

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *1147010 B.C. Ltd. v. 1074364 B.C. Ltd.*,
2026 BCSC 1196

Date: 20260625
Docket: S-262035
Registry: Vancouver

Between:

1147010 B.C. Ltd. and Bayram Saracoglu

Plaintiffs

And

1074364 B.C. Ltd. and Halil Ibrahim Eris

Defendants

Before: The Honourable Justice Majawa

Reasons for Judgment

Counsel for the Plaintiffs:

I. Suvorin

Counsel for the Defendants:

M. Manolis
C. Nunez

Place and Date of Hearing:

Vancouver, B.C.
June 2, 2026

Place and Date of Judgment:

Vancouver, B.C.
June 25, 2026

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[1] The defendants (applicants on this application), 1074364 B.C. Ltd. (“107”) and Halil Ibrahim Eris, seek a stay of the underlying proceedings in favour of the arbitration provisions of a shareholders’ agreement in existence between the parties and Metrotown Flooring Centre Ltd. (the “Shareholders’ Agreement”).

[2] For the reasons that follow, the stay of proceedings sought by the defendants is granted.

The Shareholders’ Agreement

[3] On January 1, 2020, the parties entered into the Shareholders’ Agreement with Metrotown Flooring Centre Ltd. (“Metrotown Flooring”), of which each of the parties is a shareholder.

[4] For context, the plaintiff 1147010 B.C. Ltd. (“114”) is the holding company of the plaintiff Bayram Saracoglu, and the defendant 107 is the holding company of the defendant Mr. Eris.

[5] Subsection 12.1 of the Shareholders’ Agreement is a shotgun clause, titled “Compulsory Buy-Out”. This clause allows the offeror shareholder—here, 114—to give notice and require the offeree shareholder—here, 107—to elect to either: (a) sell all of their interest in Metrotown Flooring to the offeror shareholder; or (b) purchase all of the offeror shareholder’s interest in Metrotown Flooring.

[6] Pursuant to subsection 13.1 of the Shareholders’ Agreement, 107 had 30 days to make this election.

[7] Section 16 of the Shareholders’ Agreement says the following:

16.1 Arbitration. Except for any determination of the value of an Interest made in accordance with subsection 14.2, which determination shall be final and binding on the parties, all disputes arising out of or in connection with this Agreement shall be referred to and finally resolved by a single arbitrator (the “Arbitrator”) pursuant to the *Arbitration Act*, R.S.B.C. 1996, c. 55, as amended.

16.2 Final and Binding. The decision of the Arbitrator on all issues or matters submitted to the Arbitrator for resolution shall be conclusive, final and binding on all of the parties.

16.3 Costs. The Arbitrator shall determine who shall bear the costs of arbitration pursuant to this section 16.

[8] The allegations made by the plaintiffs in this proceeding do not engage the exception provided in s. 14.2 of the Shareholders' Agreement.

[9] Subsection 17.4 of the Shareholders' Agreement provides that the agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia and Canada.

[10] As part of their formal notice of their exercise of the shotgun clause in subsection 12.1 of the Shareholders' Agreement, the plaintiffs prepared a letter addressed to the defendants (the "Shareholder Offer"). Section 4 of the Shareholder Offer contains general terms and conditions, one of which reads as follows:

4.5 This Agreement shall be governed by and construed in accordance with the law of the province of British Columbia and the parties submit and attorn to the jurisdiction of the courts of the province of British Columbia.

The Plaintiffs' Claim and the Defendants' Application

[11] On March 18, 2026, the plaintiffs filed a notice of civil claim, alleging that the defendants breached ss. 12 and 13 of the Shareholders' Agreement when they failed to complete the sale of certain Metrotown Flooring shares.

[12] Specifically, the plaintiffs alleged that 107 failed to make the election set out in subsection 12.1 within the required time under s. 13. Accordingly, the plaintiffs sought specific performance of the Compulsory Buy-Out clause and damages. In the alternative, the plaintiffs sought damages in lieu of specific performance, and in further alternative, damages for breach of contract or damages for breach of the duty of good faith and honest performance.

[13] On May 8, 2026, the defendants filed a jurisdictional response.

[14] On May 14, 2026, the defendants applied for an order staying the proceedings. On May 26, 2026, the plaintiffs filed an application response, opposing the order sought by the defendants.

Parties' Positions

[15] The defendants argue that the claims made by the plaintiffs in the notice of civil claim fall squarely within the scope and purview of s. 16 of the Shareholders' Agreement. Accordingly, the commencement of this proceeding by the plaintiffs is inconsistent with the jurisdiction conferred upon an arbitrator pursuant to this section.

[16] The defendants argue that there are no grounds on which the agreement to arbitrate set out in the Shareholders' Agreement is void, inoperative, or incapable of being performed, and that all of the prerequisites for a stay have been met.

[17] In response, the plaintiffs argue that the present dispute, insofar as it relates to the notice of civil claim, does not arise out of the terms of the Shareholders' Agreement, but rather, out of the terms of the Shareholder Offer. They argue that the Shareholder Offer has become a standalone binding legal agreement and is thus not subject to the arbitrator's jurisdiction described in subsection 16.1 of the Shareholders' Agreement.

[18] Instead, the plaintiffs argue that subsection 4.5 of the Shareholder Offer governs their claim. They argue that, because this subsection requires all legal proceedings arising out of the Shareholder Offer to be submitted to and resolved by the courts of this province, a stay of proceedings would not be appropriate.

Relevant Law

[19] The defendants have brought this application pursuant to R. 21-8(1)(b) of the *Supreme Court Civil Rules*, which provides that a party who has been served with an originating pleading or petition in a proceeding, after filing a jurisdictional response,

may apply to dismiss or stay the proceeding on the ground that the Court does not have jurisdiction over that party in respect of the claim made against that party in the proceeding.

[20] The application is also brought pursuant to s. 7(1) of the *Arbitration Act*, S.B.C. 2020, c. 2 which provides that, if a party commences legal proceedings in a court in respect of a matter agreed to be submitted to arbitration, a party to the legal proceedings may apply to stay the proceedings before submitting their first response on the substance of the dispute. Subsection 7(2) of the *Arbitration Act* states that in an application under s. 7(1), the Court must make an order staying the legal proceedings unless it determines that the arbitration agreement is void, inoperative, or incapable of being performed.

[21] An applicant must establish three prerequisites to succeed on an application pursuant to s. 7 of the *Arbitration Act*. These prerequisites are summarized at para. 28 of *Davidson v. Lyra Growth Partners Inc.*, 2024 BCCA 133, as follows:

- a) the applicant must show that a party has commenced legal proceedings in respect of a matter agreed to be submitted to arbitration;
- b) the application must be brought before the applicant submits its first response on the substance of the dispute; and
- c) the arbitration agreement cannot be void, inoperative, or incapable of being performed.

Analysis

[22] There is no dispute that the *Arbitration Act* is applicable to the Shareholders' Agreement even though the Shareholders' Agreement references the previous act. This is because s. 70(2)(c) of the *Arbitration Act* makes the reference to the *Arbitration Act*, R.S.B.C. 1996, c. 55 in s. 14.1 of the Shareholders' Agreement equivalent to a reference to the current *Arbitration Act*. Given that s. 17.4 of the Shareholders' Agreement provides that the laws of British Columbia are applicable

to the dispute, the current *Arbitration Act* is applicable pursuant to ss. 2(1) and 2(2)(c) of the *Arbitration Act*.

[23] I will consider whether each of the three prerequisites summarized in *Davidson* is made out in this case to determine whether the stay of proceedings sought by the defendants should be granted.

Matter Agreed to be Submitted to Arbitration

[24] I must first consider whether the defendants have shown that the plaintiffs commenced legal proceedings in respect of a matter agreed to be submitted to arbitration.

[25] The general rule in British Columbia is that court proceedings are stayed whenever the applicant makes out an “arguable case” that the dispute is one that the parties have previously agreed will be resolved by way of arbitration: *Clayworth v. Octaform Systems Inc.*, 2020 BCCA 117 at para. 21. The “arguable case” standard is a relatively low bar and will be met unless there is no nexus between the claims and the matters reserved for arbitration: *Tahmasebpour v. Freedom Mobile Inc.*, 2024 BCSC 726 at para. 20; *Clayworth* at para. 30. If there is any doubt as to whether the issues in a proceeding relate to matters which the parties agreed to submit to arbitration, the matter should be referred to arbitration unless it is clear that the dispute falls outside the scope of the relevant arbitration agreement: *Kooner v. Epix Squamish Limited Partnership*, 2024 BCSC 528 at para. 23, citing *Dell Computer Corp. v. Union des consommateurs*, 2007 SCC 34 at paras. 84–85.

[26] There are three exceptions to the “arguable case” test, which are set out at para. 17 of 2197 *Otter Point Properties Nominee Ltd. v. GT Mann Contracting Ltd.*, 2026 BCSC 558 [*GT Mann*]. The Court is permitted to consider a challenge to arbitral jurisdiction itself on:

- a) pure questions of law;

- b) questions of mixed fact and law that can be determined with only a superficial regard to the record; and
- c) where there is no real prospect that a *bona fide* jurisdictional challenge will be resolved by an arbitrator.

[27] In the present case, the plaintiffs commenced legal proceedings in respect of the defendants' alleged breach of ss. 12 and 13 of the Shareholders' Agreement. Applying the "arguable case" standard, I find that there is a clear nexus between the plaintiffs' claims and the matters reserved for arbitration, which, pursuant to s. 16 of the Shareholders' Agreement, consist of "all disputes arising out of or in connection with [the Shareholders' Agreement]". I find that the language of s. 16 is broad enough to capture the plaintiffs' claims in this proceeding. As in *Clayworth* at para. 48, the dispute concerns an allegation of breach of contract, which is, by nature, a "dispute arising out of or in connection with the [Shareholders' Agreement]" within the terms of s. 16. Thus, an arguable case can be made that the parties decided this matter should be resolved through their agreed-upon dispute resolution procedure.

[28] In *Tahmasebpour*, the Court held that the "arguable case" test was satisfied on weak evidence (at para. 24). In the present case, the evidence is much stronger that the parties intended to be bound by the arbitration clause of the Shareholders' Agreement, and in my view, it clearly meets the "arguable case" standard. Both parties signed the Shareholders' Agreement, and thus collectively decided that, aside from the one exception articulated in subsection 16.1, all disputes arising out of or in connection with the agreement would be subject to arbitration. Had they intended to carve out additional exceptions, they could have done so in subsection 16.1 alongside the existing exception. Their failure to exclude disputes pertaining to ss. 12 and 13 from the arbitration clause suggests that there is at least an arguable case that they intended for such disputes to be subject to arbitration pursuant to s. 16 of the Shareholders' Agreement.

[29] The plaintiffs allege that the present dispute, insofar as it relates to the notice of civil claim, does not arise out of the terms of the Shareholders' Agreement, but

rather, out of the terms of the Shareholder Offer that the plaintiffs unilaterally created. And the plaintiffs say that the Shareholder Offer is not subject to the jurisdiction of an arbitrator but rather, the courts of this province, pursuant to subsection 4.5. The plaintiffs refer to paras. 279–282 of *Jeana Ventures Ltd. v. Garrow*, 2023 BCSC 1831, to argue that the Shareholder Offer has become a standalone binding legal agreement. In my view, there is at least an arguable case that the parties intended to be bound by the provisions of the Shareholders’ Agreement, rather than by the terms of the Shareholder Offer as a standalone binding legal agreement, and thus, agreed that the relevant dispute should be resolved by way of arbitration. Based on its wording, the Shareholder Offer appears to derive its legal meaning from the Shareholders’ Agreement and thus, does not exist in isolation from it—the Compulsory Buy-Out clause says that the election to which it pertains is made on the terms and conditions set out in the Shareholder Offer and “this Agreement”, i.e. the Shareholders’ Agreement.

[30] The plaintiffs also allege that the second exception to the “arguable case” test applies. They argue that resolving the question of competing jurisdictions—in other words, deciding whether to give precedence to s. 16 of the Shareholders’ Agreement or subsection 4.5 of the Shareholder Offer—is a question of mixed fact and law that requires only superficial consideration of the documentary evidence in the record for its disposition.

[31] I cannot find that a question of law can be extracted with only a superficial consideration of the record: *Clayworth* at para. 34. This is not a situation like *Seidel v. TELUS Communications Inc.*, 2011 SCC 15, which considered a conflict between an arbitration clause in a cell phone contract and a legislative provision allowing individuals to bring actions in the British Columbia Supreme Court (s. 172 of the *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2): at paras. 1 and 5. There is no such question of law that can be extracted from the present case to invoke the second exception to the “arguable case” test. In my view, the alleged conflict between the Shareholders’ Agreement and the Shareholder Offer is not a question of mixed fact and law because it does not involve a question of law.

[32] I find that, even if the plaintiffs have raised doubts as to whether the issues in the proceeding relate to matters which the parties agreed to submit to arbitration, the matter must be referred to arbitration unless it is clear that the dispute falls outside the scope of the relevant arbitration agreement, which is not the case here: *Kooner* at para. 23.

[33] Accordingly, I find that the defendants have successfully shown that the plaintiffs commenced legal proceedings in respect of a matter agreed to be submitted to arbitration.

Application Brought Before First Response on Substance of Dispute

[34] There is no dispute that the requirements of this prerequisite are satisfied. The defendants filed a jurisdictional response on May 8, 2026, and applied for a stay on May 14, 2026. They have not yet filed a first response on the substance of the dispute.

Arbitration Clause is not Void, Inoperative, or Incapable of Being Performed

[35] The question of whether an arbitration clause or agreement is void, inoperative, or incapable of being performed is to be referred to the arbitrator for determination unless that question can be clearly answered on a superficial regard to the record: *Tahmasebpour* at para. 22. An agreement to arbitrate may be “inoperative” where it has, for some reason, ceased to have future effect or has become inapplicable, such as due to a discharge by waiver or by a subsequent agreement between the parties: *GT Mann* at para. 22.

[36] The plaintiffs allege that the arbitration clause is inoperative due to a waiver or a subsequent agreement between the parties embodied in the Shareholder Offer, citing *GT Mann* above. As I previously stated, there is at least an arguable case that the parties intended to be bound by s. 16 of the Shareholders’ Agreement, and thus, I am unable to find that the Shareholder Offer should supplant its jurisdictional effects. Accordingly, it cannot be interpreted as a waiver of s. 16, or a subsequent agreement that replaces the Shareholders’ Agreement entirely. I agree with the

defendants that there are no grounds on which it can be said that the agreement to arbitrate set out in the Shareholders' Agreement is void, inoperative, or incapable of being performed.

[37] The three prerequisites for a stay have therefore been met.

Disposition

[38] For these reasons, I grant the order sought by the defendants staying the proceedings in favour of arbitration.

[39] The defendants seek special costs. I do not see anything in the record before me that would suggest any behaviour warranting special costs. The defendants have been successful and are entitled to their costs under Tariff B.

“Majawa J.”