

IN THE COURT OF APPEAL OF MANITOBA

Coram: Madam Justice Holly C. Beard
Madam Justice Diana M. Cameron
Mr. Justice James G. Edmond

Docket: AI22-30-09870

BETWEEN:

***DALBIR BAINS and 10031670
MANITOBA LTD.***

(Plaintiffs) Respondents

- and -

***RORY LOADER and SORTEPAX
HOLDINGS LIMITED***

(Defendants) Appellants

- and -

***JAMES TWOREK and CANDELA
CAPITAL INC.***

(Defendants) Respondents

- and -

***JOSH SCHUMANN, JOSH SCHUMANN
FAMILY CORPORATION INC., AARON
SHAPIRO and THE SHAPIRO LAW
FIRM, LLC***

(Defendants)

***J. M. Woolley and
J. R. Sundmark
for the Appellants***

***P. Halamandaris and
L. L. Gergely
for the Respondents
D. Bains, 10031670
Manitoba Ltd. and
N. Kaur-Bains***

***No appearance
for the Respondents
J. Tworek and Candela
Capital Inc.***

***No appearance
for J. Schumann, Josh
Schumann Family
Corporation Inc.,
A. Shapiro, The Shapiro
Law Firm, LLC, V. Jordan,
K. Jordan, A. Bindra
and Re/Max Executives
Realty***

Docket: AI23-30-09884

BETWEEN:

VICKY JORDAN and KEITH JORDAN

(Plaintiffs)

- and -

**DALBIR BAINS and NAVNEET
KAUR-BAINS**

(Defendants) Respondents

- and -

**RORY LOADER and SORTEPAX
HOLDINGS LIMITED**

(Third Parties) Appellants

- and -

**JAMES TWOREK and CANDELA
CAPITAL INC.**

(Third Parties) Respondents

- and -

**AMIT BINDRA, RE/MAX EXECUTIVES
REALTY, JOSH SCHUMANN, JOSH
SCHUMANN FAMILY CORPORATION
INC., AARON SHAPIRO and THE SHAPIRO
LAW FIRM, LLC**

(Third Parties)

*Appeals heard and
Decision pronounced:
November 28, 2023*

*Motion under r 46.2 of
the MB, Court of Appeal
Rules (Civil)*

*Decision pronounced:
February 12, 2024*

PER CURIAM

[1] This is a motion by the defendants/third parties Rory Loader and Sortepax Holdings Limited (the Loader defendants) pursuant to r 46.2 of the MB, *Court of Appeal Rules (Civil)*, Man Reg 555/88R [the *CA Rules*], for a rehearing and/or clarification of the reasons for decision in these matters dated November 28, 2023. At the appeal hearing, we granted the appeals and ordered that the motions be returned to the Court of King's Bench for a new hearing before a different judge.

[2] The Loader defendants now request clarification on the scope of the issues that were referred back to the Court of King's Bench for a new hearing.

[3] The parties have provided their positions in writing, and we are satisfied that neither an oral hearing nor further written argument is necessary to decide these matters (see the *CA Rules*, r 46.2(9)).

[4] The Loader defendants argue that the new hearing in the Court of King's Bench would include all three grounds for a stay of proceedings that were before the motion judge—namely, on the bases of lack of jurisdiction *simpliciter*, the doctrine of *forum non conveniens*, and/or the arbitration clauses in agreements between the parties.

[5] The plaintiff/defendant Dalbir Bains and the plaintiff 10031670 Manitoba Ltd. (the Bains plaintiffs) agree that the new hearing would include the issues of jurisdiction *simpliciter* and the application of the arbitration clause. However, they take the position that the Loader defendants abandoned their motions for a stay on the basis of *forum non conveniens* when they did not raise it in their appeals or include it in their arguments, with the result that

that issue was concluded and they are not now at liberty to argue it at the new hearing.

[6] Briefly, the Loader defendants had applied to the Court of King's Bench for an order to stay the claims against them under s 38 of *The Court of King's Bench Act*, CCSM c C280, and r 21.01(3)(a) of the MB, *Court of King's Bench Rules*, Man Reg 553/88, on the bases that the Court had no jurisdiction over the subject matter of the actions due to lack of jurisdiction *simpliciter*, the doctrine of *forum non conveniens*, and/or the arbitration clauses in the agreements between them.

[7] The motion judge declined to make any decision on any of the issues raised in the motions. Instead, he set the motions, in their entirety, over to be determined "in the broader context of the trial". He specifically included the request for a stay on the basis of *forum non conveniens* in the order, stating "this is without prejudice to [counsel for the Loader defendants'] argument to bring up . . . the issue of what is the most convenient forum."

[8] While the Loader defendants focussed their appeals on the motion judge's failure to make any determination on the issues of jurisdiction *simpliciter* and the effect of the arbitration clause, and they abandoned their appeals on the doctrine of *forum non conveniens* issues, we do not see that concession as an abandonment of their application for relief on the basis of *forum non conveniens* in the motions, themselves. Rather, we see it as a recognition that a finding by this Court that the motion judge erred by failing to determine jurisdiction *simpliciter* would determine the appeals, in their entirety, because, without jurisdiction *simpliciter*, the motion judge had no

jurisdiction to make any decision regarding *forum non conveniens* or the effect of the arbitration clause.

[9] For these reasons, the motion for a rehearing of the appeals is dismissed. Our decision to order a new hearing applies to the motions, in their entirety, and that the new hearing will include the issues of jurisdiction *simpliciter*, the doctrine of *forum non conveniens* and the effect of the arbitration clause, as argued by the Loader defendants.

[10] Costs on this motion will be in the cause.

Beard JA

Cameron JA

Edmond JA