

Court of King's Bench of Alberta

Citation: 1775773 Alberta Ltd. v Hill, 2026 ABKB 511

Date: 20260715
Docket: 2503 18235
Registry: Edmonton

Between:

1775773 Alberta Ltd., and 2377799 Alberta Ltd.

Plaintiffs

- and -

Jason Hill

Defendant

Reasons for Decision of the Honourable Justice Douglas R. Mah

A. Nature of application

[1] The opposing parties in this matter agree that certain questions in their shareholder dispute should be submitted to arbitration but disagree about inclusion of one additional question. The application comes before me as an “Advice and Directions” application wherein the Court is asked to settle which questions should be arbitrated.

[2] The unanimous shareholder agreement (USA) in this case, which defines the rights and obligations of the shareholders, does not contain a dispute resolution or arbitration provision of any type. After the dispute arose, the parties agreed that arbitration would be the most efficient means by which to deal with their dispute but do not agree (at least not completely) on its scope.

[3] For the primarily jurisdictional reasons that follow, I decline to make the Order requested.

B. Background

[4] Formations Inc is a privately owned wholesale distributor of non-structural wood products and accessories. The Applicant, Jason Hill, worked for Formations until he either resigned or was terminated in April 2025. The manner, reasons for and legality of the cessation of employment are in dispute.

[5] As the individuals in this dispute have the same last name, I will refer to them by their first names.

[6] 1775773 Alberta Ltd (177) is a holding company that owns the majority interest in Formations. Jason is a minority shareholder in 177. 2377799 Alberta Ltd (237) is the majority shareholder of 177. Michael Tyler Hill (Tyler) is a Director of Formations, the sole director of 177, the sole director and shareholder of 237 as well as Jason's first cousin.

[7] 177, Tyler and Jason entered into the USA dated March 1, 2017. The USA provides:

- at Article 5.1 that if a shareholder is no longer employed with Formations, those shares must be offered for sale under Article 6.1.
- at Article 6.1, the departing shareholder is required to first offer the shares to the remaining shareholders. If not accepted, then the departing shareholder has the right to sell the 177 shares to a third-party, but
- The departing shareholder must first offer the shares to the remaining shareholders on the same terms as offered to the third-party buyer, and a third-party buyer must agree to be bound by the terms of the USA, including the requirement that a shareholder must be an employee of Formations.
- Article 6.2 sets out a purchase price for the shares consisting of the value of the departing shareholder's proportionate interest of the value of 177's interest in Formations, less any amounts owing by the exiting shareholder to 177.

[8] The USA contains no definition of the "value" of 177's interest in Formations. Further the USA contains no provisions compelling the purchase of the outgoing shareholder's shares or for redemption of the shares by 177. As can be seen, when a 177 shareholder is required to exit because of cessation of employment, there are somewhat limited options for the disposal of the shares.

[9] Jason is indebted to 177 relating to a loan that enabled his initial acquisition of the shares. The indebtedness arises from the USA, and the amount is defined by the USA.

[10] He says that Tyler obtained an outside valuation report dated April 30, 2025 and showed it to him as the basis for an offer to purchase by 237 of Jason's shares in 177 on June 17, 2025. He viewed the report's discount for limited marketability of the shares (the minority discount) to be unreasonably high and rejected the offer. To date, despite other overtures that Jason says he

made, there is no agreement between Jason and 237 or any other eligible purchaser concerning the value of his 177 shares and to whom and how they might be sold.

[11] Tyler disagrees with the way Jason has characterized some of the facts. Tyler agrees that 237 made an offer for the shares to Jason that was not accepted.

[12] Although Jason and Tyler disagree about the date of this event, it is common ground that Tyler suggested the valuation question be submitted to arbitration and gave Jason a draft arbitration agreement to that effect. The proposed issues to be arbitrated were:

- the value of Jason's shares in 177;
- the amount owing by Jason to 177; and
- responsibility for costs of the arbitration.

[13] Jason did not agree to enter into the proposed arbitration agreement.

C. Litigation History

[14] When no agreement to arbitrate emerged, this litigation ensued:

- 177 and 237 issued a Statement of Claim against Jason on September 8, 2025. It seeks to have the valuation question directed to arbitration or, alternatively, to have the Court adjudicate it in some way.
- Jason filed a Statement of Defence on February 12, 2026 defending on the basis that the Statement of Claim discloses no cause of action and should be struck out or dismissed.
- He also filed a Counterclaim alleging oppression in various forms and seeking that the shares be directed to valuation by arbitration or by the Court, a direction that no minority discount applies and that 177 be required to redeem the shares at the determined amount unless voluntarily bought by 237.
- On February 11, 2026 Jason issued a Notice of Application for Relief from Oppression, which relief included more or less the same remedies requested in the Counterclaim;

[15] When I heard the application on June 19, 2026 the situation had evolved:

- The parties now agree that the 3 issues listed in para 12 above should be referred by Court Order to arbitration. They also agree that the issue of applicability or inapplicability of the minority discount should be referred to arbitration, presumably as part of the valuation.
- They further agree that Jason's oppression claim can be referred to arbitration.
- The only matter left for the Court to decide is whether mandatory redemption by 177 of Jason's shares should be included in the arbitration reference. In Jason's brief, he asks for "advice and directions" with regard to the content of the arbitration.

D. Positions

[16] Jason's position is summarized as follows:

- It is a reality that, because his employment with Formations ended, Jason is required under the USA to dispose of his shares in 177.
- But the real dispute is not merely what the shares are worth, but how the mandatory exit is to occur. That is because the USA requires a sale but does not expressly identify a compulsory purchaser or redemption mechanism.
- The arbitration that is directed should determine all issues necessary to fully resolve the dispute, which includes not just the value of Jason's shares, but also whether 177 must redeem them.
- Otherwise, an arbitration that omits the mandatory redemption issue would leave the parties in the absurd position of having a price for the shares but no buyer.
- Hence, the notion of compulsory redemption is intrinsic to the USA and by necessary implication must be decided in order to give effect to Article 6.2.
- 177 and 237 pleaded at para 17 of their Statement of Claim that the "Dispute" between them and Jason includes "such further and other matters arising from the 177 Unanimous Shareholders Agreement." Since the notion of mandatory redemption is such a matter, then it is part of the Dispute that 177 and 237 themselves ask the arbitrator to resolve.

[17] The position of 177 and 237 is summarized as follows:

- While they favour arbitration for most of the issues between these parties, they oppose submitting to arbitration the question whether the USA contains or should be interpreted as containing a mandatory redemption obligation.
- The USA must be interpreted according to its express terms. Allowing the arbitrator to imply a mandatory redemption mechanism would improperly rewrite the USA. The absence of such a mechanism is a deliberate contractual omission, not an unintended gap that the Court (or an arbitrator) should fill: *Catre Industries Ltd v Alberta*, 1989 ABCA 243 at paras 51-56; *Fontaine v Canada*, 2016 ONCA 241 at paras 308-309; *Gainers Inc v Pocklington Holdings Inc*, 2000 ABCA 151 at para 18.
- The law is so clear on this point that it would be futile or a waste of the arbitrator's time to refer the question.
- The idea of mandatory redemption was first raised in Jason's counterclaim. Prior thereto, there was no notice that such relief was being sought by Jason so it could not be addressed in the Statement of Claim. 177 and 237 are *now* objecting to that relief.

- Where there is no arbitration agreement that defines the issues, 177 and 237 say that the Court cannot decide to direct an issue to arbitration unless the parties consensually confer jurisdiction upon the Court to do so. Here, 117 and 237 do not agree that the Court should even decide whether the intended arbitration should include the mandatory redemption issue. Hence, the Court should not decide it.

E. When can the Court direct a matter to arbitration?

[18] The sole issue between the parties concerns the arbitrability of the mandatory redemption issue, i.e. whether a mandatory redemption provision must be necessarily implied in the USA. To be clear, while the parties both addressed the merits, they *do not ask me* to answer that question myself. Rather, they ask me to decide whether the question should be referred to the arbitrator for decision in a proposed arbitration.

[19] The issue is complicated by the fact that there is no arbitration clause in the USA or a standalone formal, signed arbitration agreement that directs any disputes between these parties to be submitted to arbitration. The parties are left with three routes to arbitration: first, that the course of dealings between the parties and their counsel, including the content of the briefs filed for this application, taken together give rise to an agreement to arbitrate the valuation and other questions.

[20] The second is that a mandatory arbitration clause is necessarily implicit in the USA. Third, the parties are *now consenting* that an arbitration takes place and leaving it to the Court to settle the questions.

[21] In *SSG v SKG*, 2022 ABCA 379 at para 14 the Court of Appeal stated, “Absent the agreement of the parties or statutory authority, a judge does not have jurisdiction to order parties to submit their disputes to arbitration” (citing *Durocher v Klementovich*, 2013 ABCA 115 at para 15, which in turn cites *Sport Maska Inc v Zittner*, [1988] 1 SCR 564 at p 588 for the same proposition).

[22] The Court of Appeal concluded in *Stuve v Stuve*, 2020 ABCA 467 at para 50 that this Court does not have the power “to order private arbitration of disputes *without consent of the parties* or an agreement to that effect” (emphasis added by me). Accordingly, my issues for decision are:

- Whether, due to the course of dealings between the parties, there is an arbitration agreement in effect with respect to the valuation of Jason’s shares in 177 and other issues?
- If not, does the USA imply an arbitration agreement?
- If not, have the parties consented to this Court making a decision regarding whether the mandatory redemption issue should be directed to arbitration?

F. Implied Arbitration Agreement from course of dealings?

[23] I raise this as an issue to address because both sides say they have reached consensus that certain issues should be arbitrated. They differ on whether one last issue should be included.

[24] Jason says that impliedly it is included. Therefore, it is necessary to determine whether or not there is an arbitration agreement in place, before determining whether mandatory redemption is or must be an included issue.

[25] Absent a statutory provision that directs a dispute to arbitration, there can be no arbitration, nor would the *Arbitration Act* apply without an arbitration agreement. Professor Tamar Meshel in her seminal Canadian text on arbitration, *Arbitration Law: Statutes, Cases and Commentary* (Toronto: LexisNexis Canada, 2026) at page 3 observes that, fundamentally:

Arbitration is a contractual and voluntary process, meaning that it cannot take place without all parties agreeing to it either before or after a dispute arises.

[26] Further, she writes at page 55:

The arbitration agreement is the cornerstone of arbitration. Since consent is a *sine qua non* requirement of contractual arbitration, there can be no arbitration without an agreement to arbitrate. The arbitration agreement embodies the parties' autonomy and right to resolve a current or future dispute out of court and in a private setting. To be effective, an arbitration agreement should be "mandatory" and "clearly and precisely confer exclusive jurisdiction" on the arbitrator, and there must be "a meeting of minds between the parties" concerning the submission to arbitration.

(Citing *GreCon Dimter Inc v JR Normand Inc*, [2005] 2 SCR 401 at para 27.)

[27] The *Arbitration Act* defines "arbitration agreement" at s 1(1)(a) as "an agreement or part of an agreement by which 2 or more persons agree to submit a matter in dispute to arbitration." Section 5 states that "an arbitration agreement need not be in writing."

[28] Professor Meshel comments at pages 88-89:

A commercial arbitration agreement need not be in writing and may be oral or contained in an email. However, parties should agree in their arbitration agreement on the essential terms of the arbitration procedure, such as whether the arbitration would be governed by the *Arbitration Act*, whether the arbitration would be binding on the parties, the evidentiary requirements of the arbitration, and costs of the arbitration. A proposed arbitration agreement devoid of any essential terms does not constitute an arbitration agreement enforceable under the *Arbitration Act*.

(Footnotes omitted.)

[29] The Draft Arbitration Agreement tendered by Tyler to Jason (September 18, 2025 Affidavit of Tyler Hill, paragraphs 14-16 / Exhibit E) appears to have these essential features. The arbitrable issues listed in para 2.1 of the draft have been augmented by subsequent developments and as reflected in the respective briefs and thus the parties have agreed that those issues, as augmented, should be decided by arbitration. The problem is the draft agreement was never signed by Jason's side. Further, Jason deposes (see para 48 of his February 11, 2026 affidavit) that any agreement on his part to arbitrate has always been *contingent* on the inclusion of the mandatory redemption issue.

[30] Since there is no meeting of the minds concerning the content of the submission, there is no arbitration agreement.

G. Implied Arbitration Agreement from USA?

[31] I next turn to the question of whether there is an implied arbitration clause in the USA itself. The Statement of Claim issued by 177 and 237 pleads that the parties expressly or impliedly agreed to an arbitration provision in the USA that falls under the *Arbitration Act* and seeks relief in the form of a declaration to that effect and the appointment of an arbitral tribunal under s 10 of the *Arbitration Act*.

[32] The Court of Appeal decision of **AG Clark Holdings Ltd v HOOPP Realty Inc**, 2013 ABCA 101 is relevant. In that case, the Court dealt with whether a construction agreement that contained a dispute resolution clause compelled mandatory arbitration or not. The Court of Appeal, in overturning the chambers decision, found reversible error when the judge at first instance implied certain contractual terms to allow the respondent company to side-step arbitration and maintain conventional civil litigation with regard to the dispute. The Court of Appeal stated:

- (at para 20) that is an error of law to imply terms that are not present in the agreement; and that
- (at para 34) where “There is no gap in the Agreement as written, and the court has no role to play in filling in gaps to make the Agreement operable.”

[33] Here, the USA is silent on the whole area of dispute resolution. To me, it cannot be said from the language of the USA that the parties intended to funnel their disputes arising from the USA exclusively to arbitration. Nor is mandatory arbitration required in order to give efficacy to the USA. Notably, there is an express remedy in the *Business Corporations Act* at s 242(3)(g) – among the various remedies for oppression – that provides for the exact thing that Jason seeks, either purchase by 237 or redemption by 177 of his shares. It is a remedy granted by the Court in a s 242(1) oppression action. The *ABCA* constitutes the Court as the default venue for resolution of shareholder disputes based on oppression unless by agreement, in a USA or another agreement, the Court’s jurisdiction is ousted and substituted with arbitration. There is no hint in the USA itself to say that expressly or impliedly the Court’s jurisdiction is ousted and replaced with arbitration.

[34] Indeed, that is what Jason’s Notice of Application filed February 11, 2026 speaks to – asking the Court to order redemption.

[35] In conclusion on this point, I find that no arbitration agreement is implied in the USA.

H. Consent or Not

[36] The next question I examine is whether the parties themselves consented to have the Court determine the appropriate arbitration issues.

[37] It turned out during the course of argument that 117 and 237 had not conferred jurisdiction upon the Court, by consent, to decide whether the mandatory redemption issue

should be referred to arbitration and in fact *objected* to the notion of the Court doing so. This objection was based on:

- Mandatory redemption not really being a required remedy for Jason in order to make the USA operable. Before or after valuation of his shares through arbitration, he could find a third-party buyer. It may be that there is a limited universe, but he has never tried. If a third-party buyer is found, then further options are triggered but the price is established.
- Submission of this question to an arbitrator would mean the Court has rewritten or is asking the arbitrator to rewrite the USA. The caselaw is clear that neither the Court (nor an arbitrator in its stead) has this power and thus the reference of this issue to the arbitrator is a futile exercise.

[38] In reply, counsel for Jason expressed surprise that counsel for 177 and 237 was now taking the position that they were not consenting to the Court deciding this question. He had proceeded on the basis that both sides agreed that the Court could set the arbitration questions and that the only issue for the Court to decide was: Should the mandatory redemption question be submitted to arbitration because it is practical to do so and necessary to dispose of the dispute between the parties; *or* should the question not be referred to arbitration for the reasons given by 117 and 237, that is, it is not necessary and would result in rewriting of the USA.

[39] Counsel for Jason argued there was nothing in the 177 / 237's brief to indicate its non-consent and since non-consent was coming up so late in the day, they should not be allowed to assert non-consent.

[40] There is no mention in either brief about consenting or not consenting to the conferral of jurisdiction on the Court to settle the arbitration questions. When I first reviewed the briefs, I became concerned with exactly what jurisdiction I had to formulate the questions for arbitration in this case.

[41] The scope of Court intervention in arbitration matters is quite limited (s 6 of the *Arbitration Act*). The Court's power to "assist the arbitration process" presupposes there is an existing arbitration agreement or statutory arbitration in place. It does not allow me, as I noted above, to create an arbitration process where none exists.

[42] That is why I raised during the hearing my view that the Court could only settle the arbitration questions if the parties *agreed* that the Court could settle the arbitration questions. That approach aligns with **Stuve** at para 50.

[43] In the preparation of these Reasons, I listened to the FTR or official recording of the hearing to confirm what was said by counsel on the issue of consent. The official record indicates that counsel for 177 and 237 (upon questioning from me) stated they did not consent and in rebuttal, counsel for Jason conveyed surprise and disappointment that they had taken that position.

[44] If both sides had come to me saying "You decide which questions should be referred to the arbitrator and we will live with whatever decision you make," that would be one thing. That is not, as it turns out, what happened. Jason consents to the Court making the decision, but 177 and 237 do not.

[45] I therefore come to the conclusion that, absent consent by both sides, I do not have jurisdiction to refer the issue of mandatory redemption to the arbitrator. If I were to say that 177 and 237 cannot raise absence of consent as an argument because of timing, I would then be doing the exact thing for which I do not have jurisdiction, deciding the question of referral of mandatory redemption to arbitration *without consent*. Since there is no discussion of consent in either brief, I cannot say there was reversal of position at the hearing.

I. Ruling

[46] I dismiss Jason's application to direct the parties to arbitration on the issue of whether 177 is required to redeem Jason's shares under the USA, because I lack the authority to do so.

[47] I decline to refer any of the questions agreed to by the parties to arbitration because, as noted above, the agreement by Jason to arbitrate was conditional not final, and there is no implied arbitration clause in the USA.

[48] Although argued by both sides in their briefs and in the oral hearing, I make no comment as to whether mandatory redemption is implicit in the USA in order to make the USA operable. Jason remains free to pursue the mandatory redemption issue in this Court through his application for Relief from Oppression. I do not propose to prejudge or express an opinion in the event he chooses to seek that relief from a different judge.

[49] Of course, the parties also remain free to arbitrate whatever questions they wish concerning Jason's shares if they agree to the issues to be arbitrated in a signed arbitration agreement.

J. Costs

[50] If costs of this application are sought and are not agreed to, then the parties through their counsel may make written submissions to me within 30 days of the date of this decision. The submissions must take the form of a letter not more than 2 pages in length (excluding exhibits and authorities) and supported by a draft Bill of Costs.

Heard on the 19th day of June, 2026.

Dated at the City of Edmonton, Alberta this 15th day of July, 2026.

Douglas R. Mah
J.C.K.B.A.

Appearances:

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