

COURT OF APPEAL FOR ONTARIO

CITATION: Kingsdale Partners LP v. Sprott Asset Management LP,
2026 ONCA 356
DATE: 20260519
DOCKET: COA-25-CV-0696

Paciocco, Thorburn and Dawe JJ.A.

BETWEEN

Kingsdale Partners LP

Plaintiff (Respondent)

and

Sprott Asset Management LP

Defendant (Appellant)

David Chernos, Brendan Brammall and Julia D'Silva, for the appellant

James Renihan and Jacob Medvedev, for the respondent

Heard: April 8, 2026

On appeal from the judgment of Justice Jennifer Penman of the Superior Court of Justice, dated May 8, 2025, with reasons reported at 2025 ONSC 2812, and from the costs judgment dated July 3, 2025, with reasons reported at 2025 ONSC 3980.

REASONS FOR DECISION

OVERVIEW

[1] The appellant, Sprott Asset Management LP (“Sprott”), an asset management firm, retained the services of the respondent, Kingsdale Partners LP

(“Kingsdale”), a strategic shareholder advisory firm, to provide strategic advice in connection with its plan to gain control of Central Fund of Canada Ltd. (“CFC”), one of its competitors controlled by the Spicer family. The contract, which was executed on June 15, 2015, included a success fee, specifying that “Success is defined as **SPROTT** becoming the Manager of **CFC**.”

[2] The contract was drafted three months before its execution. Although it was not signed, the parties met and discussed various strategy options from February to June of 2015. The signing ultimately coincided with the launch of an attempt by the parties to gain control of CFC by using a “meeting requisition approach”, a “hostile” takeover strategy that involves a shareholder meeting and vote, with which Kingsdale assisted. This strategy was abandoned after a November 2015 Court of Appeal of Alberta decision ruled that the meeting requisition was invalid: *1891868 Alberta Ltd. v Central Fund of Canada Limited*, 2015 ABCA 331. Throughout 2016, Kingsdale was in repeated communication with Sprott about next steps in the takeover campaign.

[3] In March 2017, Sprott initiated a different “hostile” takeover strategy — a “plan of arrangement”. It undertook this approach without Kingsdale’s involvement, even though Kingsdale could have assisted with this second bid based on the work it undertook to do in the agreement.

[4] In July 2017, while Sprott was still pursuing the purely hostile plan of arrangement strategy, it reached out to CFC and proposed a modified plan of arrangement under which Sprott would consensually acquire CFC's assets through the newly created New Sprott Trust. When making this overture, it apologized to the Spicer family for its hostile takeover strategies. Agreement was reached, and the sale was completed.

[5] Sprott and Kingsdale disagreed on whether, according to the terms of their contract, the control that Sprott acquired over the management of CFC through this consensual purchase transaction entitled Kingsdale to the success fee and to the unpaid amount (equal to \$75,000) of the "Strategic Advisory & Proxy Solicitation Management Fee" provided for in the contract (the "management fee").

[6] The trial judge ruled in Kingsdale's favour on both issues after correctly identifying the principles of contract interpretation. She found that in their contract, Sprott retained Kingsdale to provide its services in pursuing "an overall goal" of gaining control of the management of CFC, and that the contract "was not restricted to ... a single strategy being utilized to achieve that goal". She found that this contract had not been terminated prior to Sprott's acquisition of CFC, and that the acquisition of CFC in 2017 built upon the work done by Kingsdale in 2015. Finally, she found that the acquisition gave Sprott control over the management of CFC, thereby triggering the success fee, and she found the management fee to be owing.

[7] Sprott appeals this decision, arguing that the trial judge made extricable errors of law by: (1) failing to consider the contract as a whole, (2) considering an earlier draft of the contract, (3) interpreting the contract in a commercially unreasonable manner, and (4) implying a notice provision not provided for in the contract. Sprott also alleges that she made palpable and overriding errors, including by failing to take account of the language of the management fee, and by misapprehending its position that the contract was limited to the first takeover bid, rather than the meeting requisition strategy employed as part of that bid.

[8] We are not persuaded by these submissions. As explained below, we see no extricable errors of law or palpable and overriding errors of mixed fact and law. The trial judge's decision is therefore entitled to deference, even if we find the interpretation advanced by Sprott to be reasonable or even preferable: *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53, [2014] 2 S.C.R. 633, at paras. 50-55; *Earthco Soil Mixtures Inc. v. Pine Valley Enterprises Inc.*, 2024 SCC 20, 492 D.L.R. (4th) 389, at paras. 27, 33. We therefore dismiss the appeal.

ANALYSIS

1. The trial judge did not fail to consider the contract as a whole.

[9] Sprott argues that Kingsdale's entitlement to the success fee is predicated on Kingsdale performing certain services and Sprott gaining control of CFC as a result. It argues that when the contract is read as a whole, these services must be understood as being geared towards and confined to the first takeover bid. It claims

that the trial judge failed to see this because she did not consider the contract as a whole. We do not accept this submission.

[10] In her decision, the trial judge explicitly identified her obligation to interpret the contract as a whole, recounted Sprott's submission about the need to do so, noted that she was beginning with the text, and engaged submissions that Sprott had made about aspects of the contract that it argued supported its position, including the singular use of terms throughout the contract, such as "the meeting" and "the campaign".

[11] She also responded to Sprott's claim that a review of the nature of the tasks that Kingsdale assumed reflected the meeting requisition approach and therefore supported its position that the contract related to the first takeover bid alone. She noted in response that the contract also used plural and broadly-framed language, particularly in describing the type of work Kingsdale would undertake, thereby supporting the goal-focused interpretation of the agreement. She concluded that the listed tasks described were equally applicable to both hostile strategies and therefore did not support Sprott's position.

[12] Perhaps most importantly, she also found the goal-focused nature of the agreement to be supported by the success fee provision, which predicated payment not on the success of the first takeover effort (the meeting requisition strategy) but on "SPROTT becoming the Manager of CFC", and on the "Statement

of Strategic Advisory Work” provision, which was also focused on “gaining control of the management of CFC.”

[13] During oral argument, Sprott featured two specific arguments to support its position that the contract as a whole was not given proper consideration, neither of which we accept.

[14] First, it stressed that the trial judge misquoted the contract when identifying the key term that she relied upon to conclude that the contract was goal focused. That is a fair observation. She in fact did so. She said: “The first substantive page titled ‘Statement of Strategic Advisory Work’ uses the language, ‘For Action Against – Central Fund of Canada Ltd’. The definition of ‘Action Against’ is ‘to gain control of the management of CFC’.”

[15] However, the phrase “For Action Against – Central Fund of Canada Ltd.” is not found under the heading “Statement of Strategic Advisory Work”, as the trial judge stated. It is found on the cover page identifying the contract. The provision she purported to quote from in fact reads as follows:

This strategic advisory proposal is prepared for **Sprott Asset Management LP** (hereinafter referred to as “**SPROTT**”) in relation to the proposed action against the **Central Fund of Canada Ltd.** (referred to herein as “**CFC**”) to gain control of the management of CFC.

[16] Although the trial judge accurately extracted the phrase “to gain control of the management of CFC” from this passage, she did not include the phrase “the

proposed action” when describing what it said. Sprott argues that this is a crucial omission because “the proposed action” is a reference to the takeover strategy that was commenced when the contract was signed on June 15, 2015.

[17] We are not persuaded that the misquoted and incomplete description of the provision by the trial judge shows that she failed to consider the term “the proposed action”. She clearly reviewed and found significance in this passage, since she took from it the phrase “to gain control of the management of CFC”. Having read it and having quoted from it, it is not fair to infer that she failed to consider its language.

[18] Nor is the phrase “the proposed action” so significant that it required mention, such that its omission should be taken as an indication that the trial judge failed to note its significance. In context, “the proposed action” is not particularly discerning. It is equally capable of referring to either the initial strategy adopted or to the broader goal of securing management of CFC.

[19] In any event, even if the misquote was a palpable error, it was not an overriding error. When the reasons for decision are read as a whole, it is evident that the trial judge based her conclusion that the contract was goal focused — the goal being “to gain control of the management of CFC” — on the language of the entire contract, read in the context of the surrounding circumstances. She also

noted that had Sprott intended to confine the retainer to the first takeover strategy, it could easily have said so, but no such language was used.

[20] The trial judge also found that surrounding circumstances supported the interpretation she came to. She found, reasonably, that communications between the parties before the contract was signed and in which other takeover options were reviewed reflected an appreciation by them that acquiring CFC “was going to be complicated and that Sprott might have to pivot”. This made it unlikely that they would contract for a single strategy.

[21] The surrounding circumstances also included the fact that the agreement was drafted before the strategy for the first takeover bid was selected yet had not been modified after the meeting requisition approach had been selected.

[22] In addition, surrounding circumstances revealed that the terms of the contract were functionally identical to the contract the parties signed relating to Sprott’s campaign to acquire two other Spicer-managed entities, Central Gold Trust and Silver Bullion Trust, which never involved a meeting requisition approach. This reinforced the trial judge’s conclusion that the contract before her reflected a “strategy-agnostic” approach to Kingsdale’s involvement in the acquisition of CFC.

[23] The trial judge also considered the fact that the parties continued to communicate after the meeting requisition approach failed, and that a Sprott

representative confirmed that it was “still considering next steps” when a Kingsdale representative asked whether the takeover campaign was “dead”. It is unlikely that any of this would have occurred if the parties contemplated that Kingsdale’s services were limited to the first takeover bid.

[24] In sum, we are persuaded that the inclusion of the term “the proposed action” in the reasons for decision would not have affected the outcome. Neither the trial judge’s omission of this term, nor her incorrect quotation, were overriding errors.

[25] The second submission Sprott featured in oral argument was that the termination clause, providing that “This agreement ... shall continue in force and effect until the services agreed upon in the agreement are completed”, would be rendered meaningless if the contract is read as goal focused and not as confined to the initial takeover plan. We disagree. In a goal-focused contract, this term means that Kingsdale is to be paid for its work product if control of CFC is acquired before the contract is terminated. Far from being meaningless, it reflects the important commercially reasonable objective by Kingsdale not to be cut out after contributing work product to the acquisition process.

[26] Sprott argues that the fact that this clause is found under the “Termination” heading contradicts the reading just described, since such a reading is not about termination but continuation. To the contrary, a provision relating to the continuity of a contract belongs comfortably within a termination provision, since, like defined

situations of termination, a continuity provision addresses the contract's duration. In any event, the meaning of a clause is not governed by the heading of the section where it is found: see *Bow Valley Husky (Bermuda) Ltd. v. Saint John Shipbuilding Ltd.*, [1997] 3 S.C.R. 1210, at para. 118. We note that in this contract there is provision providing for the termination of the contract in writing upon mutual consent that is found in the "Amendments & Waivers" clause and not in the "Termination" clause.

[27] We also reject Sprott's related submission that the contract should not be interpreted as goal focused in the face of this provision since this would result in a commercially unreasonable perpetual obligation. A goal-focused interpretation does not produce this result, as termination can occur in several ways. As indicated, the "Amendments & Waivers" clause permits termination in writing on mutual consent, and the "Termination" clause itself permits termination by a breach of contract by Kingsdale. Indeed, Sprott was in a position at all times to denude the contract of any practical meaning by simply ending its pursuit of control of CFC. Therefore, interpreting the contract as goal focused does not yield a commercially unreasonable unlimited contract, as Sprott contends.

[28] In sum, we are not persuaded that the trial judge failed to consider the contract as a whole or by either of the submissions Sprott featured in oral argument.

2. The trial judge did not err by considering an earlier draft of the contract.

[29] As indicated, the trial judge noted that materially the same terms as those in the June 2015 agreement were included in the draft prepared before the takeover strategy was adopted. The trial judge relied upon this as an indication that the contract was not based on a single strategy. In an argument advanced in its factum but not in oral argument, Sprott submits that relying on the prior draft contract contravenes the rule that “[t]he factual matrix must be considered *as of the time of contract formation*, not as of the date of an earlier draft” (emphasis in original). That is not the rule. A trial judge is entitled to consider “knowledge that was or reasonably ought to have been within the knowledge of both parties at or before the date of contracting”: *Sattva*, at para. 58. The parties clearly knew what the prior contract contained and could reasonably infer that since the language predated the first takeover strategy, the contract was not tied to that event. We therefore reject this ground of appeal.

3. The trial judge did not interpret the contract in a commercially unreasonable manner.

[30] We have already explained why the trial judge’s interpretation did not result in a commercially unreasonable indefinite contract. Sprott also argues that the trial judge interpreted the contract in a commercially unreasonable manner by failing to take account of the practical commercial difference between acquiring management through the operation of a meeting requisition action and a

consensual purchase transaction. In particular, it submits that the trial judge's interpretation requires Sprott to pay the success fee regardless of whether there was a connection between Kingsdale's services and the eventual purchase transaction. Relatedly, it argues that because the structure of the purchase transaction differed from the structure of the meeting requisition approach, the trial judge erred by inferring that the parties would have agreed to a 20 percent success fee on an amount of Sprott's earnings that would have been unknown to the parties at the time the contract was entered into.

[31] We do not find these consequences to be commercially unreasonable. The trial judge understood that the services Kingsdale actually rendered were limited to hostile takeover strategies but recognized, quite reasonably on the evidence, that there was a causal link between the work Kingsdale did in 2015 and the ultimate consensual purchase. Given that link, the distinction between acquiring management through the operation of a meeting requisition and a purchase transaction is immaterial. As for the unquantifiable 20 percent success fee, contractual entitlements to percentage payments of unknown value are not uncommon. Nor can Sprott avoid liability for the bargain it struck merely by restructuring its business affairs. We therefore do not give effect to this ground of appeal.

4. The trial judge did not imply a notice provision not provided for in the contract.

[32] When the trial judge commented on Sprott's failure to notify or involve Kingsdale in its plan of arrangement strategy to acquire control of CFC, she said that "nothing in the agreement ... would permit Sprott to unilaterally terminate the agreement without ever communicating that decision to Kingsdale." Sprott reads this as an erroneous conclusion by the trial judge that the contract included a notice requirement. We disagree. The trial judge was not purporting to imply a notice requirement into the agreement when she made this comment. She was making a factual finding, supported by the evidence, that Sprott had not communicated to Kingsdale that the engagement had ended. Together with her finding that there were ongoing strategy discussions between Sprott and Kingsdale between January 2016 and June 2016, the failure by Sprott to communicate an intention to terminate the contract supported her conclusion that the termination provision of the agreement was not triggered because Kingsdale's services were not "completed." This observation was also relevant to her comment that Sprott did not have a unilateral right to end the contract by cutting Kingsdale out. We see no error here.

5. There are no palpable and overriding errors.

[33] We have considered the sundry errors claimed by Sprott in its appeal factum, which were not relied upon during oral argument. None, including the two

primary submissions that warrant discussion are persuasive, and even if errors occurred, none would be overriding.

[34] Turning to those primary submissions, we are not persuaded that the trial judge failed to consider the language of the contract when ordering Sprott to pay the management fee. The management fee provision divides payment of the \$75,000 management fee into two parts, which may, depending on events, be payable in separate installments, or be payable at the same time. Specifically, it provides that \$50,000 is due “upon the mailing of **SPROTT’s** circular or upon settlement, whichever is earlier”, and the remaining \$25,000 is “payable ten (10) days before the meeting or upon a settlement, whichever is earlier”. Sprott claims that none of the payment events occurred. It submits that because the Court of Appeal of Alberta ruled the meeting requisition to be invalid, there was no mailing of Sprott’s circular and no meeting. Relatedly, it argues that there was no settlement because the agreement stipulates that settlement can only occur before a shareholder meeting, not after, as occurred here.

[35] We reject these submissions. They are dependent on the interpretation rejected by the trial judge that the contract relates only to services provided in support of the meeting requisition approach, in which Sprott would mail out its circular prior to a meeting being held or a settlement reached. As indicated, the trial judge found, as she was entitled to, that the contract was goal-focused, requiring payment for consensual purchases linked to services Kingsdale provided

under the contract. She was equally entitled to find that CFC and Sprott's consensual transaction constituted a settlement under the management fee provision. Since nothing in the language of the management fee provision requires the circular to be sent out or the meeting held prior to the parties reaching a settlement, but instead provides for payment of the entire management fee upon settlement if that event occurs first, the entire management fee was owing when Sprott and CFC agreed to their consensual transaction. We see no error in that decision.

[36] Moreover, we reject Sprott's submission that the trial judge materially misapprehended its position by interpreting it as promoting a "single strategy" interpretation of the contract, when its position was that the contract was intended to apply to the first takeover bid, irrespective of the strategy employed. In our view, in substance Sprott did argue that the contract was confined to the meeting requisition approach, including by arguing that the references in the contract to the "meeting requisition" referred to this approach. The trial judge can hardly be faulted for characterizing Sprott's position as she did. More importantly, even if there had been a misapprehension, it would not have mattered since the decision turned ultimately on the contractual language supporting a goal-oriented approach, read in the context of the surrounding circumstances. That determination is equally fatal to both a proposed "single-strategy" interpretation and a proposed "first-takeover-bid" interpretation.

6. There is no basis on which to interfere with the trial judge's costs award.

[37] Sprott seeks to set aside the trial judge's decision to award \$475,000 in costs to Kingsdale if it is successful on appeal. Given Sprott's lack of success, the trial judge's costs award stands.

CONCLUSION

[38] The appeal is dismissed.

[39] Costs on the appeal are payable by Sprott to Kingsdale on a partial indemnity basis in the amount of \$47,000, inclusive of applicable taxes and disbursements.

"David M. Paciocco J.A."

"Thorburn J.A."

"J. Dawe J.A."