

IN THE COURT OF APPEAL OF MANITOBA

Docket: A117-30-08862)
BETWEEN:)
)
LINCOLN WOLFE and 5606269)
MANITOBA LTD.)
)
(Applicants) Respondents)
)
- and -) *F. J. Trippier and*
) *A. K. Anjoubault*
DUANNE TAYLOR, 5608067 MANITOBA) *for the Appellants/Applicants*
LTD., TAYLOR BROS. FARM LTD. and)
EDWIN POTATO GROWERS LTD.)
) *R. A. McFadyen*
(Respondents) Appellants) *for the Respondents*
)
- and -)
) *G. B. Taylor*
Docket: A117-30-08896) *on a watching brief for*
BETWEEN:) *Deloitte Restructuring Inc.*
)
FAT CAT FARMS LTD., 5608067)
MANITOBA LTD. and DUANNE TAYLOR) *Chambers motion heard:*
) *August 2, 2017*
(Applicants) Applicants)
)
- and -) *Decision pronounced:*
) *August 11, 2017*
LINCOLN WOLFE, 5606269 MANITOBA)
LTD., R. L. WOLFE LTD., TAYLOR BROS.)
FARM LTD. and EDWIN POTATO)
GROWERS LTD.)
)
(Respondents) Respondents)
)
- and -)

Docket: A117-30-08897)
BETWEEN:)
)
FAT CAT FARMS LTD., 5608067)
MANITOBA LTD. and DUANNE TAYLOR)
)
(Applicants) Applicants)
)
 - and -)
)
LINCOLN WOLFE, 5606269 MANITOBA)
LTD., R. L. WOLFE LTD., TAYLOR BROS.)
FARM LTD. and EDWIN POTATO)
GROWERS LTD.)
)
(Respondents) Respondents)

HAMILTON JA

[1] This decision concerns two applications made pursuant to section 48 of *The Arbitration Act*, CCSM c A120 (the *Act*) for leave to appeal the dismissal, by a Court of Queen’s Bench judge (the application judge), of two applications to set aside awards of an arbitrator and a motion for a stay of the liquidation order dated June 5, 2017 (the liquidation order) granted by the application judge pursuant to section 49 of the *Act*.

[2] At the heart of these applications and motion is the arbitrator’s conclusion (in commercial arbitration proceedings) that it was just and equitable to liquidate farmland owned by two corporations that have been in a long-standing dispute with each other.

[3] For the reasons that follow, I dismiss the leave applications and the motion for a stay.

Background

[4] The farming operation at issue is owned by Taylor Bros. Farm Ltd. (TBF) and Edwin Potato Growers Ltd. (EPG).

[5] The equal shareholders of TBF and EPG are 5606269 Manitoba Ltd. (269) and 5608067 Manitoba Ltd. (067). 269 is owned by Lincoln Wolfe and 067 is owned by Duanne Taylor. Mr. Wolfe and Mr. Taylor are the directing minds of their respective holding corporations. For ease of reference, when I refer to Wolfe, I am referring to 269 and Mr. Wolfe. Similarly, when I refer to Taylor, I am referring to 067 and Mr. Taylor.

[6] TBF and EPG no longer carry on active business operations. Mr. Taylor now carries on farming through Fat Cat Farms Ltd. (Fat Cat Farms) and Mr. Wolfe carries on farming through R. L. Wolfe Ltd. (Wolfe Ltd.).

[7] Wolfe and Taylor entered into an amended unanimous shareholders agreement dated January 1, 2008 (the shareholders agreement) with respect to TBF. There is no such agreement with respect to EPG. The shareholders agreement requires that disputes are to be resolved by arbitration. Other provisions include a shotgun buy-sell clause.

[8] In March 2015, Taylor commenced an oppression remedy application in the Court of Queen's Bench pursuant to section 234 of *The Corporations Act*, CCSM c C225 (the *Corporations Act*) against Wolfe. Before the hearing date, the parties reached an agreement, which included that TBF and EPG would cease active business operations and be liquidated by way of auction.

[9] Because of various disagreements among the parties, the auction did not occur.

[10] By the summer of 2015, TBF had defaulted on its loans to several secured creditors, triggering higher interest rates in accordance with the applicable loan agreements. Because Wolfe has a stronger financial position than Taylor, Wolfe was more vulnerable to claims by the secured creditors under guarantees given by Wolfe and Taylor to the secured creditors. Wolfe Ltd. acquired these loans and is now a secured creditor of TBF.

[11] In August 2015, Wolfe commenced an application in the Court of Queen's Bench pursuant to section 207 of the *Corporations Act* seeking an order providing for the liquidation and dissolution of TBF and EPG, and the formal appointment of a liquidator (the liquidation proceeding). Taylor responded with a notice to arbitrate under the shareholders agreement and a motion to stay the application.

[12] In February 2016, Dewar J accepted Taylor's position in the liquidation proceeding that the issue of liquidation should be determined pursuant to the arbitration provisions in the shareholders agreement. He ordered a stay of the liquidation proceeding as it related to TBF. He also adjourned, without a date, the liquidation proceeding as it related to EPG.

The Arbitration Proceedings

[13] In March 2016, Wolfe and Taylor engaged an arbitrator and agreed that Fat Cat Farms and Wolfe Ltd. should be part of the arbitration proceedings.

[14] The written arbitration agreement dated March 11, 2016 (the arbitration agreement) is broad in scope and includes a clause referring the arbitrator to the following preliminary issue with respect to the continuing applicability of the shotgun buy-sell clause:

The parties agree to have the Arbitrator issue a Preliminary Award clarifying the current status of the [shareholders agreement], and in particular the applicability of Article 6 in the circumstances of this case. As part of that award, the Arbitrator will address whether or not [Taylor was] entitled to issue a buy-sell proposal to [Wolfe], or whether that section of the [shareholders agreement] is not enforceable in the circumstances, including as a result of the agreement by the parties to proceed with a liquidation of [TBF] and [EPG].

The Award on the Preliminary Issue

[15] On April 20, 2016, the arbitrator issued his award on the preliminary issue. He concluded that Wolfe and Taylor agreed “to have TBF and EPG cease operations to proceed with a liquidation of the assets of the corporations”, Taylor “agreed to waive their buy-sell rights” under the shareholders agreement, “the circumstance[s] in this case . . . lead to the conclusion that a winding up of TBF and EPG is warranted” and that “it is just and equitable to order the liquidation of the assets of TBF and EPG and the dissolution of the corporations.”

[16] The arbitrator ordered the liquidation of all of the assets of TBF and EPG and gave the parties one week to engage, by agreement, a liquidator, failing which he would appoint one.

The Mediation Agreement

[17] On May 7, 2016, the parties held a mediation session with the arbitrator at which they reached an agreement, as set out in an email dated May 7, 2016 from Wolfe’s counsel to Taylor’s counsel (the mediation agreement). It stated, in part, as follows:

Hearing dates will be set aside . . . for the continuing arbitration in this matter, with a view to having all the remaining issues . . . resolved once and for all. In that regard, we will need to come to an agreement . . . on the specific issues to be determined.

Following a decision from the arbitration from the issues to be arbitrated . . . Taylor will thereafter have 30 days to exercise the “shotgun” buy-sell notice as found in the [shareholders agreement].

[18] The mediation agreement also stated that if a valid shotgun notice is not provided within the stated 30 days, the parties will proceed to have Deloitte Restructuring Inc. (Deloitte) appointed as the liquidator.

[19] Taylor and Wolfe subsequently agreed on five issues (the five issues) to be arbitrated:

1. The amount owing to or from TBF by 067;
2. The amount owing to Taylor by TBF;
3. The amount owing to 269 by TBF;
4. The amount owing to or from Wolfe Ltd. by/to TBF;
5. The amount owing to TBF by Fat Cat Farms.

The August 24 Award

[20] After the hearing in July 2016, the arbitrator issued his award dated August 24, 2016, dealing with the five issues (the August 24 award).

[21] The arbitrator addressed each of the five issues in detail. He retained jurisdiction to receive further information to finalize calculations with respect to issues 2 and 5 and “to provide clarification of the terms of [the] award, any assistance required for its implementation, and to receive further submissions on matters that remain outstanding.”

[22] Issue 2 related to the employment of Mr. Taylor by TBF pursuant to a written employment agreement, which provided that part of his remuneration was based on “ten (10%) Percent of the annual gross profits of [TBF]”. The arbitrator determined the amount owing to Mr. Taylor under the employment agreement for all the relevant years at issue except for 2016. For 2016, he stated that the amount would be “[t]he greater of \$60,000.00 or 18% of TBF’s profits (less deductions) for 2016.”

[23] Issue 5 concerned amounts owed by Fat Cat Farms to TBF for the purchase of equipment and rental of assets during the 2015 crop year. The arbitrator determined a range for what the payment would be (not less than \$284,435.45 or greater than \$342,446.75), and provided that the final payment is to be determined following the final resolution of the validity of payments made by Fat Cat Farms in 2015.

[24] The arbitrator referred to the mediation agreement and specifically noted that the 30-day shotgun period follows the publication of the award

and that failure by Taylor to exercise the shotgun notice within that period would result in the remaining assets of TBF and EPG being liquidated.

The September 7 Award

[25] Wolfe sought a clarification with respect to the interest payable on the monies owing by TBF to Wolfe Ltd., arising under issue 4. The arbitrator had concluded in his analysis of this issue that Wolfe Ltd. is entitled to charge TBF interest at the rates specified in the loan agreements that TBF entered into with the secured creditors. In the summary of the August 24 award, the arbitrator stated that the interest rate in this regard was 6%.

[26] In his award dated September 7, 2016 (the September 7 award), the arbitrator clarified that the interest rate was “mischaracterized in the summary” of the August 24 award and should have been consistent with his conclusion that the interest rates on the amount owing by TBF to Wolfe Ltd. is based on the interest rates specified in the loan agreements.

The October 5 Award

[27] In a further award dated October 5, 2016 (the October 5 award), the arbitrator addressed enquiries from Mr. Taylor with respect to the employment agreement and Taylor’s position that they could not submit an offer under the shotgun clause until the amount of Mr. Taylor’s employment compensation was determined and final calculations were made with respect to issue 5. Taylor did not question the arbitrator’s jurisdiction to deal with the shotgun buy-sell issue.

[28] With respect to the amounts due to Mr. Taylor under the employment agreement, the arbitrator wrote, “The [August 24] Award concludes that Taylor’s 2016 compensation can only be determined following either the sale of the land or the issuance of a buy-sell notice.”

[29] With respect to the exercise of the shotgun buy-sell provision, the arbitrator wrote:

The amounts awarded in three of [the five issues] were fully determined other than interest which continues to accumulate. It was determined that the amount owing to TBF by Fat Cat Farms was between \$284,435.45 and \$342,446.75. Although the final amount is to be agreed to by the parties or subject to further submissions, it is not of a magnitude that would justify postponing an exercise of the buy-sell provisions. The only remaining issue is Mr. Taylor’s compensation which, as noted above can only be calculated after the issue of the land is resolved.

...

The [award on a preliminary issue] calls for the liquidation of “all of the assets of TBF and EPG”. The implementation of that decision was postponed by the parties following the mediation held on May 7th. Their agreement gave Mr. Taylor 30 days following the publication of the Award to exercise the buy-sell rights contained in the [shareholders agreement]. The time for the exercise of those buy-sell rights has expired.

[emphasis added]

The October 17 Award

[30] The arbitrator addressed Taylor’s request for reconsideration of the October 5 award with respect to the expiration of Taylor’s right to give

notice to exercise the shotgun buy-sell provision (the October 17 award). Taylor did not question the arbitrator's jurisdiction.

[31] As to his rulings in the August 24 award concerning the various shareholder account balances, the arbitrator stated that, "The clarification of account balances coupled with the use of post-closing adjustments [provided] Mr. Taylor with sufficient information to exercise the buy-sell option included in the agreement resulting from the May 7 mediation session."

[32] As to the employment agreement calculations, the arbitrator stated that the August 24 award "outlines a method for calculat[ing] the gain on a 'deemed' sale of land arising from the exercise of a buy-sell". The arbitrator referred to the following wording in the mediation agreement: "following a decision from the arbitration from the issues to be arbitrated . . . Taylor will thereafter have 30 days to exercise the 'shotgun' buy-sell notice". He stated that the August 24 award addressed "the issues" that were submitted by the parties and that "Taylor did not exercise [the shotgun] within the 30 day time limit provided in the agreement."

[33] The arbitrator ordered the parties to engage Deloitte to liquidate TBF and EPG, indicating that if Taylor desires to acquire the land, he can do so through the liquidation process.

Court of Queen's Bench Proceedings

[34] In October 2016, Taylor and Fat Cat Farms filed their two notices of application in the Court of Queen's Bench.

[35] The first application sought to set aside the September 7 award, a declaration that their rights to procedural fairness were denied, and a declaration that their rights under the arbitration agreement were not observed. The notice of application referred to sections 45(1)(f) and (g) of the *Act*.

[36] The second application sought to set aside the October 5 award and the October 17 award, also pursuant to sections 45(1)(f) and (g) of the *Act* or alternatively, judicial review of those awards.

[37] Wolfe filed a motion in the liquidation proceeding for an order of liquidation to issue pursuant to section 49 of the *Act*.

[38] Wolfe also brought an application for leave to appeal the award with respect to the monies owing to Taylor under the employment agreement, as set out in the August 24 award. This application was dismissed by the application judge and is not before me.

Decision of the Application Judge

[39] The application judge dismissed Taylor's applications to set aside the September 7 award, the October 5 award and the October 17 award. He issued the liquidation order pursuant to section 49 of the *Act* enforcing the arbitrator's order to liquidate TBF and EPG and appointed Deloitte for that purpose. See *Fat Cat Farms Ltd v Wolfe et al*; *Fat Cat Farms et al v Wolfe et al*; *Wolfe et al v Taylor et al*; *Wolfe and 5606269 Manitoba Ltd v Taylor et al*, 2017 MBQB 76.

[40] With respect to the September 7 award, the application judge concluded that the arbitrator corrected “an obvious error contained in the summary portion of the [August 24 Award]” (at para 7) pursuant to section 43(1) of the *Act*.

[41] The application judge dismissed Taylor’s application to set aside the October 5 award and the October 17 award with respect to Taylor’s shotgun rights. He wrote at (paras 9-10):

While the agreed upon issues for arbitration did not specifically include a question with respect to the commencement or expiration of the 30 day “shotgun” period, the “shotgun” rights are a matter arising under the [shareholders agreement] for TBF. As noted by counsel for Wolfe, the arbitration clause found at Article 10.8 of the [shareholders agreement] is very broad and applies to disputes “concerning any question relating to” the [shareholders agreement]. The jurisdiction of the arbitrator in this respect was implicitly, if not expressly, recognized by Taylor as he sought clarification and input from the arbitrator on the issue of his “shotgun” rights.

Furthermore, the issue of whether the 30 day period had expired was fairly and reasonably considered by the arbitrator and set out in his detailed [October 17 award]. In my opinion, his decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law and is therefore entitled to deference. Accordingly, I decline to set the award aside on this basis.

[42] The application judge denied Taylor’s motion for a stay of the liquidation order.

Court of Appeal Proceedings

Notice of Appeal (File No. AI17-30-08862)

[43] Taylor appeals the liquidation order pronounced by the application judge. TBF and EPG are also named appellants. The stated grounds in the notice of appeal are:

1. the application judge should have set aside the September 7 award, the October 5 award and the October 17 award;
2. the application judge should have held that the arbitrator had not given Taylor a proper opportunity to respond prior to amending his decision of the September 7 award thereby failing to provide the applicants an opportunity to respond to another party's case and should have set aside the arbitrator's decision pursuant to sections 45(1)(c), (f) and (g) of the *Act*;
3. the application judge should have held that the arbitrator's decision with respect to the expiration of the 30-day buy-sell period was contrary to the law, the evidence and the weight of the evidence and should have set aside the arbitrator's decision as being unreasonable and contrary to sections 45(1)(c),(f) and (g) of the *Act*; and
4. the liquidation order, if allowed to stand, would result in an injustice, or in the alternative, an unreasonable result.

[44] Taylor filed a notice of motion for a stay of the liquidation order, pending the appeal. This is one of the matters before me.

Applications for Leave to Appeal (File Nos. AI17-30-08896 and AI17-30-08897)

[45] The other two matters before me are the two applications by Fat Cat Farms and Taylor seeking leave to appeal, pursuant to section 48 of the *Act*. The first concerns the decision of the application judge dismissing their application to set aside the September 7 award. The second concerns the decision of the application judge dismissing their application to set aside the October 5 award and the October 17 award.

[46] The material filed with respect to these two applications for leave are identical.

[47] The grounds in support of the leave applications are as follows:

1. The application judge erred in finding that the shotgun rights, including the 30-day exercise period, were matters arising under the shareholders agreement;
2. The application judge erred in finding that the arbitrator had jurisdiction to make the award with respect to the shotgun period;
3. The application judge erred in applying the standard of reasonableness, and not correctness, to the arbitrator's decision with respect to the shotgun period as it was a jurisdictional issue; and
4. The application judge erred in finding that the arbitrator's decision with respect to the shotgun period was reasonable.

Positions of the Parties

[48] Taylor's fundamental position is that the arbitrator's liquidation order to liquidate TBF and EPG is contrary to the terms of the mediation agreement, which Taylor asserts sets out the rules, guidelines, scope and the limits of the arbitrator's jurisdiction. Taylor argues that the arbitrator did not follow the procedures set out in the mediation agreement and therefore, he did not have the jurisdiction to deal with the shotgun issue and decide that the shotgun period had expired. Therefore, he had no jurisdiction to order the liquidation order. Relying on *Rolling River School Division v Rolling River Teachers' Association of the Manitoba Teachers' Society et al*, 2009 MBCA 38, Taylor says that this jurisdictional issue called for a review by the application judge on the standard of correctness, not reasonableness.

[49] Further, Taylor argues that because the appeal of the liquidation order does not require leave (which Wolfe acknowledges appears to be the case), the motion for the stay of the liquidation order should be the focus of my analysis and should inform the outcome of the leave applications.

[50] Wolfe's position is that there is no merit to Taylor's position that the application judge erred in dismissing Taylor's applications to set aside the arbitrator's awards and in enforcing the liquidation order.

[51] Wolfe says that the leave applications raise the fundamental issues that must be addressed. If leave is not granted, then there is no basis to stay the liquidation order pending its appeal.

Analysis and Decision

[52] The issues raised in the motion for the stay of the liquidation order and the applications for leave to appeal are inextricably intertwined. I agree with Wolfe that my decision on the leave applications will be crucial for my consideration of Taylor's motion for the stay of the liquidation order. This is so, because there are no independent grounds of appeal concerning the liquidation order. Furthermore, the liquidation order granted by the application judge was simply an order pursuant to section 49 of the *Act* to enforce an award. If leave is not granted with respect to the application judge's decision not to set aside the awards underpinning the liquidation order, Taylor's motion for the stay is without foundation. Accordingly, I will deal with the leave applications first.

Criteria for Leave to Appeal

[53] Pursuant to section 48 of the *Act*, leave to appeal to the Court of Appeal is required for an appeal from a decision of a judge of the Court of Queen's Bench with respect to an application to set aside an award. In this case, Taylor sought to set aside the arbitrator's awards pursuant to sections 45(1)(f) and (g) of the *Act*. Thus, leave to appeal is required to appeal the decision of the application judge.

[54] The parties agree on the applicable criteria for granting leave to appeal pursuant to section 48 of the *Act* (see *Loewen v Manitoba Teachers' Society*, 2014 MBCA 12 at paras 20-22). Because an appeal will be a second review, the threshold for leave to appeal is high. See *Winnipeg Airports Authority Inc v EllisDon Corp*, 2011 MBCA 51 at para 12, quoting *Rolling River School*. Taylor must establish the following criteria:

1. A pure question of law or jurisdiction;
2. A question of arguable merit with a reasonable prospect of success; and
3. A matter of public interest that is of sufficient importance to warrant consideration by the province's highest court.

[55] Alternatively, in exceptional circumstances, leave may be granted if it would be judicious to do so even though one or more of the above three criteria are not met, if a denial of leave may result in an injustice.

Leave to Appeal the September 7 Award

[56] Sections 45(1)(f) and (g) of the *Act* provide as follows:

Grounds for setting aside award

45(1) On a party's application, the court may set aside an award on any of the following grounds:

- (f) the applicant was not treated equally and fairly, was not given an opportunity to present a case or to respond to another party's case, or was not given proper notice of the arbitration or of the appointment of an arbitrator;
- (g) the procedures followed in the arbitration did not comply with this Act or the arbitration agreement.

[57] There is no merit to Taylor's position that the application judge erred when he dismissed the application to set aside the September 7 award. First, Taylor's counsel had notice that Wolfe's counsel was seeking clarification about the interest rate noted in the summary of the August 24 award. There are no procedural or unfairness issues here. Second, the

arbitrator acknowledged he erred in how he expressed the interest rate in the summary of the August 24 award. The application judge correctly concluded that the arbitrator was simply correcting that error, which he was entitled to do pursuant to section 43(1) of the *Act*:

Correction of errors

43(1) An arbitral tribunal may, on its own initiative within 30 days after making an award or at a party's request made within 30 days after receiving the award,

- (a) correct typographical errors, errors of calculation and similar errors in the award.

[58] Taylor's application for leave to appeal the September 7 award is dismissed.

Leave to Appeal the October 5 and the October 17 Awards

[59] The essence of Taylor's position is that the arbitrator had no jurisdiction to deal with the shotgun issue because the five issues were not all completely decided and therefore, the shotgun period could not be triggered. Taylor asserts this raises an arguable question of jurisdiction.

[60] Taylor also asserts that there is an arguable question of law because the application judge was required to address the issue of jurisdiction on the standard of review of correctness, not reasonableness.

[61] As noted above, Taylor's notices of application in the Court of Queen's Bench to set aside the October 5 award and the October 17 award cited sections 45(1)(f) and (g) of the *Act*.

[62] Taylor now also relies on section 45(1)(c), for the first time in this Court. Section 45(1)(c) of the *Act* reads as follows:

Grounds for setting aside award

45(1) On a party's application, the court may set aside an award on any of the following grounds:

- (c) the award deals with a matter in dispute that the arbitration agreement does not cover or contains a decision on a matter in dispute that is beyond the scope of the agreement.

[63] Generally, new arguments raised for the first time on appeal will not be heard. However, Taylor's jurisdictional arguments were before the application judge, even if not by way of the proper sections of the *Act*. Taylor's pleadings in the Court of Queen's Bench should have cited section 45(1)(c) of the *Act*. I am satisfied that Wolfe has not been caught off guard by the jurisdictional arguments and has had full opportunity to respond to them before the application judge and before me.

[64] As for the other leave criteria, Taylor submits that these asserted questions of jurisdiction and law have a reasonable prospect of success and that the issues raised are of legal significance to all arbitrators in Manitoba, thus satisfying the public interest criteria required for leave to appeal.

[65] Further, Taylor argues that leave should be granted in any event to avoid an injustice given the previous attempts by Taylor to exercise the shotgun provision.

[66] Wolfe argues that there is no question of jurisdiction nor is there an arguable question of law. Furthermore, relying on *Winnipeg Airports*

Authority, Wolfe says that this was a complex private commercial arbitration that does not raise any question of public importance.

[67] The application judge's reasons are brief. Although he did not specifically refer to sections 45(1)(f) and (g) of the *Act*, he addressed Taylor's fundamental argument and concluded that the issue of the shotgun rights was well within the arbitrator's jurisdiction. He cited the broad arbitration provisions in the shareholders agreement and noted that it was Taylor who sought clarification from the arbitrator on this very issue. The application judge also concluded that the arbitrator's decision with respect to the shotgun rights was reasonable and entitled to deference.

[68] The application judge's references to the shareholders agreement, instead of the mediation agreement, was unfortunate, but it does not raise a question of jurisdiction, or at least one that is arguable with a reasonable prospect of success.

[69] In the October 5 award and the October 17 award, the arbitrator was responding to Taylor's requests for clarification and reconsideration. To do so, the arbitrator had to interpret the mediation agreement in the context of the particular circumstances, including the shareholders agreement, the arbitration agreement and his previous awards. Thus, what is at issue is how he interpreted the mediation agreement, which is a question of mixed fact and law, not of jurisdiction, as argued by Taylor. See *Sattva Capital Corp v Creston Moly Corp*, 2014 SCC 53; and *Quebec (Attorney General) v Guérin*, 2017 SCC 42.

[70] Furthermore, I see no procedural issue here under sections 45(1)(f) and (g) of the *Act*. The arbitrator responded carefully and quickly to Taylor's inquiries.

[71] Given these conclusions, Taylor's asserted ground of appeal that the application judge relied on the wrong standard of review in concluding the arbitrator had jurisdiction is not persuasive. In any event, I note that the application judge's reference to the standard of review of reasonableness was in the context of his review of the award itself, not the jurisdictional issue that he addressed. The application judge made no reference to a standard of review in that regard.

[72] To conclude, Taylor has not demonstrated that there is an arguable question of law or jurisdiction arising from the dismissal of Taylor's application to set aside the October 5 award and October 17 award.

[73] Furthermore, I would also decline leave because Taylor has not demonstrated the necessary public interest criteria.

[74] The arbitrator wrote detailed awards in a highly contested private commercial arbitration for which the key policy objectives are efficiency and finality (see *Teal Cedar Products Ltd v British Columbia*, 2017 SCC 32). In *Winnipeg Airports Authority*, leave to appeal an award in a commercial arbitration was denied for lack of any public interest in having the matter heard by the Court of Appeal. Scott CJM concluded in that case that there is "little, if any, precedential value beyond the peculiar facts of this case" (at para 37). That is also the case here. This is a commercial dispute that the parties agreed to resolve through arbitration, and was addressed

thoroughly by an experienced commercial arbitrator and then reviewed by a Court of Queen's Bench judge.

[75] Finally, Taylor has not demonstrated that an injustice will occur if leave is not granted. This is not an exceptional set of circumstances. The liquidation of TBF and EPG was agreed to in 2015, was ordered under the award on the preliminary issues and was again specifically contemplated under the mediation agreement. The parties have been seeking a resolution to their inability to resolve their disputes. The arbitration and the awards of the arbitrator provide this. I see no injustice.

[76] For these reasons, Taylor's application for leave to appeal the application judge's dismissal of Taylor's application to set aside the October 5 award and October 17 award is dismissed.

Motion for Stay

[77] The criteria for a stay are well-known. See *RJR—MacDonald Inc v Canada (Attorney General)*, [1994] 1 SCR 311. The criteria are:

1. Is there a serious question to be tried;
2. Will the moving party suffer irreparable harm in the absence of a stay; and
3. Which of the parties will suffer greater harm from the granting or refusal of the stay (the balance of convenience).

[78] As noted earlier, the dismissal of the leave applications are fundamental to my determination of Taylor's motion for a stay. I see no

argument with respect to this motion that is independent from those considered in the leave applications. Therefore, I agree with Wolfe that Taylor has not established a serious question to be tried.

[79] Also, I am not persuaded that Taylor would suffer irreparable harm if a stay of the liquidation order is not granted. Taylor, through Fat Cat Farms, desires to continue farming some, or all, of the farmland owned by TBF. Fat Cat Farms is currently farming some of it. However, there is no evidence that Fat Cat Farms will be prevented from farming other land if the TBF farmland is not available, and it is open to Fat Cat Farms to purchase the farmland through the liquidation process. Furthermore, Taylor, in the past, has agreed to liquidation of the farmland owned by TBF and has not provided any evidence as to what has changed since then to now amount to irreparable harm.

[80] As for the balance of convenience, resolution of these long-standing disputes favours proceeding with the liquidation, which had been agreed to by the parties in 2015. Delay is eroding the equity of TBF and EPG. Wolfe, who is now a secured creditor, will suffer more harm than Taylor from any further delay.

[81] For these reasons, the motion for a stay of the liquidation order granted by the application judge is dismissed.

Conclusion

[82] I grant Taylor and Fat Cat Farms extensions of time to file the two applications for leave to appeal. At the hearing before me, counsel for Wolfe and Wolfe Ltd. appropriately took no issue with such an order.

[83] The application for leave to appeal the September 7 award is dismissed. The application for leave to appeal the October 5 award and the October 17 award is also dismissed. The motion for a stay of the liquidation order pronounced and signed by the application judge is dismissed. Wolfe and Wolfe Ltd. are entitled to one set of costs with respect to the applications for leave and one set of costs with respect to the motion for a stay.

Hamilton JA