
Court of Appeal for Saskatchewan
Docket: CACV4509

Citation: *Welter v Parrish & Heimbecker Ltd.*, 2026 SKCA 62
Date: 2026-05-26

Between:

Jeremy Welter

*Appellant
(Respondent)*

And

Parrish & Heimbecker Ltd.

*Respondent
(Applicant)*

Before: Drennan, Bardai and Kilback JJ.A.

Disposition: Appeal dismissed

Written reasons by: The Honourable Justice Jillyne M. Drennan
In concurrence: The Honourable Justice Naheed Bardai
The Honourable Justice Keith D. Kilback

On appeal from: 2025 SKKB 18, Saskatoon

Appeal heard: February 10, 2026

Counsel: Stuart Busse for the Appellant
Colin Hirschfeld, K.C. for the Respondent

Drennan J.A.**I. INTRODUCTION**

[1] On February 3, 2025 a Court of King’s Bench Chambers judge granted an application by Parish & Heimbecker Ltd. [P&H] to recognize and enforce a foreign arbitral award [award] made against Jeremy Welter as a judgment of the court, pursuant to *The Enforcement of Foreign Arbitral Awards Act*, SS 1986, c E-9.11 [EFAA] (*Parrish & Heimbecker Ltd. v Welter*, 2025 SKKB 18 [Decision]). Mr. Welter appeals the *Decision*. He says that the Chambers judge committed various errors, and that the award did not meet the statutory requirements for recognition and enforcement.

[2] Having considered the record and the submissions before this Court, I am not persuaded that Mr. Welter has demonstrated any reviewable error in the *Decision*. The Chambers judge properly recognized and enforced the award pursuant to the EFAA. As a result, Mr. Welter’s appeal must be dismissed. My reasons follow.

II. BACKGROUND

[3] The underlying conflict between the parties arises from a January 5, 2021, contract in which P&H agreed to purchase 226.80 metric tonnes of canola from Mr. Welter [contract]. Mr. Welter was to deliver the canola to P&H by September 30, 2021. Article 12 of the contract provides that the parties arbitrate any dispute pursuant to the National Feed and Grain Association’s [NFGA] Arbitration Rules [Rules].

[4] Mr. Welter did not deliver the canola to P&H by the agreed upon date. P&H thereafter gave notice to Mr. Welter that he was in default of the contract, and later, submitted an arbitration complaint to the NFGA in accordance with its Rules.

[5] Thereafter, Mr. Welter communicated respecting the arbitration process with the NFGA (principally through its Director of Commercial/Arbitration Services and Project Management, Mary Hitchcock) on numerous occasions over an eight-month period. Ms. Hitchcock provided Mr. Welter a copy of the Rules and an arbitration services contract and asked him to sign and

return the agreement. Although Mr. Welter indicated he would respond and execute the arbitration services contract as requested by the NFGA, he ultimately failed to do so.

[6] On August 19, 2022, the NFGA granted P&H a default award against Mr. Welter in accordance with the Rules. P&H subsequently applied in the Court of King’s Bench to have the award recognized and enforced in Saskatchewan. Mr. Welter opposed the application, arguing that the contract was unconscionable, and that recognition and enforcement of the award was contrary to public policy. The Chambers judge rejected these arguments and granted the order sought by P&H.

[7] Mr. Welter now appeals, saying that the Chambers judge committed various errors, including by (a) enforcing an award that was rendered in a procedurally unfair way, (b) failing to recognize that the award is invalid because it was granted by default without a hearing before a properly constituted tribunal, (c) enforcing a contract that contained an “agreement to agree” on future and uncertain terms, (d) failing to recognize that the process under the Rules was not neutral, and (e) enforcing an award that did not meet the statutory prerequisites for enforcement. I will explore each of these arguments further below but will first address a preliminary issue that arose during the hearing, being whether new issues raised by Mr. Welter should be entertained by the Court.

III. ANALYSIS

A. Mr. Welter’s new arguments on appeal

[8] As Mr. Welter’s arguments have evolved somewhat from the lower court to the appeal, I begin by identifying the new arguments made on appeal from those advanced at the Court of King’s Bench.

[9] Before the Chambers judge, Mr. Welter opposed P&H’s application primarily on the basis that the award was unconscionable and that its enforcement was contrary to public policy, saying that (a) the contract contained an “acts of God” provision that unfairly protected P&H’s interests in the event of weather related drought, and (b) the contract further unfairly allowed P&H to stipulate its own damages. As noted above, the Chambers judge rejected these arguments.

[10] In his notice of appeal and written argument, Mr. Welter asserts that the Chambers judge erred by accepting the award “at face value” without “confirming whether the statutory prerequisites existed” for its recognition and enforcement. Specifically, he submits that there was no evidence before the Chambers judge that (a) a tribunal was constituted (which he says was required by the Rules), (b) proper notice of arbitration was issued and responded to, (c) a hearing (oral or written) took place, and (d) the requirements for due process and neutrality were met. Because he was not afforded procedural fairness, and because the award was rendered contrary to the Rules, Mr. Welter says the award should not have been recognized and enforced pursuant to the *Act*.

[11] As I understand his oral submissions before this Court, Mr. Welter’s primary argument (made through his counsel who did not represent him when the matter was before the judge in Chambers) is that the award was not valid because it was rendered pursuant to Rules that authorized the NFGA secretary to enter a default award without a hearing and was not the product of an arbitration. He says he was denied the ability to meaningfully challenge matters such as jurisdiction. However, he also argues that the contract’s provision that the parties would arbitrate pursuant to the Rules amounts to an agreement to agree to additional uncertain terms – being, the signing of an arbitration services contract. He further submits that as the Rules provide for an arbitral panel to be comprised of its members, P&H (being a NFGA member) could potentially influence the composition and determinations of a panel, undermining the neutrality of the process.

[12] In response, P&H says that many of Mr. Welter’s submissions on appeal are new, particularly those suggesting that the contract contains an unenforceable “agreement to agree”, and that any arbitral panel constituted would not have been neutral. P&H submits that these arguments should not be entertained by this Court.

[13] I agree with P&H that many of the arguments made by Mr. Welter were not made before the Chambers judge. Indeed, his notice of appeal and written submissions took a slightly different tack than he initially pursued before the judge in Chambers. Of note on this point, counsel for Mr. Welter concedes that several of the arguments made orally in this Court are new, and that there is no evidentiary foundation in the court below to support some of the submissions (for example,

the assertion that an arbitration panel may not have been neutral, given P&H's membership status with the NFGA).

[14] However, while new arguments on appeal are generally discouraged, there is no absolute prohibition on entertaining them. The decision to permit and consider new arguments is a discretionary one, having regard to whether the issue raised is truly new, the evidentiary record, and the interests of justice as they affect the parties (see *Kupsar v Regina Provincial Correctional Centre*, 2020 SKCA 142 at para 29, citing *R v Ahmed*, 2019 SKCA 47 at para 15).

[15] Having regard to the above principles, I am satisfied that the interests of justice warrant consideration of Mr. Welter's new arguments. His submissions are all centered on, or related to, the idea that the Chambers judge erred in recognizing and enforcing the award, when the award did not meet the prerequisites for enforcement and was rendered in a procedurally unfair manner. That is and always has been Mr. Welter's core challenge to the *Decision*. Counsel for P&H was also orally prepared to address these arguments in reply and did so ably.

[16] Upon considering all of Mr. Welter's arguments on their merits, I am not persuaded that he has demonstrated any error in the *Decision* to recognize and register the award pursuant to the *Act*. For the sake of completeness, I will address each of Mr. Welter's written and oral submissions, some of which overlap.

B. The award was not entered in a procedurally unfair way

[17] Turning first to Mr. Welter's procedural fairness and inadequate notice arguments, I note that the Chambers judge accepted the evidence of Ms. Hitchcock and made several important findings of fact. Those included that (a) the parties agreed to use the Rules to resolve disputes under the contract, (b) Mr. Welter received notice of P&H's arbitration complaint under the Rules, (c) on many occasions over an approximate eight-month period, Mr. Welter communicated with the NFGA regarding P&H's arbitration complaint, and (d) Mr. Welter indicated to the NFGA that he would execute and return the arbitration services contract, but never did. In addition, Ms. Hitchcock's evidence confirmed that she sent a copy of the Rules to Mr. Welter in December of 2021, and that he was advised that failure to participate in the arbitration process and return the

arbitration services contract could result in a default award being entered against him (pursuant to Rule 2(E)).

[18] Given that Mr. Welter has not challenged these factual findings, I see no error in the Chambers judge's conclusion that Mr. Welter had proper notice of the arbitration proceeding and failed to meaningfully engage in it. Mr. Welter has also failed to identify any other procedural unfairness in the process that calls into question the award's legitimacy or enforceability. It is worth mentioning here that Mr. Welter could have applied to vacate the default award within 15 days of its entry (pursuant to Rule 2(E), specified in the NFGA's reasons for the award), but he did not do so – nor did he take issue with the award prior to P&H's application for enforcement.

C. The administratively entered default award was valid

[19] Mr. Welter makes a related argument to the one above, being that the award was unenforceable because there was a lack of evidence before the Chambers judge that a tribunal had been constituted and that a hearing (oral or written) took place. Put somewhat differently, Mr. Welter says that an award rendered administratively in default is somehow less valid or enforceable than an award rendered after a hearing. He says that any objections to matters such as jurisdiction could not be made without an arbitral panel being constituted and a hearing occurring.

[20] I am not persuaded that this argument has merit. I say this as the Chambers judge found that the parties agreed on an arbitration process governed by the Rules, and the Rules provide that an award may be entered in default where a party refuses to engage in the NFGA arbitration process. Specifically, the Rules require parties to return an executed arbitration services contract within 15 days from receiving one from the NFGA secretary (Rule 2(D)). If a party fails to do so, or fails to pay the arbitration service fee, "the NFGA Secretary may without further submissions of the parties enter a default judgment" (Rule 2(E); see also Rule 10(A)). That is precisely what occurred here. Mr. Welter was provided with the arbitration services contract executed by P&H on January 12, 2022, and again in July of 2022, and failed to sign and return it (see Affidavit of Mary Hitchcock, sworn May 28, 2023, and the *Decision* at para 18). The NFGA secretary thereafter entered the award against him in accordance with the Rules the parties had agreed to, without the need for further proceedings.

[21] I also observe that Mr. Welter’s affidavit in the lower court did not mention any objection to the jurisdiction of the NFGA. Instead, he indicated that in the context of an arbitration, he intended to argue that (a) the contract was frustrated by severe drought, (b) P&H failed or refused to comply with paragraph 7 of the contract regarding partial delivery by the seller, and (c) P&H failed to mitigate its damages (at para 19). In addition, I note that Rule 1 of the Rules sets out the specific jurisdiction and scope of what cases NFGA may consider, and that as the parties’ contract provided for disputes to be resolved under the Rules, it fell within the purview of Rule 1(A)(2).

[22] The bottom line is that Mr. Welter agreed that the Rules governed the arbitration of his dispute with P&H. After P&H submitted an arbitration complaint, Mr. Welter was required to respond. In the absence of a response, the Rules allowed for an award to be rendered administratively in default. The Chambers judge was alive to all of this and did not fail to consider any issues associated with notice or procedural fairness, as the Rules did not require a tribunal to be constituted before an award could be granted in these circumstances. In short, there was no deficiency in the evidence before the Chambers judge as to how the award was issued or its propriety under the Rules. It was clear on the record that the award was issued in default pursuant to the Rules because Mr. Welter failed to engage in a process he agreed to in his contract with P&H.

C. The contract did not contain an “agreement to agree” on future uncertain terms, being the arbitration services contract

[23] Mr. Welter submits that the contract contained an unenforceable agreement to agree to future terms – specifically, the arbitration services contract. Implicit in this submission is an assertion that the Chambers judge erred by not recognizing this and by not finding that this unenforceable agreement to agree undermined the validity of the award in the context of P&H’s enforcement application.

[24] It is true that an agreement to agree on future uncertain or overly general terms is, generally speaking, not enforceable (see *Bawitko Investments Ltd. v Kernels Popcorn Ltd.*, 1991 CanLII 2734, 79 DLR (4th) 97 at p 104 (WL) (ONCA); see also *Neigum v Van Seggelen*, 2022 SKCA 108 at para 54; *Bourgault Industries Ltd. v Graham*, 2024 SKKB 153 at paras 103-108; *Lethal Energy*

Inc. v Kingsland Energy Corp, 2014 SKQB 10; *Perrault v Ruchotzke*, 2012 SKQB 465). However, that was not the case here. The terms in issue were neither uncertain nor overly general.

[25] The half-page long arbitration services agreement that NFGA asked Mr. Welter to sign confirmed the parties' agreement to comply with the Rules, summarized their rights of appeal, and specified limitations of liability on NFGA staff. It contained only one term that was not reflected in the Rules, which related to the NFGA secretary's ability to appoint another member to act in the event a member of an arbitration committee or appeals committee became unable to continue. That term had no bearing on how the award was granted.

[26] There is no fundamental uncertainty or ambiguity in the contract's terms as between the parties, or their agreement to arbitrate under the Rules. The Rules simply required the signing of an arbitration services contract as a formality to facilitate the arbitration process. Having agreed to the applicability of the Rules in the contract, Mr. Welter cannot now complain that this requirement constituted an unenforceable agreement to agree.

D. The process under the Rules was not undermined by a lack of neutrality

[27] Mr. Welter correctly states that an arbitration committee or panel comprised pursuant to the Rules would consist of arbitrators selected by the NFGA secretary. To qualify as an arbitrator, an individual must be an employee, or active principal, officer, or director of "a NFGA member eligible to arbitrate disputes" pursuant to the Rules (Rule 5(C)(1)). Mr. Welter argues that as P&H is a member of the NFGA, any arbitral panel would be populated by "friends and family" of P&H, such that its neutrality would be undermined.

[28] There are several fatal problems with Mr. Welter's submission.

[29] First, the award was entered in default and without the matter being determined by an arbitration committee pursuant to Rule 5. I have already determined the propriety of that process in this case given the facts found by the Chambers judge. Because the NFGA secretary entered that award, no arbitral committee was ever constituted under Rule 5.

[30] Second, Rule 5 provides that arbitrators must be employees, active principals, officers, or directors of members of the NFGA eligible to arbitrate (Rule 5(C)(1)) *and* that they must be

“commercially disinterested with respect to the particular dispute” (as per Rule 5(C)(2)). The provision is clearly intended to ensure the neutrality of the process by excluding members that have a vested interest in the matter.

[31] Third, as conceded by Mr. Welter’s counsel, there was no evidence adduced before the Chambers judge that a potential arbitral panel would be comprised of “friends and family” of P&H, simply because P&H was an NFGA member.

[32] In the end, I am not persuaded that the process by which the award was rendered was infected by any bias or lack of neutrality. It was entered by the NFGA secretary, and there was no foundation in the evidence to conclude that this process was not neutral or somehow biased against Mr. Welter’s interests. For all these reasons, this argument must fail.

E. The award met the statutory prerequisites for recognition and enforcement

[33] Mr. Welter’s overarching argument on appeal is that the award did not meet the statutory prerequisites for its recognition and enforcement. Having regard to the *EFAA* and the reasons of the Chambers judge, this argument cannot succeed.

[34] The Chambers judge reviewed the relevant provisions of the *EFAA* (which adopts the *United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards* [New York Convention]), as well as the UNCITRAL Model Law on International Commercial Arbitration [Model Law] (adopted by *The International Commercial Arbitration Act*, SS 1988-89, c I-10.2). As P&H points out, unless there was evidence proving one of the applicable exceptions under Article V of the New York Convention, the award was both recognizable and enforceable. I see nothing in the record that would make an Article V exception applicable here, given the evidence and the Chambers judge’s factual determinations that Mr. Welter had notice of the arbitration proceedings, that he communicated with the NFGA on multiple occasions regarding both the Rules and their requirements, and that he declined to return a signed arbitration services contract.

[35] There is also no basis to conclude that the composition or authority of the arbitral tribunal, the arbitral procedure, or the form of the arbitral award were not in accordance with the agreement

of the parties under Article V(1)(d) of the New York Convention. This is because, as noted, the Rules the parties had agreed upon expressly authorized entry of the default judgment by the NFGA secretary in the circumstances.

[36] It is also worth noting, as observed by the Chambers judge, that the regime for recognition and enforcement of foreign arbitral awards under the New York Convention and Model Law is well recognized in the case law (see *BWV Investments Ltd. v SaskFerco Products Inc.*, 1995 CanLII 4041, [1995] 2 WWR 1 (SKCA); *Yugraneft Corp. v Rexx Management Corp.*, 2010 SCC 19; *Parrish & Heimbecker Ltd. v TSM Winny AG Ltd.*, 2020 SKQB 348; *Parrish & Heimbecker Ltd. v Bukurak*, 2017 SKQB 322). So too is the observation made by the Court of Queen's Bench in *TSM Winny*, being that once an applicant demonstrates that the procedural requirements for recognition and enforcement of an award are met pursuant to the New York Convention and Model Law, presumptive recognition is established, and the responding party bears the burden of establishing a ground for refusal of enforcement (*TSM Winny* at para 17).

[37] Here, P&H met its burden of demonstrating that the procedural requirements for recognition and enforcement of the award were met. Mr. Welter failed to show that there was or is any reason, or exception pursuant to the New York Convention or Model Law, that the award should not be enforced. It follows that this ground of appeal must fail.

IV. CONCLUSION

[38] To conclude, the Chambers judge identified and applied the relevant legal principles to the facts before him and properly recognized and enforced the award pursuant to the *EFAA*. Mr. Welter has not identified any error in the Chambers judge's approach. His appeal must therefore be dismissed. P&H will have its costs of this appeal fixed in the amount of \$2,000.00.

“Drennan J.A.”

Drennan J.A.

I concur.

“Bardai J.A.”

Bardai J.A.

I concur.

“Kilback J.A.”

Kilback J.A.