GSA with respect to its right to complete access to information from CTR and the requirement that the collateral be insured with HBFC named as loss payee.

[84] HBFC relies on evidence that Mr. Shomer, without notice to or approval of HPFC, caused a company he controls, 100031025 Ontario Inc., to enter into a software transfer agreement with Digital Research Labs to acquire ownership of a new automation tool that was developed by CTR using some of the additional loan advances made by HBFC to CTR. HBFC's evidence is that the new automation tool was essential to CTR's business. CTR advised in November 2024 that it was in the process of transferring the new automation tool to CTR. On November 11, 2025, after the commencement of this application, 100031025 Ontario Inc. transferred the new automation tool to CTR.

Analysis

[85] The USA provides, in section 9.2.1, that before the appointment of the arbitrator, the Arbitration Parties (as defined) may apply to the courts for interim relief and that a request for interim relief to a court will not be considered to be incompatible with section 9.1 or as a waiver of that provision.

[86] Section 47(1) of the BIA provides:

> 47 (1) If the court is satisfied that a notice is about to be sent or was sent under subsection 244(1), it may, subject to subsection (3), appoint a trustee as interim receiver of all or any part of the debtor's property that is subject to the security to which the notice relates until the earliest of
>
> (a) the taking of possession by a receiver, within the meaning of subsection 243(2), of the debtor's property over which the interim receiver was appointed,
>
> (b) the taking of possession by a trustee of the debtor's property over which the interim receiver was appointed, and
>
> (c) the expiry of 30 days after the day on which the interim receiver was appointed or of any period specified by the court.

[87] Section 47(3) of the BIA provides:

> (3) An appointment of an interim receiver may be made under subsection (1) only if it is shown to the court to be necessary for the protection of
>
> (a) the debtor's estate; or

> (b) the interests of the creditor who sent the notice under subsection 244(1).

[88] In its motion, HBFC seeks an order pursuant to s. 47(1) of the BIA and s. 101 of the *Courts of Justice Act* appointing an interim receiver of all the assets, undertakings and properties of CTR until disposition of its application. In its Notice of Application, HBFC seeks a final order appointing a receiver of all the assets, undertakings and properties of CTR pursuant to s. 243(1) of the BIA and s. 101 of the *Courts of Justice Act*.

[89] HBFC submits that evidence establishes a pattern of conduct by CTR and Mr. Shomer demonstrating that HBFC's security is exposed to significant risk. HBFC relies on the failures by CTR to provide financial information, the secret transfer of the new automation tool, Mr. Shomer causing CTR to engage in transactions with his companies, without board approval, and CTR's conduct with respect to the Lloyd's insurance payments. HBFC submits that the evidence shows that a court-appointed receiver is necessary to protect the collateral and to enable HBFC to obtain information it is contractually entitled to receive.

[90] In response to this motion, CTR submits that it has not committed an Event of Default under the Loan Agreement. It submits that any failures to provide information and records are no more than technical breaches of the loan documents which are not material. CTR cites *Craig v. CEO Global Network Inc*., 2019 ONSC 3589, at para. 77, where the court held that for a breach of a consulting agreement to be material, it must be "substantial, serious, and consequential in nature". CTR submits that it provided full access to HPFC to its books and records including at a meeting on May 3, 2024. CTR relies on its evidence that it offered to provide additional information to HBFC, on a counsel's eyes only basis, because of concerns that Mr. Douramakos, the principal of HBFC, had misused confidential information belonging to CTR and had taken a corporate opportunity of CTR. CTR denies that any information that was not provided is material.

[91] CTR denies that it committed a material breach of the GSA by transferring the new automation tool from CTR to 100031025 Ontario Inc. and submits that, in any event, the tool has now been transferred. CTR relies on the fact that the insurance proceeds have now been placed in escrow by agreement of the parties.

[92] In *Konopny (Re),* 2009 CanLII 44412, Strathy J., as he then was, heard an application for the appointment of an interim receiver pursuant to s. 46(1) of the BIA which allows for such an appointment if it is shown to be necessary for the protection of the estate of a debtor. Strathy J. accepted the test for the appointment of an interim receiver set out in Houlden and Morawetz, *Bankruptcy and Insolvency Law of Canada*, 4th ed., (Toronto: Carswell, Looseleaf ed., 2009) at p. 2-115, which included that "there must be an immediate need for protection of the debtor's estate due to the grave danger that assets will disappear or the estate is otherwise in jeopardy". This test was approved in *In the Matter of the Bankruptcy of Thomas Dylan Suitor*, 2024 ONSC 5940, at para. 9.

[93] I observe that the issue about the new automation tool was known to HBFC in November 2024 and the issue about the insurance proceeds was known to HBFC in August 2024. HBFC has been seeking information and records since before May 2024. HBFC did not seek the appointment of a receiver, or an interim receiver, when these issues arose. This application was commenced on

July 11, 2025. The motion for an interim receiver was brought by notice of cross-motion dated August 27, 2025, after the CTR Parties moved to stay the application.

[94] I am not satisfied that, in the circumstances, HBFC has established that there is an immediate need for the appointment of an interim receiver for protection of the assets and property of CTR due to the grave danger that if an interim receiver is not appointed, the assets will disappear or be improperly dissipated. HBFC has not shown that the appointment of an interim receiver is necessary for the protection of the estate of CTR or the interests of HBFC, as required by s. 47(3) of the BIA. I am also not satisfied that where HBFC has failed to establish that an interim receiver should be appointed under s. 47(1) of the BIA, it is just or convenient for an interim receiver to be appointed under the CJA.

[95] I have held that the application should be stayed and that an arbitrator should determine whether there is jurisdiction to decide the matters in dispute in this application. If the arbitrator determines that there is jurisdiction to decide these matters in dispute, the arbitrator will also have jurisdiction under the *Arbitration Act*, and the power under section 9.2.2 of the USA, to take interim measures in respect of such matters. Section 9.2.2 provides that "the Arbitrator may take any interim measures that the Arbitrator considers necessary in respect of the Dispute, including measures for the preservation of assets, the conservation of goods or the sale of perishable goods".

[96] It is not necessary for me to decide whether the motion by HBFC should be dismissed because of its conduct.

Disposition

[97] For these reasons:

(a) The motion by the CTR Parties is granted and the within application is stayed pursuant to s. 7(1) of the *Arbitration Act*;

(b) The motion by HBFC for an order appointing an interim receiver over the assets, undertaking and property of CTR is dismissed.

[98] If the parties are unable to resolve costs of each of the two motions, they may make written submissions (with reasonable page limits) in accordance with a timetable to be agreed upon by counsel and approved by me.

Cavanagh J.

Date: December 16, 2025