

CITATION: City of Toronto Economic Development v. 3XM Amalgamated Corp, 2026 ONSC 3112

COURT FILE NO.: CV-22-00687986-0000

DATE: 2026-05-25

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: CITY OF TORONTO ECONOMIC DEVELOPMENT CORPORATION v. 3XM AMALGAMATED CORPORATION et al

BEFORE: ASSOCIATE JUSTICE D. MICHAEL BROWN

HEARD: January 14, 2026 [in person]

COUNSEL: D. Collett for the moving party/respondent, Manulife Assurance Company of Canada

L. Boritz for the responding party/applicant, City of Toronto Economic Development Corporation

ENDORSEMENT

[1] The applicant, City of Toronto Economic Development Corporation (“TEDCO”), is the landlord of two properties located at 176 Cherry Street and 20 Polson Street in Toronto. The respondent Manulife Assurance Company of Canada (“Manulife”) is a tenant¹ of those properties. In 1997, the predecessors in interest of TEDCO and Manulife entered into substantially identical ground leases for the two properties (the “Leases”). On September 29, 2022, TEDCO commenced the within application seeking various relief in relation to the Leases, including an order terminating the Leases as a result of an alleged default by Manulife as tenant. On the same day, TEDCO served a notice of arbitration seeking to determine the Market Base Rent (as defined in the Leases).

[2] Manulife brings this motion for an order staying TEDCO’s application in favour of arbitration pursuant to the arbitration provisions contained in the Leases and for an order appointing an arbitrator for the arbitration. At the hearing of the motion, Manulife conceded that as an associate judge I lack jurisdiction to appoint an arbitrator. Such an appointment may only be

¹ Manulife is one of two tenants of the properties that are named as respondents in this application. The other tenant/respondent, 3XM Amalgamated Corporation, did participate in the motion and did not communicate any position to the court on the motion.

made by application to a judge (see s. 10(1) of the *Arbitration Act, 1991* and Rules 14.05 and 38.02 of the *Rules of Civil Procedure*). The arbitration agreement in the Leases also specifically provides that if the parties cannot agree the arbitrator shall be appointed by a judge. Accordingly, the motion proceeded solely on the issue of the requested stay of proceedings. For the reasons that follow, Manulife's motion for a stay of TEDCO's application is dismissed.

Stay of proceedings in favour of arbitration - Legal framework

[3] Manulife brings this motion under section 7(1) of Ontario's *Arbitration Act, 1991* which provides:

7 (1) 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.

[4] The stay of proceedings required by s.7(1) of the *Act* is subject to certain exceptions listed in s. 7(2) of the *Act*:

7 (2) However, the court may refuse to stay the proceeding in any of the following cases:

1. A party entered into the arbitration agreement while under a legal incapacity.
2. The arbitration agreement is invalid.
3. The subject-matter of the dispute is not capable of being the subject of arbitration under Ontario law.
4. The motion was brought with undue delay.
5. The matter is a proper one for default or summary judgment.

[5] In *Peace River Hydro Partners v. Petrowest Corp.*, [2022 SCC 41 \(CanLII\)](#), [2022] 3 SCR 265, the Supreme Court of Canada set out a two-stage analysis for the determination of whether a stay of proceedings should be granted in favour of arbitration. In the first stage of the analysis the party seeking the stay must establish that arbitration agreement engages the stay provision of the provincial arbitration statute, in this case s. 7(1) of the *Act*. The moving party must satisfy the court that certain technical prerequisites are present:

[82] Considerations at this stage may differ depending on the jurisdiction and the nature of the arbitration (i.e., whether it relates to domestic or international arbitration). Broadly speaking, however, this threshold inquiry requires the court to

determine whether the party seeking to rely on the arbitration agreement has established the technical prerequisites for a stay in favour of arbitration.

[83] There are typically four technical prerequisites relevant at this stage:

- (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. [*Peace River* at paras 82-83; see also *Husky Food Importers & Distributors Ltd. v. JH Whittaker & Sons Limited*, [2023 ONCA 260 \(CanLII\)](#) at para 24]

[6] If all the technical prerequisites are met, the mandatory stay under s. 7(1) of the Act is engaged. The court should then move on to the second stage of the analysis, which concerns the statutory exceptions to granting a stay under s. 7(2) of the Act: *Peace River*, at para. 82; *Husky Food*, at para. 25. The onus at this stage shifts to the party seeking to avoid arbitration (i.e. the party opposing the stay): *Peace River*, at para. 88.

[7] The analysis under s. 7 of the *Arbitration Act, 1991*, must be considered in the context of the “competence-competence” principle that gives precedence to the arbitration process. It holds that arbitrators should be allowed to exercise their power to rule first on their own jurisdiction, including as it relates to the scope and validity of the arbitration agreement: *Peace River*, at paras 39-41. However, as the Supreme Court of Canada explained in *Peace River*, the competence-competence principle is not absolute:

[42] The competence-competence principle is not absolute, however. 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 requiring only superficial consideration of the evidentiary record (*Uber*, at para. 32; *Dell*, at paras. 84-85). This exception is justified by the particular expertise that courts have in deciding such questions. Further, it allows a legal argument relating to the arbitrator’s jurisdiction “to be resolved once and for all, and also allows the parties to avoid duplication of a strictly legal debate” (*Dell*, at para. 84).

[8] Where it is unclear if the arbitrator has jurisdiction, it is preferable to leave the issue to the arbitrator pursuant to the competence-competence principle: *Haas v. Gunasekaram*, [2016 ONCA 744](#), at para. 15, citing *Ciano Trading & Services C.T. & S.R.L. v. Skylink Aviation Inc.*, [2015 ONCA 89](#), at para. 7. The party seeking the stay of proceedings need only demonstrate that it is “arguable” that the dispute falls within the terms of the arbitration agreement: *Haas*, at para. 15, quoting *Dancap Productions Inc. v. Key Brand Entertainment, Inc.*, [2009 ONCA 135](#) at para. 32.

Stage 1 Analysis – s. 7(1) Technical Prerequisites

[9] TEDCO concedes that three of the four technical prerequisites for a stay under s. 7(1) of the Act have been met in this case: There is an arbitration agreement in the Leases; TEDCO (the applicant) is a party to that arbitration agreement; and, Manulife brought this motion for a stay before taking any “step” in the application. TEDCO’s position is that technical prerequisite (c) as identified by the Supreme Court of Canada in *Peace River* has not been met. TEDCO argues that its application is not in respect of a matter or matters that the parties agreed to submit to arbitration. The key question on this motion is therefore whether the matters to be determined in TEDCO’s application fall within the scope of the arbitration agreement contained within the Leases.

Competence-competence principle not engaged

[10] In the circumstances of this case, the determination of whether the matters in dispute in the application fall within the scope of the arbitration agreement in the Leases is a question of mixed fact and law. All that is required for this determination is the contractual interpretation of arbitration provisions of the Leases set against the matters in dispute in the application as set out in Tedco’s notice of application. Only a superficial consideration of the evidentiary record is required. Accordingly, I find that I am able to resolve the question of arbitral jurisdiction without offending the competence-competence principle.

Scope of the arbitration agreement

[11] The arbitration provisions in the Leases are identical across the two Leases. The parties to the Leases agreed that only certain specific matters of dispute in relation to the Leases would be subject to arbitration. This is clear from the final clause of both Leases which provides as follows:

Save and except as set out above, any other matters of dispute or enforcement of the provisions of this Lease shall not be subject to arbitration unless otherwise agreed to by the Parties in writing.

[12] On a plain reading of this final clause, a dispute relating to the Leases is not arbitrable unless the Leases otherwise specifically provide for arbitration of that dispute.

[13] The primary arbitration clause in the Leases is contained in Article 19.00, which reads in its entirety:

- 19.1 If any dispute occurs among the Parties ***with respect to any matter listed below or otherwise specifically provided for in this Lease*** which cannot be resolved by the provisions hereof or by agreement of the Parties, the matter in dispute shall be resolved by arbitration. Any party to the dispute may at any time require arbitration by giving written notice thereof to the other Parties hereto setting out in reasonable detail the issue in dispute. The dispute shall be determined

by a single arbitrator mutually appointed by the Parties provided the Parties can agree upon one within ten (10) days from the receipt of the notice. Failing such mutual appointment, an arbitrator shall be appointed by a Judge of the Ontario Court (General Division), upon the application of any of the Parties. The arbitration shall proceed in accordance with the provisions of the Arbitration Act and the arbitrator shall, if applicable to the issue in dispute, apply and consider the Basic Principles and the other terms herein contained in resolving the dispute or issue. The decision arrived at by the arbitrator shall be final and binding and no appeal shall lie therefrom, with respect to all matters determined pursuant to this Article 19.00, including:

- (a) Whether an Approval which has been refused should in fact be given in accordance with the terms of this Lease;
- (b) The determination as to whether a Redevelopment has occurred;
- (c) The terms of any Separate Lease;
- (d) The determination of Market Base Rent as contemplated in the Lease.
- (e) A dispute under Section 3.9;
- (f) Design Guideline changes as per Section 12.1; and
- (g) Rezoning under Section 12.2(b). [my emphasis]

[14] The parties dispute the meaning of the words “or otherwise specifically provided for in this Lease” in section 19.1. In oral submissions, Manulife argued that this phrase means that any dispute regarding any specific term of the Leases is subject to arbitration. In my view, Manulife’s interpretation is not tenable when considered in the context of the Leases as a whole. Manulife’s interpretation directly contradicts the plain wording of the final clause in the leases that provides that no dispute regarding the provisions of the Lease is arbitrable unless specifically provided for in the Leases or agreed to in writing. Manulife’s interpretation also begs the question as to why the parties would have listed specific disputes that were arbitrable at the end of Article 19.00 if they intended that *any* dispute under the Leases was subject to arbitration. If Manulife’s interpretation is correct, the list at the end of section 19.1 would be unnecessary.

[15] I agree with TEDCO’s submission that matters “otherwise specifically provided for in this Lease” in section 19.1, means matters otherwise specified in the Leases as being subject to arbitration. That is the only interpretation that makes sense in the context of the Leases as a whole. I find that Article 19.00, read together with the final clause of the Leases, provides that only those

matters that are listed in subsections (a) through (g) of section 19.1 or that are otherwise specified as arbitrable in the Leases are subject to arbitration.

Matters in dispute in the application

[16] The issues in dispute to be determined in the application are set out in TEDCO's notice of application. In addition to pre-judgment interest, post-judgment interest and costs, TEDCO seeks the following relief in paragraph 1 of its Amended Notice of Application:

- (a) a declaration that [the Tenants] are deemed to have agreed to the rent adjustment proposal made by the Landlord dated March 17, 2022;
- (b) in the alternative to (a), an order requiring the Tenants to participate in an arbitration to determine the Market Base Rent in accordance with Article 19 of the Ground Leases pursuant to the Notice of Arbitration dated September 29, 2022;
- (c) a declaration that the Market Base Rent became 100% effective January 1, 2017 in accordance with section 3.2(d)(B) of the Ground Leases;
- (d) a declaration that the Tenants are in default of their obligations under section 3.4 of the Ground Leases to provide net cash flow statements to the Landlord in order to determine Participation Rent (as that term is defined in the Ground Leases);
- (d.1) a declaration that the Tenants are in default of their obligations under section 4.2 of the Ground Leases due to a change in control of the Tenants without the consent of the Landlord;
- (e) a mandatory order requiring the Tenants to provide new net cash flow statements to the Landlord;
- (f) an accounting of Participation Rent owing by the Tenants to the Landlord;
- (g) an order terminating the Ground Leases as a result of the Tenants' default; and,
- (g.1) damages for breach of the Ground Leases.

The matters to be determined in the TEDCO application are outside the scope of the arbitration agreement in the Leases

Para. 1(a) of the Amended Notice of Application – Deemed agreement to rent adjustment

[17] In paragraph 1(a) of its Amended Notice of Application, TEDCO seeks a declaration that the Tenants are deemed to have agreed to the rent adjustment proposal made by the Landlord dated March 17, 2022. In support of this relief, TEDCO relies on section 18.1 of the Leases. Subsection 18.1(a)(ii) provides that a party whose approval is required under the Leases shall respond to a

request for such approval within 10 days or shall be deemed to have provided such approval. TEDCO pleads that it sought approval from the Tenants for a Market Base Rent adjustment on March 17, 2022 and further pleads that the Tenants did not respond to the request for approval and are therefore deemed to have approved the rent adjustment. TEDCO is asking the court to interpret and apply subsection 18.1(a)(ii) of the Leases.

[18] Section 18.1 and article 19.00 of the Leases do not provide for arbitration of the question of whether there has been deemed approval under subsection 18.1(a)(ii). Section 19.1(a) of the Leases provides for arbitration to determine “whether an Approval which has been refused should in fact be given in accordance with the terms of this Lease.” Subsections 18.1(a)(iii) and 18.1(b) provide that the arbitrator should apply the Basic Principles (defined in section 1.1(j) of the Leases) in determining whether an approval which has been refused should in fact be given.

[19] No refusal to approve has been alleged in TEDCO’s application. The arbitration provided for in subsection 19.1(a) specifically refers to a refusal to approve only. If the parties to the Leases wanted to include the deemed approval under subsection 18.1(a)(ii) as an arbitrable matter they could have expanded the language of 19.1(a) accordingly. Read in the context of the final clause in the Leases, the arbitration provided for in subsection 19.1(a) does not encompass the relief sought by TEDCO subparagraph 1(a) of its Amended Notice of Application. It is not arguable that the dispute in relation to this relief falls within the scope of the arbitration agreement or within the arbitrator’s jurisdiction.

Para. 1(b) of the Amended Notice of Application – Alternative relief – order requiring arbitration of Market Base Rent

[20] TEDCO’s Amended Notice of Application acknowledges that where the parties have not agreed on Market Base Rent the determination of Market Base Rent is subject to arbitration in accordance with section 1.1(ww) and section 19.1(d) of the Leases. In paragraph 1(b) of its Amended Notice of Application TEDCO seeks an order directing such an arbitration in the alternative to the relief sought in paragraph 1(a). If the Court does not find that there has been deemed agreement to Market Base Rent, TEDCO is asking that it be determined by arbitration in accordance with the Leases.

[21] The relief sought in paragraph 1(b) of the Amended Notice of Application is clearly subject to the arbitration agreement in the Leases. However, the order requested is contingent on the court first ruling on the relief sought under paragraph 1(a) of the Amended Notice of Arbitration, which I have already found falls outside the scope of the arbitration agreement. It would not therefore be appropriate to stay the balance of the application pending the arbitration of Market Base Rent as contemplated by paragraph 1(b) of the Amended Notice of Application.

[22] It would also make no sense to order a narrow stay of only the determination of the relief sought in paragraph 1(b) of the Amended Notice of Application. The arbitration sought to be ordered in paragraph 1(b) is in regard to the one of the issues that Manulife seeks to arbitrate. The

narrow stay if granted would amount to a circular stay of the arbitration of Market Base Rent pending the arbitration of Market Base Rent.

Para. 1(c) of the Amended Notice of Application – Base Rent increase to 100% of Market Base Rent

[23] In paragraph 1(c) of its Amended Notice of Application, TEDCO seeks a declaration that the Market Base Rent became 100% effective January 1, 2017 in accordance with section 3.2(d)(B) of the Leases. TEDCO is not asking the court to determine the value of the Market Base Rent. It is seeking a declaration regarding the Base Rent adjustments provided for in section 3.2 of the Leases based on the court's interpretation and application of that section.

[24] Section 3.2 of the Leases contains no arbitration provision. None of the arbitrable matters listed at the end of section 19.1 of the Leases apply to the Base Rent adjustments provided for in section 3.2 of the Leases. The matters for determination in relation to paragraph 1(c) of Amended Notice of Application fall outside the scope of the arbitration agreement in the Leases.

Paras. 1(d), (e) and (f) of the Amended Notice of Application – Participation Rent

[25] Sections 3.3 and 3.4 of the Lease provide for the payment by the Tenants of Participation Rent which is calculated based on the Tenant's Net Cash Flow (as defined in section 1.1(xx) of the Leases) from the property. In Paragraphs 1(d), (e) and (f) of the Amended Notice of Application TEDCO seeks a declaration that the Tenants are in default of their obligations to provide Net Cash Flow statements required under section 3.4 of the Leases for the calculation of Participation Rent, as well as a mandatory order requiring the Tenants to provide new Net Cash Flow statements to TEDCO, and an accounting of the Participation Rent owing by the Tenants to the TEDCO.

[26] There is no arbitration provision in sections 3.3 and 3.4 of the Leases. These sections are not listed among the arbitrable matters at the end of section 19.1 of the Lease, nor is there any reference to Participation Rent or Net Cash Flow Statements in section 19.1. The matters for determination in relation to paragraphs 1(d), (e) and (f) of Amended Notice of Application fall outside the scope of the arbitration agreement in the Leases.

Para. 1(d.1) the Amended Notice of Application – Change of Control

[27] In paragraph 1(d.1) of the Amended Notice of Application TEDCO seeks a declaration that the Tenants are in default of section 4.2 of the Leases as a result of an alleged change in control of the tenants without the Landlord's consent. TEDCO further pleads that it lost its right of first refusal under section 4.2(a)(iv) of the Leases.

[28] There is no arbitration provision in section 4.2 of the Leases. Section 19.1 of the Leases does not reference section 4.2 nor change of control. Section 19.1(a) of the Leases does not apply as no refusal to approve has been alleged. TEDCO's position is that its consent for the change of control was never sought. The matters for determination in relation to paragraph 1(d.1) of the Amended Notice of Application fall outside the scope of the arbitration agreement in the Leases.

Paras. 1(g) and (g.1) the Amended Notice of Application – Remedies for default including termination and damages

[29] TEDCO seeks an order pursuant to Article 10 of the Leases terminating the leases for the alleged defaults committed by the Tenants. TEDCO further seeks damages for the Tenants' alleged breaches of the Leases. Article 10 of the Leases does not contain an arbitration provision nor refer to arbitration. Article 19.00 does not provide for arbitration in relation to any remedy available to the Landlord for default or breach by the Tenants.

[30] There is no provision in the Leases that would give an arbitrator jurisdiction to determine damages or to order any other remedy for a breach of the Leases. Absent such a provision, the general exclusion of arbitration in the final clause of the Leases applies. The matters for determination in relation to paragraphs 1(g) and (g.1) of the Amended Notice of Application fall outside the scope of the arbitration agreement in the Leases.

Conclusion on Stage 1 analysis - s. 7(1) Technical Prerequisites

[31] Other than the alternative relief sought in paragraph 1(b) of the Amended Notice of Application, none of the matters to be determined in TEDCO's application fall within the scope of the arbitration agreement contained within the Leases. They are not matters that the parties to the Leases agreed would be submitted to arbitration. I find with respect to each of the matters for determination as set out in subparagraphs 1(a),(c),(d),(d.1),(e), (f), (g) and (g.1) of the Amended Notice of Application that it is not arguable these matters fall within an arbitrator's jurisdiction.

[32] Manulife has not demonstrated that the technical prerequisites for a stay of proceedings under s. 7(1) of the *Arbitration Act, 1991* have been met. Manulife's motion for a stay of proceedings is dismissed.

[33] As I have found that the technical prerequisites for a stay have not been met, I need not move on to the second stage of the analysis set out in *Peace River* to consider whether any of the statutory exceptions to a stay apply. However, in case I am wrong, I will briefly address the one statutory exception raised by TEDCO on this motion.

Stage 2 – s. 7(2) of the Arbitration Act, 1991 – delay in bringing the motion

[34] TEDCO submits that even if the technical prerequisites for a stay of proceedings have been met, I should nevertheless refuse the stay under subsection 7(2) of the Act because the motion was brought with undue delay. TEDCO commenced the application by serving a notice of application on September 29, 2022. Manulife did not serve a notice of motion for this motion until September 20, 2024, almost two years after the application was commenced.

[35] TEDCO relies on *Hargraft Schofield LP v. Fluke*, [2014 ONSC 5866](#) and *Steelrite Construction Canada Inc. v Man-Shield (NWO) Construction Inc.*, [2017 ONSC 2303](#) where the court refused to grant a stay under s. 7 of the Arbitration Act, 1991 on the basis of the moving party's delay in bringing the motion: a 3-year delay in *Hargraft* and a 16-month delay in *Steelrite*.

[36] Although Manulife did not serve a notice of motion until September 2024, as early as October 2022 Manulife took the position that the application should be stayed pending arbitration. Manulife consistently maintained that it would be bringing a motion for a stay of proceedings if TEDCO moved forward with its application. Other than serving the Amended Notice of Application in December 2023, TEDCO took no steps to advance the application until it served its application record on July 30, 2024. Two months later, Manulife served its notice of motion.

[37] The lack of activity in the application during the period of delay and the early stage of the proceedings distinguish this case from *Hargraft* and *Steelrite*. In *Hargraft* the parties to the litigation had taken significant steps during period of delay, including discoveries and mediation: *Hargraft*, paras 12-22. In *Steelrite*, by the time the notice of motion had been served, the actions had been set down for trial and the parties were following a timetable for the exchange of documents and discoveries: *Steelrite* at para 43.

[38] In my view, Manulife did not unduly delay in bringing this motion. It was prudent and reasonable in the circumstances for Manulife to wait on service of the application record before serving the motion for a stay of proceedings. Had I found that Manulife had satisfied the technical requirements for a stay under s. 7(1) of the *Arbitration Act, 1991*, I would not have exercised my discretion under s. 7(2) of the Act to deny the stay.

Disposition and costs

[39] Manulife's motion for stay of proceedings is dismissed. At the hearing of the motion the parties advised that they had agreed that the successful party on the motion should receive \$19,000.00 in costs on a partial indemnity basis, regardless of who wins. TEDCO was entirely successful on the motion. Manulife shall pay TEDCO its costs of the motion on the partial indemnity scale, fixed at \$19,000.00 inclusive of HST and payable within 30 days.

D. Michael Brown, Associate Judge

DATE: May 25, 2026