

of the plaintiff's action in favour of arbitration be heard prior to the plaintiff's motion for certification under the **Act** instead of together with it.

[2] The defendant says the arbitration clause in the plaintiff's contract with the defendant mandates that disputes be resolved by arbitration and that the wording of section 7 of **The Arbitration Act**, C.C.S.M. c. A120, creates a substantive right on the part of the defendant to apply for a stay at the earliest stage of a proceeding. The defendant relies on the reasoning in **Williams v. Amazon.com, Inc.**, 2019 BCSC 1807 (CanLII) ("**Amazon.com, Inc.**") and the authorities relied on by the court in that case.

[3] The plaintiff argues that this court's discretion is broader than as described by the defendant and relies on the decision of **Cannon v. Funds for Canada Foundation**, 2010 ONSC 146 (CanLII) (see in particular the factors set out at paragraph 15). The plaintiff further says that courts have also held that litigation by installment is to be avoided in that it delays and denies access to justice and wastes judicial litigation resources. The plaintiff also raised the timing of the implementation of the arbitration agreement, which she says occurred on July 26, 2018, after this action was instituted.

[4] **The Arbitration Act** confers on the defendant a substantive right to seek and obtain a stay of proceedings in favour of arbitration where conditions of section 7 of **The Arbitration Act** are met. Subsection 7(1) reads as follows:

Stay

7(1) Subject to subsection (2), if a party to an arbitration agreement commences a proceeding in a court in respect of a matter in dispute to be submitted to arbitration under the agreement, the court shall, on the motion of another party to the arbitration agreement, stay the proceeding.

[5] I agree with the defendant's submission that the reasoning in the decision of ***Amazon.com, Inc.*** is applicable and specifically the analysis that the defendant's substantive right to seek a stay of proceedings cannot be defeated merely on the basis of the plaintiff's procedural choice to pursue claims under a class action. See also ***Thompson et al. v. Minister of Justice of Manitoba et al.***, 2017 MBCA 71 (CanLII), at paragraph 18, as to this court's inherent jurisdiction to hear a stay motion prior to certification. It is a term of the plaintiff's contractual relationship with the defendant that any dispute will be resolved by binding arbitration pursuant to section 18 of the agreement between the parties. It is arguable that the arbitration clause applies here and that pursuant to the provisions of ***The Arbitration Act*** the defendant is entitled to apply for a stay of proceedings.

[6] I also agree with the defendant that the usual discretion exercised by the court on a sequencing motion is inapplicable where the interlocutory motion in issue is brought under the provisions of ***The Arbitration Act***, and although the court retains jurisdiction over its process, it should be exercised bearing in mind the legislative policy contained in ***The Arbitration Act***. The stay motion ought to proceed before the certification motion because this involves a matter of the court's jurisdiction to hear the plaintiff's claim. I find support for this proposition in the obiter comments of Perlmutter A.C.J.Q.B. in ***Briones v. National Money Mart Company et al.***, 2016 MBQB 213 (CanLII), where he stated the following:

[12] I agree with the plaintiff's argument that there is a difference between motions that would result in a stay based on the court's lack of jurisdiction (for example because of an arbitration clause) and the present case where the court has jurisdiction over the action, but the question is whether it should proceed as a class action or as an individual claim. In the former situation, if the jurisdictional motion is successful, there would be no action to certify, and therefore there is some logic to having such a jurisdictional motion heard prior to a certification hearing. However, in the present case, if Money Mart is successful on its waiver motion, the court will still have jurisdiction over the remaining action. The court would have jurisdiction over the plaintiff's individual action. As well, there would still be a certification hearing with respect to loans prior to the inclusion of the class action waiver clause in 2003, and as against Dollar Financial (who was not a party to the FCA agreements).

[7] I find that the authorities cited by the plaintiff where courts have heard the certification issue along with other motions all involved motions that did not involve an arbitration clause, such as is the case here, and are distinguishable on that basis.

[8] I accept the defendant's position that the validity of the arbitration clause should not be a consideration on this sequencing motion. Finally, I agree with the reasoning of the court in *Amazon.com, Inc.* that, while access to justice is a well-established policy objective of class action legislation, access to justice considerations are also a policy behind arbitration clauses as they promote access to justice by allowing parties to voluntarily choose private, less expensive dispute resolution. Delay is therefore "a two-sided coin". Arguing a stay application at the same time as certification could delay the final resolution of the dispute by way of arbitration in the same way that a stay application may delay the plaintiff's pursuit of certification of her claims (see *Amazon.com, Inc.*, at paragraphs 36-38).

[9] I therefore direct that the defendant may bring its application to stay the claim pursuant to section 7 of ***The Arbitration Act*** before any further step is taken in this proceeding.

_____ J.