

IN THE COURT OF KING'S BENCH OF NEW BRUNSWICK
TRIAL DIVISION
JUDICIAL DISTRICT OF BATHURST
BETWEEN:

SAMUEL SIVRET and 647925 NB Inc.

Applicants

-and-

McLAUGHLIN,

NORMAND LOSIER, THÉO GAUVIN, GINETTE

RAOUL BRIDEAU and RÉMI BRIDEAU

Respondents

BEFORE: The Honourable Justice Mario J. Lanteigne
AT: Bathurst, New Brunswick
DATE OF HEARING: January 22, 2026
DATE OF DECISION: April 13, 2026
APPEARANCES: Basile Chiasson, K.C., for the Applicants
G. Robert Basque, K.C., for the Respondents

[TRANSLATION]

INTRODUCTION

[1] The Applicants, Samuel Sivret and 647925 NB Inc., seek, by Amended Notice of Application, to be granted the following orders:

- (a) an order appointing one or more arbitrators in accordance with the relevant provisions of a unanimous shareholder agreement dated July 3, 2009, concerning relations and interactions among the shareholders of 638274 NB Inc., for the purpose of resolving a disagreement or dispute relating to, or arising from, the interpretation or application of the provisions of said agreement;
- (b) the costs of these proceedings; and
- (c) such other and further relief as this Honourable Court may deem just and proper.

[2] One of the main grounds raised by the Applicants is that a disagreement or dispute has arisen over the rights and obligations of shareholders bound by a unanimous shareholder agreement who are no longer part of the cottage rental pool. Another ground asserts that the unanimous shareholder agreement in question provides for a resolution mechanism through arbitration to which the Respondents refuse to submit in order to resolve the disagreement or dispute that has arisen between them.

I. FACTS

[3] The only evidence I need to weigh is that contained in the Affidavit of Samuel Sivret, the Applicant. The Respondents do not dispute the facts relating to the sequence of events. In fact, the Respondents did not file any affidavits challenging the Applicants' factual matrix.

[4] A vacation resort project born out of a public-private partnership was formed in the Tracadie area in about 1998 and is now operating under the trade name **Hôtel Deux Rivières Enr.** (“vacation resort”). This vacation resort, owned by 638274 N.B. Inc., now includes a cottage accommodation complex, a hotel and a convention centre.

[5] The project went through several phases to become what it is today.

[6] Thirty-three cottages were built in 1999, to which seventeen new cottages were added in 2001. A convention centre and an outdoor pool were built in 2000, not to mention the purchase of a boat called the MV Cajun III in 2004, which was destroyed in 2014. A health centre including a spa operated by 610095 NB Inc. was opened in 2005. A twenty-room hotel was built in 2009, to which four new rooms were added in 2018. Finally, in 2011, renovations were undertaken to refurbish the laundry room and kitchen.

[7] Early in the project, interested investors attended a public meeting at which they were informed that they could buy a cottage for \$30,000 and that the other half of the purchase price would be paid by the [Atlantic] Canada Opportunities Agency on behalf of the Corporation du Développement des Deux Rivières Tracadie (“CDDRT”).

[8] At the time the cottages were sold, the buyers were given an investor information package, which is not in evidence, stating that cottage owners were entitled to withdraw from the rental pool after fifteen years and that, in that case, they were required to either live in their cottages and/or sell them with full repayment of the loan from the Atlantic [Canada] Opportunities Agency. In short, shareholders became full owners of their cottages after fifteen years.

[9] According to the Affidavit of Samuel Sivret, a fifteen-year lease, which is not in evidence, had also been signed by the owners during the early stages of the project.

[10] Over time, fifty private investors became shareholders in 638274 N.B. Inc., with each coming to own a cottage. These investors include the parties to the application, each

of whom holds one Class A voting common share within the share capital of 638274 N.B. Inc. and owns one cottage at the vacation resort. They became shareholders on the following dates:

- a) Normand Losier: September 22, 2008;
- b) Théo Gauvin: September 22, 2008;
- c) Rémi Brideau: September 22, 2008;
- d) Ginette McLaughlin as heir to the estate of Fernand McLaughlin: September 22, 2008;
- e) 647925 NB Inc.: January 21, 2013;
- f) Raoul Brideau: June 1, 2015.

[11] In 2009, 638274 NB Inc. was established to serve as collateral for the loan to each of the fifty owners by issuing one Class A share for each of the fifty cottages instead of taking out a mortgage. The establishment of this corporation fulfilled a condition for securing a loan for a project to expand the convention centre. This term of the loan stipulated that all the shareholders were liable for the loan with the Corporation du Développement des Deux Rivières Tracadie.

[12] A unanimous shareholder agreement was also signed in 2009; it is the subject of this application.

[13] In 2013, the fifty cottage owners became full owners of their cottages as part of a transaction involving the transfer of management of the vacation resort from the CDDRT to 638274 NB Inc. This transaction had been completed before the end of the Corporation du Développement des Deux Rivières Tracadie management agreement, which was set for 2015 and 2016, fifteen years after the initial signing date. Although the owners had now become full owners as part of this transaction, they remained subject to strict restrictions, such as being barred from renting out the cottages and from carrying out renovations without the vacation resort's consent.

[14] In fact, as part of this transaction, among other things, the land for each of the fifty cottages was transferred to the investors before the CDDRT management agreement ended.

[15] The same year, 638274 NB Inc. bought the convention centre and the land on which the vacation resort sits from the CDDRT with financial assistance from the Town of Tracadie in the amount of \$700,000.

[16] Since 2017, 638274 NB Inc. has redeemed thirteen Class A common shares for \$100 each and bought back one cottage with one Class A common share, which was returned to the rental pool, whereas the five shareholders who are parties to this application are no longer part of the rental pool. No investment had been required of the fifty shareholders who were part of the rental pool at the time, as 638274 NB Inc. had financed the construction and development of the site in the amount of \$348,000, plus the balance of the mortgage and other loans.

[17] As of June 20, 2025, thirty-four shareholders still held Class A voting shares and each owned a cottage, including the Respondents, who are no longer part of the cottage rental pool.

[18] There is a disagreement between the parties to this application over the nature and scope of the shareholders' rights and obligations according to whether a shareholder is part of the cottage pool. The issue raised by the Applicants is that the Respondents no longer contribute to the company's revenue, capital outlays and expenses, including the payment of a debt for the construction of their cottages, and that this has led to a completely inequitable relationship between the shareholders who remain part of the rental cottage pool and those who have withdrawn from it.

[19] It goes without saying that the parties take differing positions on whether their disagreement is arbitrable under the unanimous shareholder agreement.

II. ISSUES

1. The Court must determine whether there is a disagreement or dispute over the interpretation or application of the provisions of the unanimous shareholder agreement dated July 3, 2009, that is

arbitrable as provided in the arbitration clause. If so, must it be resolved through arbitration?

2. Have the Applicants met the conditions precedent to arbitration as described in article 9(a) of the unanimous shareholder agreement regarding attempts to reach a settlement?

III. POSITION OF THE APPLICANTS

[20] The Applicants seek the appointment of an arbitrator to resolve a disagreement or dispute over the interpretation or application of the provisions of a unanimous shareholder agreement dated July 3, 2009. They filed the Affidavit of Samuel Sivret, which is the only evidence filed in support of the Notice of Application.

[21] According to the Applicants, the unanimous shareholder agreement is at the root of a disagreement between the parties as to its interpretation. The Applicants rightly point out that if this were a disagreement over the application of a provision of the unanimous shareholder agreement, no application would be necessary. The reason for this application, according to the Applicants, has to do with the definition of the word “cottage” in article 1.01 of the unanimous shareholder agreement:

[TRANSLATION]

“Cottage” means a cottage in the cottage pool of the Complexe Les Deux Rivières in Tracadie-Sheila, New Brunswick.

[22] According to the Applicants, this definition forms the basis of the interpretive disagreement. The Applicants' reasoning suggests that a “cottage” belongs to a “cottage pool” and that the evidence in Samuel Sivret's Affidavit resolves an ambiguity in the wording of the definition of the word “cottage” by introducing the word “rental.”

[23] The Applicants contend that the unanimous shareholder agreement is a contract or an instrument. In their view, it follows that the principles of contractual interpretation set out by the Supreme Court of Canada in *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53 (CanLII), apply and make it possible to resolve the ambiguity in the definition of the word “cottage,” following a review of the evidence relating to the factual matrix surrounding the timing of the unanimous shareholder agreement, which is contained in the Affidavit of Samuel Sivret.

[24] Still following the Applicants’ reasoning, they suggest that the ambiguity in the definition of the word “cottage” can be resolved by applying the principles of contractual interpretation, and that such a resolution gives rise to a disagreement between the parties over the interpretation of a provision of the unanimous shareholder agreement, namely the definition of the word “cottage” in article 1.01, which becomes arbitrable de jure. This interpretive disagreement ultimately relates to the nature and scope of the rights and obligations of the parties to the unanimous shareholder agreement according to whether a shareholder is part of the rental cottage pool.

[25] The Applicants start by drawing the Court’s attention to paragraphs 17 and 28 of the Affidavit of Samuel Sivret, in which he describes the cottage pool as a “rental pool” in order to support the Applicants’ position that the mutual and objective intentions of the parties, as expressed in the definition of the word “cottage,” were to refer to a pool of “rental” cottages.

[26] Paragraphs 17 and 28 of the Affidavit of Samuel Sivret read as follows:

[TRANSLATION]

17. The investor information package provided at the time of the sale of the cottages stated that after fifteen years, cottage owners were entitled to withdraw from the rental pool, either to live in their cottages and/or to sell them against the mortgage, at which point the ACOA loan would be repaid in full.

28. Since 2017, nineteen shareholders have sold or taken possession of their cottages to withdraw from the rental pool. Of these, the corporation has redeemed thirteen Class A common shares for \$100 each, and one cottage, along with a Class A share, was bought back and returned to the rental pool. The Respondents, namely the five shareholders, are currently outside the rental pool.

[27] The Applicants suggest that these paragraphs are evidence of the factual matrix set out in the Affidavit of Samuel Sivret that makes it possible for this Court to interpret the meaning of the definition of the word “cottage” to include the word “rental.” The definition of the word “cottage” would then read as follows:

[TRANSLATION]

“Cottage” means a cottage in the *rental* cottage pool of the Complexe Les Deux Rivières in Tracadie-Sheila, New Brunswick.

[28] The argument is that the addition of the word “rental” to the definition of the word “cottage” would give rise to a disagreement as to interpretation. This interpretive disagreement would relate to the nature and scope of the rights and obligations of the parties to the unanimous shareholder agreement according to whether a shareholder is part of the rental cottage pool.

[29] Reading the definition of the word “cottage” with the addition of the word “rental” together with clause 8.02 of the unanimous shareholder agreement, the Applicants argue that it is reasonable to wonder about the consequence of no longer being part of the rental pool. In essence, the argument suggests that the addition of the word “rental” gives rise to a disagreement of interpretation over the scope of the rights and obligations of the parties to the unanimous shareholder agreement according to whether a shareholder is part of the rental cottage pool.

[30] Clause 8.02 of the unanimous shareholder agreement contains no reference to the rights and obligations of the shareholders according to whether a shareholder is part of some cottage pool.

[31] The Applicants also suggest that the shareholders were bound by a joint venture or community of interests at the time the unanimous shareholder agreement was signed. The Applicants cite case law that they consider relevant, at most by analogy, to support the argument that the shareholders, at the time the unanimous shareholder agreement was signed, shared a joint venture, which was to be part of a rental cottage pool.

[32] The Applicants also contend that they met the threshold requirements for referring the disagreement to arbitration by sending letters, between 2019 and 2022, to the shareholders who were no longer part of the cottage pool in an attempt to settle the disagreement.

[33] In short, the Applicants argue that the unanimous shareholder agreement reveals a disagreement of interpretation once the ambiguity in the definition of “cottage” is resolved by adding the word “rental” as a result of consideration of the factual matrix set out in the Affidavit of Samuel Sivret surrounding the signing of the unanimous shareholder agreement.

[34] In conclusion, the Applicants contend that there is an interpretive disagreement that falls within the scope of the arbitration clause and that the terms of article 9.01 of the unanimous shareholder agreement are met, allowing this Court to appoint an arbitrator to resolve the disagreement.

IV. POSITION OF THE RESPONDENTS

[35] The Respondents did not file any affidavits. They contend that the unanimous shareholder agreement is unambiguous. For that matter, they go as far as to argue that the Affidavit of Samuel Sivret actually supports their position. Essentially, the

Respondents submit, on the one hand, that there is no provision in the unanimous shareholder agreement dealing with the nature and scope of the shareholders' rights and obligations according to whether a shareholder is part of the cottage pool and, on the other hand, that there is no indication in the Affidavit of Samuel Sivret of the existence of documents on the subject.

[36] By this reasoning, the evidence of the Applicants' factual matrix would support the Respondents' position. In this regard, the Applicants claim that, at the time of signing, the parties never intended to include the word "rental" in the definition of the word "cottage;" this explains the omission of the word "rental" from the definition of the word "cottage."

[37] On this point, the Respondents draw the Court's attention to certain paragraphs of the Affidavit of Samuel Sivret, in particular paragraphs 17, 25 and 26, which read as follows:

[TRANSLATION]

17. The investor information package provided at the time of the sale of the cottages stated that after fifteen years, cottage owners were entitled to withdraw from the rental pool, either to live in their cottages and/or to sell them against the mortgage, at which point the ACOA loan would be repaid in full.

25. The 2013 transaction transferred all of V2R's properties, including the land for each of the fifty cottages, to the investors before the end of the CDDRT management contract, which was set for 2015 and 2016, fifteen years after the initial signing date.

26. The fifty owners then became full owners of their cottages, but with strict restrictions to preserve the accommodation centre concept; for example, they were not permitted to rent out their cottages or renovate them without the consent of the V2R Board of Directors.

[38] Relying on this evidence, the Respondents argue that the shareholders were entitled to withdraw from the pool and became full owners of their cottages after fifteen years.

[39] The Respondents rely on the Applicants' evidence to support the position that the shareholders—in this case, the parties to this application—were entitled to withdraw from the pool after fifteen years and become full owners of their cottages. In addition, according to the Respondents, there are no facts or documents in evidence that confirm the parties' intention to deal with the nature and scope of the shareholders' rights according to whether a shareholder is part of the cottage pool.

[40] In conclusion, the Respondents' position is, at most, that there is no ambiguity in the definition of the word "cottage" or elsewhere in any of the provisions of the unanimous shareholder agreement, including the arbitration clause in article 9. Put another way, the Respondents contend that the unanimous shareholder agreement contains all the provisions that the parties freely chose to include. To claim otherwise would be to ask this Court to rewrite the unanimous shareholder agreement.

[41] In the alternative, the Respondents argue that the Applicants have not met the conditions precedent to referring any disagreement or dispute to arbitration under article 9 of the unanimous shareholder agreement.

V. LAW AND ANALYSIS

[42] The Applicants are proceeding under rules 16.04(e) and/or (j) of the *Rules of Court*, which read as follows:

16.04 By Notice of Application
Subject to Rule 16.041, when an Act or rule authorizes an application or motion to the court without requiring the

institution of an action, a Notice of Application (Form 16D) may be used and, in addition thereto, a proceeding may be so commenced where the relief claimed is

(...)

(d) for a determination of rights which depend upon the interpretation of a deed, will, contract or other instrument, or upon the interpretation of a statute, order-in-council, regulation, local government by-law or resolution,

(...)

(j) in respect of any other matter where it is unlikely that there will be a substantial dispute of fact.

[43] The Court must therefore first determine whether there is a disagreement or dispute relating to or arising from the interpretation or application of the provisions of the unanimous shareholder agreement that falls within the scope of the arbitration clause. If so, must the Court order that the disagreement be resolved by arbitration? The Applicants' position is that there is a disagreement of interpretation only; otherwise, they argued, the application would not have been necessary.

[44] This initial judicial determination essentially concerns the arbitrability of the disagreement. The main issue falls under Rule 16.04(e), as it is indeed a contract that forms the basis of this application.

[45] The Respondents raise a related question as to whether the Court should decide the issue of the arbitrability of the disagreement or whether it should leave this issue to an arbitral tribunal. However, the parties agree that the Court has the necessary jurisdiction to determine the arbitrability of the disagreement.

[46] Second, if the Court is satisfied that an arbitrable disagreement of interpretation exists, it must then determine whether the Applicants have met the conditions precedent to arbitration relating to settlement attempts.

[47] The terms of the arbitration clause regarding the nature of the disagreement or dispute are set out in article 9 contained in part nine of the unanimous shareholder agreement entitled “Arbitration” and read as follows:

[TRANSLATION]

9.01 The parties hereto agree that any disagreement or dispute relating to or arising from the interpretation or application of the provisions of the Agreement shall be resolved exclusively by arbitration, in accordance with the provisions of the Arbitration Act of New Brunswick, subject to the following:

- (a) **Settlement.** Before referring any disagreement or dispute relating to or arising from the interpretation or application of the provisions of the Agreement to arbitration, each Shareholder hereby agrees to make every effort and take all reasonable steps, which may include mediation, to reach a settlement of such disagreement or dispute.
- (b) **Notice of Arbitration.** If the Shareholders are unable to reach a settlement pursuant to paragraph (a) above within thirty (30) days, any Shareholder (or group of Shareholders) may then refer such dispute or disagreement to arbitration by giving written notice to the other Shareholders, setting out at least the following:
 - (i) a reasonably detailed description of the dispute or disagreement to be referred to arbitration;
 - (ii) a statement that the Shareholder wishes to proceed with arbitration in accordance with this Agreement;
 - (iii) the name, address and occupation of the person proposed as arbitrator; and
 - (iv) a reminder to the other Shareholders that they must take action in accordance with this article within fifteen (15) days.
- (c) **Selection of the Arbitrator(s).** The other Shareholders shall have fifteen (15) days either to accept the choice of arbitrator proposed in the notice referred to in paragraph (b) above, or to name, by written notice to the first Shareholder (or the first group of Shareholders), the arbitrator they themselves propose, who shall then serve as a member of a panel of three (3) arbitrators. In the event that the other Shareholders accept the choice of arbitrator proposed in the notice referred to in paragraph (b) above, the arbitrator so appointed shall act alone. In the event that

the other Shareholders themselves propose a second arbitrator, the two arbitrators so appointed shall have seven (7) days from the date of appointment of the second arbitrator to appoint a third arbitrator, who shall preside over the arbitration panel.

If any Shareholder fails to appoint an arbitrator or the first two arbitrators fail to appoint a third arbitrator within the specified time, such appointment may be made by a judge of the Court of Queen's Bench of New Brunswick at the request of any affected Shareholder.

- (d) **Replacement of an Arbitrator.** In the event of the death, refusal, resignation or inability to act for any reason of any of the arbitrators, and in the event such vacancy persists for more than seven (7) days after notice of such vacancy has been given to one of the Shareholders (or groups of Shareholders) by the others or by one of the remaining arbitrators, a new arbitrator shall be appointed within ten (10) days following the expiration of such period by the Shareholder or Shareholders represented by the arbitrator to be replaced, or by the other two arbitrators if the arbitrator to be replaced was the third arbitrator. In the event of failure to comply with this paragraph, such appointment may be made by a judge of the Court of Queen's Bench of New Brunswick at the request of any affected Shareholder.
- (e) **Rules of Arbitration.** Once the arbitrator is appointed and accepted by all the Shareholders or, where applicable, once all three arbitrators are appointed, he, she or they shall proceed to hear the matter as expeditiously and informally as possible, while nevertheless affording the Shareholders reasonable opportunity to present their claims and evidence regarding the dispute. The decision of the majority of the arbitrators, and in the absence of such a majority or unanimous decision, the decision of the third arbitrator, shall be binding on the parties hereto and their heirs, successors and assigns, such decision being final, without possible appeal and not subject to review by any court. The costs of arbitration shall be apportioned among the parties as the arbitrators may decide.

[48] The Applicants contend that the basis for the application lies in the ambiguity of the definition of the word “cottage” and that the resolution of this ambiguity gives rise to an arbitrable interpretive disagreement. This definition is set out in article 1.01 of the unanimous shareholder agreement and reads as follows:

[TRANSLATION]

“Cottage” means a cottage in the cottage pool of the Complexe Les Deux Rivières in Tracadie-Sheila, New Brunswick.

[49] In *Sattva*, Rothstein J., delivering the judgment of the Court, abandons the historical approach to the principles of contractual interpretation in favour of a new approach. This new interpretive approach is outlined at paragraph 50 of *Sattva*:

Contractual interpretation involves issues of mixed fact and law as it is an exercise in which the principles of contractual interpretation are applied to the words of the written contract, considered in light of the factual matrix.

[50] The concept of the factual matrix is defined in greater detail at paragraphs 56 through 60 of *Sattva*:

[56] I now turn to the role of the surrounding circumstances in contractual interpretation and the nature of the evidence that can be considered. The discussion here is limited to the common law approach to contractual interpretation; it does not seek to apply to or alter the law of contractual interpretation governed by the Civil Code of Québec.

[57] While the surrounding circumstances will be considered in interpreting the terms of a contract, they must never be allowed to overwhelm the words of that agreement (*Hayes Forest Services*, at para. 14; and *Hall*, at p. 30). The goal of examining such evidence is to deepen a decision-maker’s understanding of the mutual and objective intentions of the parties as expressed in the words of the contract. The interpretation of a written contractual provision must always be grounded in the text and read in light of the entire contract

(Hall, at pp. 15 and 30-32). While the surrounding circumstances are relied upon in the interpretive process, courts cannot use them to deviate from the text such that the court effectively creates a new agreement (*Glaswegian Enterprises Inc. v. B.C. Tel Mobility Cellular Inc.* (1997), [1997 CanLII 4085 \(BC CA\)](#), 101 B.C.A.C. 62).

[58] The nature of the evidence that can be relied upon under the rubric of “surrounding circumstances” will necessarily vary from case to case. It does, however, have its limits. It should consist only of objective evidence of the background facts at the time of the execution of the contract (*King*, at paras. 66 and 70), that is, knowledge that was or reasonably ought to have been within the knowledge of both parties at or before the date of contracting. Subject to these requirements and the parol evidence rule discussed below, this includes, in the words of Lord Hoffmann, “absolutely anything which would have affected the way in which the language of the document would have been understood by a reasonable man” (*Investors Compensation Scheme*, at p. 114). Whether something was or reasonably ought to have been within the common knowledge of the parties at the time of execution of the contract is a question of fact.

(c) *Considering the Surrounding Circumstances Does Not Offend the Parol Evidence Rule*

[59] It is necessary to say a word about consideration of the surrounding circumstances and the parol evidence rule. The parol evidence rule precludes admission of evidence outside the words of the written contract that would add to, subtract from, vary, or contradict a contract that has been wholly reduced to writing (*King*, at para. 35; and Hall, at p. 53). To this end, the rule precludes, among other things, evidence of the subjective intentions of the parties (Hall, at pp. 64-65; and *Eli Lilly & Co. v. Novopharm Ltd.*, [1998 CanLII 791 \(SCC\)](#), [1998] 2 S.C.R. 129, at paras. [54-59](#), per Iacobucci J.). The purpose of the parol evidence rule is primarily to achieve finality and certainty in contractual obligations, and secondarily to hamper a party’s ability to use fabricated or unreliable evidence to attack a written contract (*United Brotherhood of Carpenters and Joiners of America, Local 579 v. Bradco Construction Ltd.*, [1993 CanLII 88 \(SCC\)](#), [1993] 2 S.C.R. 316, at pp. 341-42, per Sopinka J.).

[60] The parol evidence rule does not apply to preclude evidence of the surrounding circumstances. Such evidence is consistent with the objectives of finality and certainty because it is used as an interpretive aid for determining the meaning of the written words chosen by the parties, not to change or overrule the meaning of those words. The surrounding circumstances are facts known or facts that reasonably ought to have been known to both parties at or before the date of contracting; therefore, the concern of unreliability does not arise.

[51] The evidence presented by Samuel Sivret outlines the origins of the vacation resort project but fails to provide a factual matrix describing the circumstances at the time the unanimous shareholder agreement was signed on July 3, 2009, with the exception of a reference to an investor information package provided at the time of the sale of the cottages, which is not in evidence. In addition, the only documentary evidence consists of the unanimous shareholder agreement, some share certificates and a few letters and arbitration notices sent between 2019 and 2024.

[52] Although the Affidavit of Samuel Sivret mentions the word “rental” five times, there is nothing to establish the parties’ mutual and objective intent to introduce the word “rental” into the definition of the word “cottage.” In other words, it is impossible to conclude that there was knowledge that was or reasonably ought to have been within the common knowledge of the parties at the time of contracting that would shed light on the meaning of the definition of the word “cottage” by introducing the word “rental,” assuming that the definition of the word “cottage” is ambiguous as suggested by the Applicants.

[53] It therefore cannot be concluded, on a balance of probabilities, that the parties intended to negotiate the issue of rights and obligations according to whether a shareholder was part of the cottage pool at the time the unanimous shareholder agreement was signed. According to the Affidavit of Samuel Sivret, at the time the unanimous shareholder agreement was signed, the parties were aware, at most, that they were entitled to withdraw from the rental pool after fifteen years and to become full owners of their cottages. This knowledge cannot, on its own, be evidence of a factual matrix to establish that the parties had a mutual and objective intention to introduce the word

“rental” into the definition of the word “cottage” and that they also intended to negotiate the rights and obligations of the shareholders under the unanimous shareholder agreement according to whether a shareholder is part of a cottage pool.

[54] For these reasons, it is also impossible to conclude that there is a joint venture involving the renting of cottages.

[55] In addition, no provision of the unanimous shareholder agreement deals with the nature and scope of the shareholders’ rights and obligations according to whether a shareholder is part of a “rental” cottage pool. Section 8.01 refers at most to the principle that every cottage owner must hold at least one share and that as soon as an owner disposes of his or her interest in a cottage, he or she must also dispose of his or her share.

[56] Even if a contractual interpretation did allow for the word “rental” to be introduced into the definition of the word “cottage,” which is not the case here, this would not by extension raise the issue of rights and obligations as suggested by the Applicants. Such a conclusion would amount to overwhelming the words of the unanimous shareholder agreement or creating a new one. According to *Sattva*, this cannot be the objective of a contractual interpretation.

[57] In the circumstances, it is impossible to conclude that there is an arbitrable disagreement over the nature and scope of the shareholders’ rights and obligations according to whether a shareholder is part of the cottage pool via an interpretive resolution of the definition of the word “cottage” in section 1.01 of the unanimous shareholder agreement through the introduction of the word “rental.”

[58] The definition of the word “cottage” in section 1.01 of the unanimous shareholder agreement is unambiguous. In short, applying the principles of contractual interpretation to the definition of the word “cottage” does not make this an arbitrable disagreement.

[59] In conclusion, there is, in the circumstances, no arbitrable interpretive disagreement. By applying the principles of contractual interpretation to the definition of the word “cottage” in the unanimous shareholder agreement, this Court is, at the same time, exercising its jurisdiction to determine the arbitrability of the disagreement instead of leaving that issue for consideration by an arbitral tribunal.

[60] Had this Court found that there was an arbitrable interpretive disagreement, the issue of whether the Applicants had met the conditions precedent to the right to refer such a disagreement to arbitration, as set out in article 9 of the unanimous shareholder agreement, would have been considered in greater detail. I nevertheless find that the Applicants did not meet this condition. The letters sent between 2019 and 2022 do not in and of themselves constitute attempts to settle a disagreement. Article 9(a) of the unanimous shareholder agreement provides that “each Shareholder (...) agrees to make every effort and take all reasonable steps, which may include mediation, to reach a settlement of such disagreement or dispute.”

[61] The first letter dated July 26, 2019, is addressed to only one shareholder, Normand Losier, and contains an error suggesting that he sold his cottage, presenting Normand Losier with a *fait accompli* regarding the proposed redemption price of his share. The letters sent to shareholders Raoul Brideau, Mireille Gauvin, Théo Gauvin, Ginette McLaughlin and Normand Losier on November 22, 2022, are formal notices that do not, in and of themselves, meet the contractual requirement to “make every effort” and “take all reasonable steps, which may include mediation,” to settle any disagreement.

VI. CONCLUSION AND DISPOSITION

[62] The application is dismissed. Costs in the amount of \$1,500 payable by the Applicants are awarded to the Respondents.

DATED at Bathurst, New Brunswick, this 30th of April 2026.

Mario J. Lanteigne
Judge of the Court of King's Bench
of New Brunswick