

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: IBRAHIM HUSSEIN ABOUZEID, Plaintiff

AND:

EXP REALTY OF CANADA, INC. AND EXP WORLD HOLDINGS, INC.,
Defendants

BEFORE: Cavanagh J.

COUNSEL: *Mark Polley and Alex Sokolov*, for the Plaintiff (Responding Party)

Vera Toppings, Daniella Muryinka, and Kirsten Sullivan, for the Defendants
(Moving Party)

HEARD: April 7, 2026

ENDORSEMENT

Introduction

[1] In this action, the plaintiff, Ibrahim Abouzeid, makes claims against the defendants eXp Realty of Canada Inc. (“eXp Canada”) and eXp World Holdings, Inc. (“eXp World”), the parent of eXp Canada. The claims include specific performance of and other relief in respect of an Independent Contractor Agreement made by Mr. Abouzeid in March 2022 (the “ICA”).

[2] The ICA contains a dispute resolution provision that requires that disputes arising out of or related to the ICA be submitted to and decided by arbitration.

[3] eXp Canada moves under s. 7(1) of the *Arbitration Act, 1991* for an order staying this action against eXp Canada on the ground that it is in respect of a matter to be submitted to arbitration under the ICA. Mr. Abouzeid opposes this motion on the ground that the arbitration agreement in the ICA is invalid or incapable of being performed.

[4] For the following reasons, I grant the eXp Canada’s motion.

Background Facts

[5] eXp Canada is a corporation incorporated under the *Canada Business Corporations Act*. It does business as a cloud-based real estate brokerage, and its registered office is in Victoria, British Columbia. The parent of eXp Canada is eXp World.

[6] In November 2018, Mr. Abouzeid founded the Affinity Real Estate Group, a team of real estate brokers. In the statement of claim, Mr. Abouzeid asserts that he and his team were recruited to join eXp (defined in his pleading to be eXp Canada and eXp World, collectively). He pleads that as a result of the overture, he and his team decided to move to eXp.

[7] The ICA reads that it is entered into by and between Mr. Abouzeid and eXp Canada (which is stated to be referred to in the ICA as “eXp Realty” or “Company”). The ICA was signed on behalf of the “Company” by Jason Gesing, “CEO, EXP REALTY”. The signature is dated March 29, 2022. Mr. Abouzeid executed the ICA on or about March 29, 2022.

[8] The ICA provides:

Certain portions of this Agreement may be modified from time to time by the Company in its sole discretion. Company will provide a minimum of seven (7) days' notice of any material revision for review by Contractor by sending an email communication to the email address on file in Company's Enterprise system (www.expenterprise.com) ("Enterprise"). For material changes, after the seven-day review period has elapsed, unless Contractor has notified the Company in writing that Contractor objects to the revisions, Contractor is deemed to have accepted all revisions.

[9] eXp Canada has provided evidence that Mr. Abouzeid received by email notices of material revisions to the ICA and that he has never objected to any revision to the ICA. The last such notice to Mr. Abouzeid was sent on September 5, 2025. The evidence provided on behalf of eXp Canada states that on September 24, 2025, eXp Canada made a non-material revision to the ICA which changed eXp Canada's corporate signatory.

[10] Mr. Abouzeid disputes that the ICA may be unilaterally amended at any time without meaningful notice.

[11] Each of the version of the ICA at the time of its execution and the version that eXp Canada says was in effect at the time it was terminated contains a provision that states that any dispute arising out of or related to the ICA shall be determined by arbitration.

[12] On September 29, 2025, eXp Canada terminated the ICA.

[13] Mr. Abouzeid commenced this action by a statement of claim that was issued on January 15, 2026. In the action, Mr. Abouzeid claims relief in relation to the termination of the ICA.

Analysis

[14] eXp Canada moves for an order staying the action against it pursuant to s.7(1) of the *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.

[15] In *Peace River Hydro Partners v. Petrowest Corp.*, 2022 SCC 41 (*'Peace River'*), the Supreme Court of Canada held, at paras. 76-77, that there are two general components to the stay provisions in provincial arbitration legislation across the country: (a) the technical prerequisites for a mandatory stay of court proceedings; and (b) the statutory exceptions to a mandatory stay of court proceedings. These two components, although interrelated, ought to remain analytically distinct because the burden of proof shifts between the first and second component.

[16] I reproduce the two versions of the arbitration agreement in the ICA below.

[17] The ICA which eXp Canada submits was in effect at the time of its termination on September 29, 2025 contains the following provisions:

a. Any dispute, controversy, or claim arising out of or related to this ICA or any breach or termination of this ICA, including but not limited to performance of the Services, and any alleged violation of any federal, provincial, territorial, or local statute, regulation, common law, or public policy, whether sounding in contract, tort, or statute, shall be submitted to and decided by binding arbitration. Arbitration shall be administered by JAMS and held either virtually or in Toronto, Ontario before a single arbitrator, in accordance with the JAMS rules, regulations, and requirements. Any arbitral award determination shall be final and binding upon the Parties. Judgment on the arbitrator's award may be entered in any court of competent jurisdiction. However, eXp may, at its election, choose to bring any claim or cause of action against Agent, by counterclaim, cross claim, third-party complaint, or otherwise, in a pre-existing civil action where it would otherwise be appropriate to assert such a claim, in lieu of commencing arbitration as described herein. Additionally, in the event eXp seeks injunctive relief that binding arbitration would not have the authority to award, eXp may assert such claims through an appropriate civil action.

b. Arbitration shall proceed only on an individual basis. The Parties waive all rights to have their disputes heard or decided by a jury or in a court trial and the right to pursue any class or collective claims against each other in court, arbitration, or any other proceeding. Each Party shall only submit their own individual claims against the other and will not seek to represent the interests of any other person. The arbitrator shall have no jurisdiction or authority to compel any class or collective claim, or to consolidate different arbitration proceedings with or join any other party to an arbitration between the Parties. The arbitrator, not any court, shall have exclusive authority to resolve any dispute relating to the enforceability or formation of this ICA and the arbitrability of any dispute between the Parties, except for any dispute relating to the enforceability or

scope of the class and collective action waiver, which shall be determined by a court of competent jurisdiction.

c. Agent understands the meaning and effect of the waivers being made in Section 18(b), immediately above, and Agent has been provided with reasonable time and an opportunity to consult with his or her own legal counsel regarding the same; Agent agrees to be bound by the mandatory binding arbitration and dispute resolution provisions set forth in the eXp P&Ps.

[18] The March 29, 2022 version of the ICA includes the following provisions:

A. Mediation in Advance of Arbitration

1. The parties agree that any and all disputes, claims or controversies arising out of or relating to this Agreement shall be submitted to JAMS, a private alternative dispute resolution provider, or its successor, for mediation under the JAMS International Mediation Rules, and if the matter is not resolved through mediation, then it shall be submitted to JAMS, or its successor, for final and binding arbitration pursuant to the clause set forth in subparagraph A.5 below.

2. Either party may commence mediation by providing to JAMS and the other party a written request for mediation, setting forth the subject of the dispute and the relief requested.

3. The parties will cooperate with JAMS and with one another in selecting a mediator from the JAMS panel of neutrals and in scheduling the mediation proceedings. The parties agree that they will participate in the mediation in good faith and that they will share equally in its costs.

4. All offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by any of the parties, their agents, employees, experts and lawyers, and by the mediator or any JAMS employees, are confidential, privileged and inadmissible for any purpose, including impeachment, in any arbitration or other proceeding involving the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation.

5. Either party may initiate arbitration with respect to the matters submitted to mediation by filing a written demand for arbitration at any time following the initial mediation session or at any time following 45 days from the date of filing the written request for mediation, whichever occurs first ("Earliest Initiation Date"). The

mediation may continue after the commencement of arbitration if the parties so desire.

6. At no time prior to the Earliest Initiation Date shall either side initiate an arbitration or litigation related to this Agreement except to pursue a provisional remedy that is authorized by law or by JAMS International Arbitration Rules or by agreement of the parties. However, this limitation is inapplicable to a party if the other party refuses to comply with the requirements of subparagraph A.3 above.

7. All applicable statutes of limitation and defenses based upon the passage of time shall be tolled until 15 days after the Earliest Initiation Date. The parties will take such action, if any, required to effectuate such tolling.

B. Binding Final Arbitration; Appeal

The parties to this Agreement agree that any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, not resolved pursuant to paragraphs A.1 through A.7 above, shall be determined by arbitration in the province or territory that issued the Contractor's real estate license or registration, and if Contractor is licensed in more than one province, then the province or territory in which the transaction that is the subject of the dispute closed in, before three arbitrator(s). The arbitration shall be administered by JAMS pursuant to the JAMS International Arbitration Rules and in accordance with the expedited procedures in those rules or pursuant to JAMS' Streamlined Arbitration Rules & Procedures and which can be found at: www.jamsadr.com. Judgment on the award may be entered in any court having jurisdiction. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction. Of the three arbitrators, the Chair must previously have served as Chair or sole arbitrator in at least 10 arbitrations where an award was rendered following a hearing on the merits and one of the wing arbitrators must be an expert in the area of residential real estate brokerage transactions.

The aggrieved party must file and give written notice of any claim to the other party no later than the expiration of the statute of limitations (filing deadline) that the law imposes for the claim. Otherwise, the claim shall be null and void and deemed waived. The arbitrators shall apply the substantive law (and the law of remedies, if applicable) of the applicable provincial, or federal law, or both, as applicable to the claim(s) asserted. In the event of a dispute, the arbitrators shall decide which substantive laws shall apply. The

arbitrators are authorized to award any remedy allowed by applicable law. The arbitrators shall issue a written and signed statement of the basis of their decision, including findings of fact and conclusions of law. **EACH PARTY, THEREFORE, ACKNOWLEDGES THAT IT IS WAIVING ANY RIGHT TO A TRIAL BY JURY IT MAY HAVE.**

This Agreement and the rights of the parties hereunder shall be governed by and construed in accordance with the laws of the province or territory in which the Contractor is licensed or registered as a real estate agent and if Contractor is licensed or registered in multiple provinces or territories, then the laws of the province or territory in which the transaction that was the basis of the dispute was located.

Notwithstanding the provision in the preceding sentence with respect to applicable substantive law, any arbitration conducted pursuant to the terms of this Agreement shall be governed by the applicable provincial or territorial arbitration statute(s).

The parties adopt and agree to implement the JAMS Optional Arbitration Appeal Procedure, as it exists on the date of the last signatory's signature on this Agreement (the "Effective Date"), with respect to any final award in an arbitration arising out of or related to this Agreement.

Has eXp Canada established the technical prerequisites for a mandatory stay of this action?

[19] At the first stage of the analysis, there are typically four technical prerequisites that are relevant: (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.

[20] The standard of proof applicable at the first stage of the analysis is lower than the usual civil standard. To satisfy the first component, the applicant must only establish an arguable case that the technical prerequisites are met. If all of the technical prerequisites are met, the mandatory stay provision is engaged and the court should move on to the second component of the analysis. See *Peace River*, at para. 83-84.

[21] eXp Canada has established that the technical prerequisites are met. Mr. Abouzeid does not submit otherwise.

Has Mr. Abouzeid shown on a balance of probabilities that one or more of the statutory exceptions apply?

[22] At the second stage of the analysis, the key question is whether, even though the technical requirements for a stay are met, the party seeking to avoid arbitration has shown on a balance of probabilities that one or more of the statutory exceptions apply. If not, the court must grant a stay.

The mandatory nature of stay provisions across jurisdictions in Canada reflects the presumptive validity of arbitration clauses and the principle of party autonomy. See *Peace River*, at para. 88.

[23] A court should dismiss a stay application on the basis of a statutory exception only in a clear case. Where the invalidity or unenforceability of the arbitration agreement is not clear (but merely arguable), the matter should be resolved by the arbitrator. Such an approach accords due respect to arbitral jurisdiction, in light of the competence-competence principle, as well as to the parties' intention to refer their disputes to arbitration. See *Peace River*, at para. 89.

[24] The statutory exceptions are found in s. 7(2) of the *Arbitration Act, 1991*:

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.

[25] Mr. Abouzeid submits that (i) the arbitration agreement is invalid, and (ii) it is incapable of being performed.

Is the arbitration agreement invalid because enforcement would require Mr. Abouzeid to have his dispute resolved by a specific service with a monopoly on resolving eXp Canada's disputes?

[26] Mr. Abouzeid submits that there is no valid or enforceable arbitration agreement because the clause upon which eXp Canada relies would force Mr. Abouzeid to have his dispute resolved by a specific service (JAMS) with a long-standing monopoly on resolving eXp Canada's disputes. Mr. Abouzeid submits that the dispute resolution clause in the ICA precludes the possibility of an independent arbitrator who can act impartially. He submits that, as a result, the clause is contrary to public policy and invalid.

[27] In support of this submission, Mr. Abouzeid relies on *Hooters of Am., Inc. v. Phillips*, 173 F (3d) 933 (4th Cir 1999) ('*Hooters*'). In *Hooters*, the Court held that the dispute resolution process in the applicable contract was utterly lacking in the rudiments of even-handedness and affirmed the district court's refusal to compel arbitration. The Court held that the rules for arbitration set by Hooters, taken as a whole, were so one-sided that their only plausible purpose was to undermine the neutrality of the proceeding. The Court held that the mechanism for selecting a panel of arbitrators was crafted to ensure a biased decisionmaker because it provided that the two arbitrators selected by the employee and by Hooters must select the third arbitrator from a list of arbitrators created exclusively by Hooters. The Court held that this gives Hooters control over the entire panel and places no limits on whom Hooters can place on the list. The Court held that given the

unrestricted control that Hooters has over the panel, the selection of an impartial decisionmaker would be a surprising result.

[28] The arbitration agreement in the ICA does not place any restriction on who may be selected to be the sole arbitrator under the 2025 version of the ICA, if applicable, or who may be selected to be on the three person panel under the 2022 version of the ICA, if applicable (except for requirements that the Chair must previously have served as Chair or sole arbitrator in at least 10 arbitrations where an award was rendered following a hearing on the merits and one of the wing arbitrators must be an expert in the area of residential real estate brokerage transactions).

[29] There is no requirement in either version of the ICA that an arbitrator must be selected from the JAMS roster of arbitrators. The fact that the arbitration is required to be administered by JAMS pursuant to the JAMS rules does not affect who the decisionmaker or decisionmakers will be. The problem under the dispute resolution process in *Hooters*, selection of a biased decisionmaker, does not arise under the arbitration agreement in either version of the ICA.

[30] Mr. Abouzeid also relies on *Monster Energy Company v. City Beverages, LLC* ('*Monster*'), a decision of the United States Court of Appeals for the Ninth Circuit dated October 19, 2019. In *Monster*, the parties chose an arbitrator from a list of neutrals provided by JAMS, the arbitration organization specified in the agreement. The arbitrator ruled in favour of *Monster*. The other party sought to vacate the award based on later-discovered information that the arbitrator was a co-owner of JAMS – a fact that he did not disclose prior to the arbitration. The majority of the Court held that the arbitrator's failure to disclose his ownership interest in JAMS, coupled with the fact that JAMS has administered 97 arbitrations for *Monster* over the past five years, created a reasonable impression of bias and supported vacating the award.

[31] Mr. Abouzeid submits that the requirement in the ICA that JAMS be the administrator of the arbitration to be conducted pursuant to the JAMS rules creates the same problem as the one that arose in *Monster* because JAMS may have administered many arbitrations involving eXp entities. I disagree. The problem that arose in *Monster* involved a reasonable impression of bias on the part of the arbitrator because of his undisclosed ownership interest in JAMS coupled with the fact that JAMS had administered many arbitrations for *Monster*. The issue on this motion does not involve the impartiality of any given arbitrator. The fact that in the forms of agreement used by eXp Canada and eXp World the arbitration is required to be administered by JAMS does not give rise to a reasonable apprehension of bias on the part of any arbitrator to be selected.

[32] The arbitration agreement in either version of the ICA does not preclude the selection of an independent arbitrator or arbitrators. There is no requirement in either version of the ICA that JAMS will provide an arbitrator, or that the arbitrator(s) must be selected from a roster maintained by JAMS. Mr. Abouzeid's submission that the dispute resolution clause in the ICA precludes the possibility of an independent arbitrator who can act impartially is unfounded.

[33] Mr. Abouzeid has failed to establish that the arbitration agreement in either version of the ICA is contrary to public policy and invalid because of provisions that would require Mr. Abouzeid to have the arbitration administered by JAMS under its rules.

Is the arbitration agreement invalid because it is unconscionable?

[34] Mr. Abouzeid also submits that the arbitration agreement upon which eXp Canada relies is unconscionable.

[35] In *Uber Technologies Inc. v. Heller*, 2020 SCC 16, the majority of the Supreme Court of Canada, at para. 54, noted that unconscionability is an equitable doctrine that is used to set aside unfair agreements that resulted from an inequality of bargaining power. The majority of the Court, at para. 60, held that unconscionability is meant to protect those who are vulnerable in the contracting process from loss or improvidence to that party in the bargain that was made. The majority, at paras. 62-65, confirmed that the doctrine of unconscionability has two elements: an inequality of bargaining power and a resulting improvident transaction.

[36] Mr. Abouzeid submits that the ICA was a lengthy standard form of agreement that was imposed on him and within which was buried a dispute resolution clause that is improvident.

[37] Mr. Abouzeid did not provide an affidavit in response to this motion. There is no evidence of the circumstances in which the ICA was executed. There is no evidence of whether Mr. Abouzeid was given an opportunity to negotiate terms of the ICA. The ICA signed by Mr. Abouzeid in March 2022, which contains his initials on each page, includes a provision in section 40 by which Mr. Abouzeid represented and acknowledged that “he or she understands the meaning and effect of the arbitration waiver and agreements in this Agreement and has been provided a reasonable time and opportunity to consult with his or her own legal counsel regarding the same”.

[38] On the record before me on this motion, I am unable to find that Mr. Abouzeid was vulnerable in the contracting process because of an inequality of bargaining power.

[39] Mr. Abouzeid submits that the arbitration agreement in the ICA is unconscionable because he reasonably expected that his contractual entitlements under the ICA would be adjudicated by an independent decision-maker and, instead, the arbitration agreement requires his dispute to be dealt with by the exclusive dispute resolution provider of eXp Canada or eXp World. He submits that the JAMS roster in Canada, according to its website, has only two persons in the pool of potential arbitrators.

[40] As I have explained, the arbitration agreement in either version of the ICA does not require the dispute to be adjudicated by an arbitrator who is on a JAMS roster or is otherwise affiliated with JAMS.

[41] Mr. Abouzeid has failed to establish that the arbitration agreement in the ICA is unconscionable and, therefore, invalid.

Is the arbitration agreement incapable of being performed?

[42] Mr. Abouzeid submits that even if the arbitration agreement is valid, it would be incapable of being performed. This is so, he submits, because the arbitration agreement requires a panel of three decision-makers, however, the JAMS roster in Canada includes a total of two mediators/arbitrators.

[43] As I have noted, under either version of the arbitration agreement in the ICA, there is no requirement that an arbitrator be selected from a roster maintained by JAMS. The arbitration agreement is not incapable of being performed for this reason.

[44] I conclude that Mr. Abouzeid has failed to show that one or more of the statutory exceptions in s. 7(2) of the *Arbitration Act*, 1991 applies. As a result, I must grant a stay of the action under s. 7(1).

Disposition

[45] For the following reasons, the motion by eXp Canada is granted. I hereby order that the action by Mr. Abouzeid as against eXp Canada is stayed.

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

Cavanagh J.

Date: June 5, 2026