

CITATION: 1171757 Ontario Limited et al v. 1171758 Ontario Limited et al, 2026 ONSC 4414
COURT FILE NO.: CV-25-00742013-0000
DATE: 20260729

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	)	
	)	
1171757 ONTARIO LIMITED; JASON	)	<i>Martine Garland and Shannon Reid</i>
KAPTYN	)	Counsel for the Applicants
	)	
Applicant(s)/Plaintiff(s)	)	
	)	
– and –	)	
	)	
1171758 ONTARIO LIMITED; MISS	)	<i>Caroline Abela and Lia Boritz</i>
BRIT REALTY CORPORATION; SIMON	)	Counsel for the Respondent,
KAPTYN; JONATHAN KAPTYN	)	Jonathan Kaptyn
	)	
Respondent(s)/Defendant(s)	)	
	)	
	)	
	)	HEARD: June 18, 2026

E. IACOBUCCI J.

REASONS FOR DECISION

OVERVIEW

[1] The Applicants 1171757 Ontario Limited (“757”) and Jason Kaptyn bring this application pursuant to the *Arbitration Act, 1991*, S.O. 1991, c. 17 as amended. They seek a declaration that an arbitrator does not have jurisdiction to consider claims brought by Jonathan Kaptyn pursuant to an arbitration clause in a partnership agreement. (To avoid confusion, I refer to each of the individual parties by their first names in these reasons.)

[2] An arbitrator, the Honourable Thomas McEwen, concluded that he does have jurisdiction to consider Jonathan’s claims in arbitration. Jason brings this application pursuant to s. 17(8) of the *Arbitration Act*, which permits a party to bring an application to court to decide a question concerning the arbitrator’s jurisdiction.

[3] Jonathan responds and cross-applies. He seeks the court’s confirmation that the arbitrator has jurisdiction to hear matters that he initiates. Jonathan also argues that, on one issue, he is similarly situated to Jason: if his claim is not arbitrable, then neither is Jason’s analogous claim.

[4] The dispute turns on an interpretation of the partnership agreement.

[5] Jonathan is not a “partner,” nor a “principal” of a partner, as defined in the partnership agreement, but submits that he is a “party” to the partnership agreement because of his shareholdings in a partner.

[6] Jason submits that, because Jonathan is neither a partner nor a principal of a partner, he is not a party to the partnership agreement. Jason further submits that even if Jonathan might have otherwise been a party, a Power of Attorney (“POA”) that gives Jason authority over Jonathan’s shares implies that he is not a party. Finally, Jason submits that the particular claims that Jonathan advances are not arbitrable.

[7] I find that Jonathan is a party, the POA does not affect that status, and that his claims are arbitrable. I also find that Jason’s claims are arbitrable.

FACTS

[8] This dispute concerns a family enterprise. Jason and Jonathan are brothers. Their father is Simon Kaptyn. Their grandfather was John Kaptyn, now deceased.

[9] The business at the centre of this dispute concerns two hotels and a fitness centre. Parkway Hotels and Convention Centre Inc. (“Parkway”) is the legal owner of these properties. Parkway’s shares are owned 50% by 757, 25% by 1171758 Ontario Limited (“758”) and 25% by Miss Britt Realty Corp. (“Miss Britt”).

[10] Parkway holds title to its assets as trustee for the benefit of a partnership established by a Partnership Agreement effective April 12, 1996, as amended May 1, 2007. The partnership units are divided equally between 757 on the one hand, and 758 and Miss Britt together on the other.

[11] On the formation of the partnership, John was the sole officer, director and 100% shareholder of one partner, “Johnco,” which became 757, and Simon was the sole officer, director and 100% shareholder of “Simonco,” which became 758. Miss Britt was later added to the partnership agreement. Simon is the sole shareholder of 758 and Miss Britt.

[12] John died in May 2007. He bequeathed his shares in 757 to Jonathan and Jason equally, making them each 50% shareholders in 757. By a codicil, John made the bequest of 757’s shares conditional on Jonathan first providing Jason with a Power of Attorney that conferred on Jason the authority to “manage the assets of [757] including without limitation a permanent proxy to vote the shares of both [757] and [Parkway].” Jonathan granted Jason a POA accordingly. Jason controlled 757 as a consequence of the POA.

[13] By agreement with Parkway, Jason managed the Parkway assets through a corporation that he owned and controlled, Kaptyn Enterprise, Inc. (“KEI”). Parkway entered into a management contract with KEI in 2006, conferring on KEI the right to manage the Parkway properties in exchange for an annual management fee of \$200,000. KEI would hire senior employees to manage

the business of the partnership, including the general manager of the hotel, and the head of human resources.

[14] The agreement between Parkway and KEI expired in 2010. It appears that the parties continued as though it was in effect, including maintaining the \$200,000 fee.

[15] In 2024, Jason asked Simon to agree to an increase in the \$200,000 annual compensation to KEI. This precipitated discussions, and disagreements. Jason decided to seek arbitration pursuant to the partnership agreement, asking among other things for a third party to set fair market compensation for KEI's services.

[16] Simon responded that the KEI agreement should be terminated. Simon asks an arbitrator to dissolve the partnership.

[17] Jonathan asserted a right to participate in the arbitration proceedings as a party to the partnership agreement. He opposed Jason's positions.

[18] Jonathan also had a contract with Parkway. He provided maintenance services and was paid by Parkway for doing so. Jonathan sought in the arbitration an increase in his compensation from Parkway for these maintenance services. Jonathan also sought dissolution in the arbitration, but on different timing from that sought by Simon.

[19] Jason submits that Jonathan does not have a right to participate in an arbitration pursuant to the partnership agreement because he is not a partner or a principal.

[20] Jonathan submits that, while he is neither a partner nor principal, he is a party to the partnership agreement. He also submits that to the extent that Jason is permitted to arbitrate the fairness of KEI's compensation for its services to Parkway, Jonathan is equally entitled to arbitrate the fairness of his compensation for his services to Parkway.

THE PARTNERSHIP AGREEMENT

[21] The arbitration clause in the partnership agreement, Article 17.1, is at the centre of this dispute. It provides:

If any dispute or controversy shall occur between the parties hereto relating to the interpretation or implementation of any of the provisions of this Agreement, such dispute shall be resolved by arbitration... The decision arrived at by the board of arbitration, however constituted, shall be final and binding and no appeal shall lie therefrom. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction.

[22] "Party" is not defined in the partnership agreement. Jason submits that Jonathan is not a party; Jonathan submits that he is.

[23] Terms that are defined in the agreement include “partner” and “principal.” Article 1.1 provides in part:

(x) Partner means any Person who from time to time holds Units of the Partnership and is bound by the provisions of this Agreement, the initial Partners, being Johnco and Simonco.

(ff) Principal means the natural person or persons that have the ultimate right to direct and control the business and affairs of a corporate Partner.

[24] The partners originally were Johnco (757) and Simonco (758), and at the time of this dispute were 757, and 758/Miss Britt.

[25] Simon is a principal. He has the right to direct and control 758 and Miss Britt.

[26] Jason is also a principal. He is a 50% shareholder of 757. He is also empowered by the POA to vote Jonathan’s 50% shares in 757. He has the right to direct and control 757.

[27] Conversely, Jonathan is not a principal. He does not have the right to control a corporate partner. He is a shareholder of a partner.

[28] The question concerning Jonathan’s right to participate in arbitration turns on whether Jonathan is a “party” to the partnership agreement even if not a partner or principal.

[29] Jonathan emphasizes two aspects of the partnership agreement that he submits offer support to his position that he is a party to the partnership agreement.

[30] First, Jonathan cites the recitals to the partnership agreement. The 1996 partnership agreement was between 757, 758, John and Simon. John and Simon signed the agreement both on behalf of the partners and on behalf of themselves as individuals. As individuals, they were identified in the recitals not as principals, but as shareholders of partners. The recitals above the signature lines read:

...AND WHEREAS John is the registered and beneficial owner of all the issued and outstanding shares in the capital of [757];

AND WHEREAS Simon is the registered and beneficial owner of all the issued and outstanding shares in the capital of [758]...

[31] Second, Jonathan cites the enurement clause as offering support to his position. Article 23.7 of the partnership agreement provides,

Enurement. The Agreement shall enure for the benefit of and be binding upon the parties and their respective heirs, executors, administrators, successors, legal representatives and permitted assigns.

[32] Jonathan's submission relies on both provisions. The recitals indicate that John was a party by reason of his beneficial ownership of shares in 757. The enurement clause passed party status to both Jason and Jonathan when John gifted shares in 757 to them.

[33] Jonathan also identifies the use of "party," "partner," and "principal" in distinct ways in the partnership agreement, suggesting that there is independent status to "party": a party may be neither a partner nor a principal.

[34] In contrast, Jason submits that, when read as a whole, the partnership agreement confers party status on principals and partners; Jonathan is neither. Moreover, because of the POA, Jonathan cedes authority over his shares to Jason. Even if he had party status without the POA, he loses such status given the POA.

[35] Similarly, Jason submits that Jonathan's interpretation of the enurement clause does not make sense. John had 17 heirs, and Jason asks rhetorically whether all 17 are parties to the partnership agreement.

[36] I consider the wording of the contract below but dismiss the submission about the implications of the enurement clause for all of John's heirs. The enurement clause does not arguably have an effect simply because Jonathan is an heir of John. Rather, it has an arguable impact because Jonathan inherited his shares in 757 from John, and it was John's status as a registered and beneficial shareholder in 757 that arguably rendered John a party to the partnership agreement. Such an argument applies to Jason and Jonathan, but not to other heirs.

[37] Both parties cite evidence outside the partnership agreement. Jason cites affidavit evidence from various advisors to John. These advisors state John intended to confer control of the business on Jason because John perceived him to be a better businessperson than Jonathan. Jason also cites memoranda of counsel about interpretations of the partnership agreement.

[38] Jonathan cites two documents executed subsequently to the partnership agreement to support his status as a party.

[39] First, Simon, Jonathan, and Jason executed an agreement on October 21, 2010 (the "2010 agreement"). They agreed to amend the partnership agreement, with all three family members signing the 2010 agreement. No amendment to the partnership agreement was ever executed, but the significance of the 2010 agreement according to Jonathan is the acceptance by all that Jonathan was a party to the partnership agreement.

[40] Second, in 2016, the same parties signed a letter of intent ("LOI") concerning the development of the Parkway properties. They all signed as "owners." The LOI stated that:

The Owners acknowledge that they are currently parties to the Partnership Agreement dated April 12, 1996, as amended from time to time. The Owners further acknowledge that they continue to be bound by the Provisions of the Partnership Agreement until such time as a new agreement is entered into which supersedes and/or amends the Partnership Agreement.

[41] Jason submits that allowing Jonathan to sign these agreements was a courtesy but did not and could not confer “party” status on Jonathan when the partnership agreement itself did not do so.

PRELIMINARY ISSUES

[42] This section addresses a question raised by Jonathan in his factum about whether an appeal of the arbitrator’s decision lies to this court, as well as the standard of review that applies if the matter is properly before this court.

[43] The “competence-competence” principle allows the arbitrator first to decide questions of their jurisdiction. See s.17 of the *Arbitration Act*.

[44] If a party objects to an arbitrator’s finding on jurisdiction, and the arbitrator makes a preliminary ruling on that objection, a party may within thirty days apply to the court to decide the matter. See s. 17(8) of the *Arbitration Act*.

[45] The Honourable Thomas McEwen ruled on Jason’s and Jonathan’s objections to his jurisdiction. He decided that Jonathan is a proper party to the arbitration, that the question of Jonathan’s compensation was arbitrable, and that the question of Jason’s compensation was arbitrable. The arbitration is ongoing.

[46] In his reasons, the arbitrator did not explicitly address the question of whether Jonathan has standing in arbitration to ask for the dissolution of the partnership. In the hearing on the application, the parties agreed that this jurisdictional question was before the arbitrator and thus is now before the court. I will address this issue.

[47] The Article 17.1 arbitration clause in the partnership agreement invites arbitration on controversies over “interpretation or implementation” of the agreement, and provides that, “The decision arrived at by the board of arbitration, however constituted, shall be final and binding and no appeal shall lie therefrom.”

[48] There was a question raised by Jonathan whether this clause prevents this court from reviewing the arbitrator’s findings on his status as a party, which his factum submits is a question of interpretation not jurisdiction.

[49] The question before this court is not an appeal precluded by Article 17.1. The question of whether a person is a party to an arbitration agreement is a question of jurisdiction: *Covanta Durham York Renewable Energy Limited Partnership v. Barton-Malow Canada, Inc.*, 2016 ONCA 558, 351 O.A.C. 177.

[50] Moreover, Article 17.1 precludes appeals from final and binding decisions by the arbitrator. An application to decide a question of jurisdiction is not an appeal.

[51] As the court put it in *Ontario (Minister of Northern Development, Mines, Natural Resources and Forestry) v HugoMB Contracting Inc.*, 2023 ONSC 3513, 44 B.L.R. (6th) 146, at para. 11:

This application is a hearing *de novo*, not a review of or an appeal from the arbitrator's decision. The principle of competence-competence does not require that any deference be paid to an arbitrator's determination of her own jurisdiction. The usual principles and standards of appellate review or judicial review do not apply. I am simply to "decide the matter" of whether or not the arbitrator has jurisdiction over claim #7. [Emphasis added. Citations omitted.]

[52] A clause precluding an appeal does not prevent an application to a court to consider *de novo* the preliminary question of the arbitrator's jurisdiction.

[53] The questions of jurisdiction are properly before this court. Moreover, as observed in *HugoMB*, this is a hearing *de novo* with no deference owed to the arbitrator.

ISSUES

[54] There are four issues relating to the arbitrator's jurisdiction in this case.

[55] First, does Jonathan have party status that allows him to rely on the arbitration clause? My answer is yes.

[56] Second, does Jonathan have party status in arbitration involving the potential dissolution of the partnership? My answer is yes.

[57] Third, does the arbitrator have jurisdiction over Jason's claims involving his management company, KEI, including that its compensation ought to be increased? My answer is yes.

[58] Fourth, does the arbitrator have jurisdiction over Jonathan's claims that compensation for his services ought to be increased? My answer is yes.

CONTRACTUAL INTERPRETATION

[59] Arbitrators do not have inherent jurisdiction but rather must derive jurisdiction from either statute or contract: see, e.g., *HugoMB*. The partnership agreement in this case establishes the arbitrator's jurisdiction. The disagreements about jurisdiction are therefore to be resolved by interpreting the partnership agreement.

[60] A leading case from the Supreme Court of Canada on the proper approach to interpreting a contract is *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53, [2014] 2 S.C.R. 633. It stands for a number of propositions, some of which are as follows:

- (a) "[T]he interpretation of contracts" is "a practical, common-sense approach not dominated by technical rules of construction. The overriding concern is to

determine ‘the intent of the parties and the scope of their understanding.’” (*Sattva*, at para. 47.)

- (b) “A decision-maker must read the contract as a whole, giving the words used their ordinary and grammatical meaning, consistent with the surrounding circumstances known to the parties at the time of formation of the contract.” (*Sattva*, at para. 47.)
- (c) “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. 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.” (*Sattva*, at para. 57; citations omitted.)
- (d) “The interpretation of a written contractual provision must always be grounded in the text and read in light of the entire contract. 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” (*Sattva*, at para. 57; citations omitted.)
- (e) “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, that is, knowledge that was or reasonably ought to have been within the knowledge of both parties at or before the time of contracting.” (*Sattva*, at para. 58; citations omitted.)

[61] Other useful observations about contractual interpretation are found in *Ventas, Inc. v Sunrise Senior Living Real Estate Investment Trust*, 2007 ONCA 205, 85 O.R. (3d) 254. Paragraph 24 of *Ventas* observes that a commercial contract is to be interpreted:

- (a) “As a whole, in a manner that gives meaning to all of its terms and avoids an interpretation that would render one or more of its terms ineffective;
- (b) by determining the intention of the parties in accordance with the language they have used in the written document and based upon the ‘cardinal presumption’ that they have intended what they have said;
- (c) with regard to objective evidence of the factual matrix underlying the negotiation of the contract, but without reference to the subjective intention of the parties; ...and (to the extent there is any ambiguity in the contract);
- (d) in a fashion that accords with sound commercial principles and good business sense, and that avoids a commercial absurdity.” (References omitted.)

[62] In short, contractual interpretation requires an assessment of the objective intentions of the parties by relying primarily on the wording of the agreement. Surrounding circumstances known

to the parties at or before the time the parties agreed to the contract may also inform interpretation, but cannot overwhelm the wording of the contract.

ANALYSIS

Party Status

The Partnership Agreement

[63] This court must decide, on a *de novo* basis, whether Jonathan is properly a party to the arbitration pursuant to the partnership agreement, and whether Jason’s and Jonathan’s claims for dissolution or increased compensation fall within the jurisdiction of the arbitrator. To reach decisions on these questions, I must interpret the partnership agreement. In this section, I consider Jonathan’s status in respect of the agreement.

[64] *Sattva* makes it clear that the starting point in interpreting a contract is the wording of the agreement itself.

[65] The partnership agreement makes reference to three classes of actors: partners (the corporations 757 and 758); principals (those who control 757 and 758, which at present would be Jason and Simon); and parties. “Party” is not a defined term.

[66] The arbitration clause requires disputes between “parties” to be decided in arbitration. It does not restrict the operation of the clause to “partners” or “principals.”

[67] Jason submits that an arbitration is only available in disputes between partners or principals, but for that to be so, it must be that “parties” is restricted to “partners” and “principals.” Nothing in the wording of the agreement suggests such a restriction. Rather, the agreement uses “partners,” “principals” and “parties” in distinct ways. Individual clauses refer independently to partners, principals and parties.

[68] For example, Article 18.1 provides that the Principals and Partners agree “with other parties bound hereby” to certain covenants. The critical question is whether “parties” includes Jonathan.

[69] I am persuaded that the recitals to the partnership agreement and the enurement clause help establish that Jonathan is a party.

[70] John and Simon were signatories to the partnership agreement twice, once in their status as directing minds of 757 and 758, and once in their individual capacity. The recitals cite John and Simon’s status individually not as principals but as “beneficial and registered shareholders” of 757 and 758. It is apparent that, as individuals, they were parties, and thus signatories to the partnership agreement by reason of their status as beneficial and registered shareholders of 757 and 758.

[71] The enurement clause binds John’s heirs and confers on them the benefits from the partnership agreement. Just as John was a party by reason of his beneficial and registered

ownership of 757's shares, so too are his heirs who become registered and beneficial shareholders of 757. On this basis, Jason and Jonathan are parties to the agreement.

[72] Jason submits that conferring party status on Jonathan would fail to read the agreement as a whole. He identifies passages in the partnership agreement that concern partners and principals, and no one else.

[73] For example, the substance of Article 18.1 concerns covenants that bind partners and principals but not "parties." These include non-competition clauses and confidentiality commitments. Jason submits that, given the special status that the agreement confers on the partners and principals, it is they who are parties, and not shareholders of partners.

[74] In my view, the fact that the agreement has some clauses that bind only principals and partners does not give rise to the implication that only principals and partners are parties. Nothing in the wording of Article 18.1, or other clauses that use principals, partners and parties, detracts from the conclusion that a "party" may be neither a principal nor a partner.

[75] Moreover, principals have certain rights and obligations in the contract that make commercial sense for them: they control the partners and thus have an impact on the operations of the partnership. And the same goes for the corporate partners themselves. It therefore is logical, for example, that partners and principals are bound by a covenant not to compete, but "parties" who are not principals or partners are not bound by such a covenant. A party without any control rights over the partnership cannot, for example, manage the partnership poorly in order to benefit their competing enterprise.

[76] Article 18.1 is consistent with the implications of the recitals that shareholders of the partners are parties to the partnership agreement.

[77] Similarly, Jason highlights Art. 3.8, which provides that nothing in the agreement creates a partnership relationship among the "principals," yet is silent with respect to "parties." Again, I find that Art. 3.8 leaves room for a party who is neither a principal nor a partner. Principals control the partners and thus have management influence over the partnership. It is understandable that the partnership agreement would, for clarity, provide that principals involved in management do not by doing so make themselves partners. But that does not imply that the partnership agreement relates only to principals and partners and not to other parties.

[78] Jason also submits that it would not make business sense for a party who is not a principal or partner to have rights pursuant to the partnership agreement: only the principals and the partners are involved in the management of the business, and there is no need for mere shareholders of the partners to have rights pursuant to the partnership.

[79] While interpreting a contract in a manner that makes no business sense may be problematic (*Sattva, Ventas*), Jonathan's submission that he is a party is commercially reasonable.

[80] A shareholder in a partner has a financial interest in the operations of the partnership. Including that shareholder as a party to the partnership agreement provides the shareholder with

protection of that financial interest – at the core of this case is Jonathan’s ability to protect his interests in the partnership’s operations by seeking arbitration. Just as non-voting shareholders do not have control rights over the corporation, yet have standing to seek corporate law remedies, the partnership agreement in this case confers on non-principal, non-partner parties standing to participate in arbitration protecting their rights and interests.

[81] 757 is a corporation. Jason submits that a shareholder in a corporate partner such as 757 may rely on corporate law remedies to seek relief from wrongdoing at 757 to protect their interests and does not require standing in partnership arbitration.

[82] It is perhaps true that in some circumstances, a corporate law remedy would suffice to protect a shareholder in a corporate partner. Even if so, that does not mean that it is illogical also to allow the shareholder-party the protection of the arbitration clause in the partnership agreement. In addition, the shareholder-party may be able to seek relief as a party in arbitration that would not be available pursuant to corporate law. For example, if 758 is harming the partnership, a corporate law claim against 757 would presumably not result in a remedy against 758.

[83] In summary, its plain wording contemplates that shareholders of the partners are parties to the partnership agreement. The business context is not in tension with the plain wording, but rather there is a commercial logic to allowing shareholders to protect their financial interests in the partnership by seeking remedies in arbitration. Jonathan is a party with standing to participate in arbitration.

Other evidence

[84] Both Jason and Jonathan identify documents that were produced after the partnership agreement was struck to support their respective interpretations of the agreement.

[85] Jason points to memoranda produced by counsel to the partnership many years after the 1996 agreement. He submits that counsel’s interpretation of the agreement is consistent with his. Simon has not waived privilege on this document and its admissibility is contested.

[86] I do not need to resolve the evidentiary dispute. To determine the objective intentions of the parties, *Sattva* calls for an examination of the wording of the contract, and the surrounding circumstances *at or before* the time of contracting. A lawyer’s beliefs about the interpretation of the contract outlined in a document years after the agreement was struck does not provide useful guidance in interpreting the contract.

[87] Jonathan calls attention to two documents. First, there was an agreement signed by Simon, Jason and Jonathan in 2010 to amend the partnership agreement. Jonathan signed the agreement, which Jonathan submits reveals his status as a partner.

[88] Had the 2010 agreement to amend resulted in an actual amendment of the partnership agreement, then it would be the amended partnership agreement that would be before the court. But the 2010 agreement did not result in an amended partnership agreement. The 2010 agreement

confronts the same challenges to its relevance as the allegedly privileged memoranda: at its highest, it reflects the parties' positions years after the agreement was struck.

[89] Moreover, even if Jason subjectively believed in 2010 that Jonathan was a party to the partnership agreement, his subjective beliefs do not constrain interpretation of the 1996 agreement that strives to ascertain the objective intentions of the parties at the time.

[90] The same analysis applies to another document on which Jonathan invites reliance. In 2016, Simon, Jonathan, and Jason signed a letter of intent ("LOI") concerning the development of properties, some of which were owned by Parkway. The LOI expressly described the signatories as parties to the partnership agreement. Again, the document was not contemporaneous with the partnership agreement. While it may reflect subjective beliefs about party status two decades after the partnership agreement was struck, this is not helpful guidance in interpreting the contract.

POA

[91] John made the gifts of his shares to Jason and Jonathan conditional on Jonathan granting Jason a Power of Attorney ("POA") over the governance rights associated with his shares. Jonathan granted Jason the power to vote his shares accordingly. Jason submits that the POA ought to influence an assessment of whether Jonathan is a party.

[92] There is no doubt that the POA has an impact on whether Jonathan is a principal in the partnership agreement. Because of the POA, Jonathan and Jason do not share control of 757 as 50% shareholders; rather, by signing the POA, Jonathan ceded control of 757 to Jason. Given that a "principal" to the partnership agreement controls a corporate partner, the POA implies that Jason is a principal, and Jonathan is not a principal. It is apparent that John sought to ensure that Jason would manage 757, not Jonathan.

[93] On the other hand, the POA does not interfere with Jonathan's status as a registered and beneficial shareholder in 757, having inherited that status from John. As outlined above, the recitals indicate that registered and beneficial shareholders of 757 and 758 are parties to the agreement, and the enurement clause confers on John's heirs who were gifted the shares status as parties to the agreement. That Jonathan has no control rights in 757 does not affect the implications of the wording of the agreement, nor the commercial logic of allowing shareholders without control rights to protect their financial interests in the partnership through party status (and rights to arbitrate) pursuant to the agreement.

[94] Jason seeks to introduce affidavit and other evidence about John's intentions to confer managerial authority over the partnership on Jason but not Jonathan. The admissibility of some of the evidence is in dispute. I need not decide the questions of admissibility: the POA self-evidently reflects an intention to confer on Jason managerial authority but not on Jonathan. But the POA does not affect Jonathan's status as a shareholder: he is a party to the agreement.

May Jonathan arbitrate partnership dissolution?

[95] In considering whether Jonathan has the right pursuant to the partnership agreement to ask an arbitrator to dissolve the partnership, it is useful at the outset to emphasize the distinction between the right as a party to pursue arbitration, and the significance of the party's status in determining the outcome of the arbitration.

[96] Jonathan seeks to be considered a party to the partnership agreement with standing to ask an arbitrator for the dissolution of the partnership, despite not being a partner nor a principal of a partner. It is perfectly coherent to conclude that Jonathan has standing as a party to ask for dissolution, but also to conclude that an arbitrator may choose to account for his standing as a party, and not a principal or partner, in deciding whether to order the dissolution of the partnership.

[97] In my view, Jonathan, as a party to the partnership agreement, may pursue arbitration on the issue of dissolution. *Sattva* requires primary attention to the wording of the contract. The wording is clear. Article 17.1 empowers a “party” to seek arbitration on matters concerning the “interpretation or implementation” of the partnership agreement. Dissolution concerns the implementation of the partnership agreement. (I observe that Simon has initiated an arbitration over dissolution and there have understandably been no objections to his standing – dissolution concerns the implementation of the partnership agreement.) Therefore, Jonathan may pursue arbitration seeking dissolution.

[98] It may be that the arbitrator would want to account for Jonathan's lack of control rights over a partner in reaching a conclusion on dissolution (though I note that Simon also seeks dissolution). If, for example, the partners and principals were co-operating well in managing a successful business, and Jonathan sought dissolution as a shareholder in a partner without any control rights, the arbitrator may consider the partners' and principals' harmony to be relevant in deciding the question. But the fact that his status as a party may be relevant to the substance of the arbitration does not vitiate Jonathan's right to participate in arbitration.

Arbitration over Parkway's contracts with KEI and Jonathan

[99] Jonathan provides maintenance services to Parkway by contract. KEI provides management services to Parkway by contract. There is a question of whether compensation to Jonathan and/or KEI pursuant to these contracts is arbitrable.

[100] Jason submits that compensation to KEI is arbitrable, but compensation to Jonathan is not, even if Jonathan is a party to the partnership agreement.

[101] Jonathan submits whatever the decision on jurisdiction is in respect of KEI, the same ought to apply to him.

[102] The question turns on contract interpretation, and in particular on whether compensation to Jonathan and/or KEI concerns the implementation of the partnership agreement. In my view, it does and both matters are arbitrable.

[103] The contracts that each of KEI and Jonathan have for their services are not with the partnership but rather are with Parkway. Jonathan, in making the submission that if he cannot arbitrate his compensation then nor can KEI, submits that since it is Parkway who has a contract with KEI, it is a matter that does not concern implementation of the partnership agreement.

[104] I do not find this submission persuasive. Parkway holds the properties in trust. The trust agreement authorizes the partnership to provide written directions to Parkway in managing the business. That is, Parkway answers to the partnership. In my view, that implies that Parkway's contracts are arbitrable matters for the partnership: the partnership has the authority to tell Parkway what to do in respect of Parkway's contracts.

[105] To elaborate, the partnership agreement in Article 4.1 provides that the executive committee of the partnership manages the business and affairs of the partnership and may delegate to any person the powers of the executive committee in respect of the business. Art. 4.2 provides that all material transactions shall be authorized in writing, including those involving the hiring, termination or change in the employment terms of any key personnel.

[106] Article 4 applies to the KEI contract. KEI employs key personnel such that its contract with Parkway is a matter that concerns the implementation of the partnership agreement.

[107] There was some dispute as to whether the executive committee had ever been constituted, and there were apparently no written instructions from it in any event. Those facts may or may not be relevant to the substance of the arbitration over the contract, but as a jurisdictional matter, the implementation of the partnership agreement concerns the contract with KEI, and the question of KEI's compensation is arbitrable.

[108] On the other hand, Jason submits that the agreement with Jonathan to provide maintenance services does not involve key personnel such that his contract is not analogous to KEI's contract and is not arbitrable.

[109] There is a factual dispute about the importance of Jonathan's role in providing maintenance services. But whatever the resolution of this dispute, Art. 2.1 sets out a very broad scope for the executive committee of the partnership to, for example, "manage, control and develop all the activities of the Partnership and to take all measures considered necessary or appropriate in order to conduct the Business or any business ancillary thereto." Art. 2.1(a). "Business" is defined in Art. 3.2 to concern the hotel and fitness businesses. In my view, given the scope of the partnership's authority over the business, just as Jason's claims are arbitrable, the decision whether to have a contract with Jonathan, and on what terms, is arbitrable.

[110] Putting this differently, if the principals on the executive committee of the partnership agreed that Jonathan was deserving of a raise, they could instruct Parkway to pay Jonathan more. Disputes over Jason/KEI's and Jonathan's compensation are disputes over the implementation of the partnership agreement.

[111] The arrangements both with Jason/KEI on the one hand, and Jonathan on the other hand, are arbitrable.

CONCLUSION

[112] Jonathan is a party to the partnership agreement and has standing to pursue arbitration. The claims about dissolution, Jonathan's compensation, and Jason/KEI's compensation are all arbitrable.

[113] If the parties cannot agree on costs, they may send submissions of no more than three double-spaced pages to annamaria.tiberio@ontario.ca no more than thirty days from today.

E. Iacobucci J.

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CITATION: 1171757 Ontario Limited et al v. 1171758 Ontario Limited et al, 2026 ONSC 4414
COURT FILE NO.: CV-25-00742013-0000
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ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

1171757 ONTARIO LIMITED; JASON KAPTYN

Applicant(s)

– and –

1171758 ONTARIO LIMITED; MISS BRIT REALTY
CORPORATION; SIMON KAPTYN; JONATHAN
KAPTYN

Respondent(s)

REASONS FOR DECISION

E. Iacobucci J.

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