Federal Court Cour fédérale

Date: 20250604

Docket: T-447-25

Citation: 2025 FC 1012

Toronto, Ontario, June 4, 2025

PRESENT: Madam Justice Go

BETWEEN:

QSL CANADA INC.

Plaintiff

and

CANPOTEX TERMINALS LIMITED

Defendant

ORDER AND REASONS

I. Overview

[1] Before the Court are two motions brought by the parties in the herein action.

[2] The Plaintiff, QSL Canada Inc. [QSL], is a maritime terminal operator. The Defendant, Canpotex Terminals Limited [Canpotex], is a company that specializes in the production and supply of Canadian potash products.

[3] Based on a Terminal Handing Agreement [Agreement] that Canpotex had previously entered into with a company that QSL has since acquired, QSL sues Canpotex in this Court for reimbursement of costs incurred in the performance of their work for Canpotex.

[4] Canpotex denies QSL's claim. Canpotex pleads that the Agreement contains an Arbitration Clause and that it gave Notice of Arbitration to QSL in relation to the Agreement. Canpotex also counterclaims for damages against QSL for breach of contract for disclosing commercially sensitive documents and information, and for breach of the Arbitration clause. Canpotex further pleads legal/direct set off and/or equitable set off, or such other relief this Court should determine appropriate.

[5] QSL brings a motion for summary judgment under Rule 215 of the *Federal Courts Rules*, SOR/98-106 [*Rules*] for a sum of $201,923.99 plus interest at the legal rate of 5% post-judgement until payment, and the dismissal of the Statement of Defence and Counterclaim.

[6] Canpotex brings a motion asking the Court to dismiss QSL's motion for summary judgment, and to grant a stay of proceeding in favour of arbitration pursuant to subsection 50.1 of the *Federal Courts Act*, RSC, 1985, c.F-7 [*Federal Courts Act*].

[7] For the reasons set out below, I grant the Plaintiff's motion, and I dismiss the Defendant's motion.

II. Background

[8] On January 1, 2019, Canpotex and Furncan Marine Ltd. [Furncan] entered into the Agreement for the management, supervision and performance of the operation and maintenance of the terminal facilities on the west shore of Courtenay Bay, in the Port of Saint John, New Brunswick [Terminal]. On July 1, 2021, Furncan was amalgamated with Quebec Stevedoring Company Ltd., and on the same date, Quebec Steverdoring Company Ltd. was acquired by QSL.

[9] According to QSL, Canpotex was to reimburse QSL for certain costs incurred in the performance of the work by QSL including labour costs incurred from the contracting of stevedores through the International Longshoremen's Association, terminal staff and subcontractor costs, and expenses related to supplies and materials required for the operation and maintenance of the Terminal.

[10] Between January 2024 and April 2024, QSL issued several invoices to Canpotex covering labour costs for stevedoring services, various expenses related to supplies and materials required for the operation and maintenance of the Terminal, as well as labour costs in the form of grievances filed through the Port of Saint John Employers Association.

[11] Under Article 6 of the Agreement, payment of the invoices was to be made "as expeditiously as is reasonable on receipt of the invoice."

[12] Instead of paying the said invoices, Canpotex issued a Notice of Arbitration dated January 23, 2025 [NOA] to QSL to address a loss which it suffered, which was allegedly caused by QSL's negligent performance of its services and/or breach of its service obligation. The NOA describes certain events that occurred on January 23, 2023 leading to the co-mingling of the potash belonging to Canpotex with bran that came in from two CN Railcars. The NOA also alleges that Canpotex has incurred $390,269.40 in costs and lost inventory as a result of the co-mingling, and holds QSL responsible for allowing the contents of the Railcars to be discharged into the potash storage warehouse.

[13] As Canpotex failed to pay the invoices, QSL filed the herein action on or around February 11, 2025.

[14] After QSL initiated the herein action, Canpotex issued a Notice Demanding Arbitration dated March 13, 2025 [NDA]. In the NDA, Canpotex claims that QSL has commenced the herein action contrary to the intent of Canpotex and Furncan when they entered into the Agreement and in breach of Article 16 of the Agreement. Canpotex further states that the litigation ought to be resolved by means of arbitration and that the matter before the Court should be either stayed or converted into an arbitration pursuant to the NDA. Canpotex also denies QSL's claims and reserves the right to assert its defence.

[15] Article 16 of the Agreement states as follows:

> Article 16 – Arbitration
>
> Any disagreement between Canpotex and the Terminal Operator which cannot otherwise be resolved shall be subject to arbitration and be governed by the following provisions:

> a) The reference to arbitration shall be to three arbitrators, one of them shall be chosen by Canpotex, one of them by the Terminal Operator and the third by the two so chosen, and the third arbitrator so chosen shall be the chairman.
>
> b) Any decision or award may be made by a majority of the arbitrators and such decision or award shall be final and binding upon the parties hereto; and
>
> c) The costs of any arbitration shall be borne equally by the parties hereto except as a majority of the arbitrators may otherwise determine.
>
> Subject to the express provisions of this Article 16, the provisions of the Arbitration Act, Province of New Brunswick, as amended from time to time, shall apply to any arbitration proceedings under this Agreement.

[16] Other articles that are relevant to the motions are: a) Article 20 that provides, in part, that the Agreement "shall be governed by and construed according to the laws of the Province of New Brunswick," and b) Article 13 which states: "No information relative to the operation of the terminal or the performance of the Work shall be released without the prior approval of Canpotex." The term "work" is in turn defined in the Agreement to mean "the work and services to be provided by the Terminal Operator upon and in respect of the Terminal Site, as set forth in this Agreement, including, without limitation to the management, supervision and performance of the operation of the facilities on the Terminal Site and the items set out in Schedule "A" hereto."

III. Relevant case law and provisions governing the motions

A. *Plaintiff's motion for Summary Judgment*

[17] The requirements for summary judgment are set out in Rule 215 of the *Rules* that states, in part:

215(1) If on a motion for summary judgment the Court is satisfied that there is no genuine issue for trial with respect to a claim or defence, the Court shall grant summary judgment accordingly.	**215 (1)** Si, par suite d'une requête en jugement sommaire, la Cour est convaincue qu'il n'existe pas de véritable question litigieuse quant à une déclaration ou à une défense, elle rend un jugement sommaire en conséquence.

[18] Summary judgment motions must be granted when there is no genuine issue requiring a trial: *Hryniak v Mauldin*, 2014 SCC 7 [*Hryniak*] at para 47. As the Supreme Court of Canada [SCC] explained in *Hryniak* at para 49: "There will be no genuine issue requiring a trial when the judge is able to reach a fair and just determination on the merits on a motion for summary judgment. This will be the case when the process (1) allows the judge to make the necessary findings of fact, (2) allows the judge to apply the law to the facts, and (3) is a proportionate, more expeditious and less expensive means to achieve a just result."

[19] In *Gemak Trust v Jempak Corporation*, 2022 FCA 141 [*Gemak Trust*], the Federal Court of Appeal [FCA] noted at para 64 that "there will be no genuine issue for trial if there is no legal basis to the claim, or if the judge has the evidence required to fairly and justly adjudicate the dispute."

[20] In *Saskatchewan (Attorney General) v Witchekan Lake First Nation*, 2023 FCA 105 [*Witchekan Lake First Nation*] the FCA addressed what constitutes a genuine issue. Noting at para 35 that *Hryniak* marked a departure from the pre-existing approach to summary judgment, the FCA made clear that "the standard for granting summary judgment now requires that the judge have sufficient confidence in the state of the record that he or she is prepared to exercise judicial discretion to resolve the dispute." The FCA stated, at para 38, that the determination of

whether a genuine issue for trial exists must follow a certain analytical path: the legal issues in dispute and their associated evidentiary requirements must be identified, the factual issues in dispute must then be extracted and assessed in light of their relevancy to the legal issues, and only when these questions have been answered can the sufficiency of the motion record be assessed.

[21] The FCA further noted that a case ought not to proceed to trial unless there is a genuine issue that can only be resolved through the full apparatus of a trial: *Witchekan Lake First Nation* at para 32. The FCA stressed at para 33 that the critical point is not whether the legal issue is important, but whether the matter presents credibility concerns or complex evidence that can only be adequately appreciated by means of a trial.

B. *Defendant's motion to stay the proceedings*

[22] Canpotex relies on subsection 50.1 of the *Federal Court Act* which states:

50 (1) The Federal Court of Appeal or the Federal Court may, in its discretion, stay proceedings in any cause or matter	**50 (1)** La Cour d'appel fédérale et la Cour fédérale ont le pouvoir discrétionnaire de suspendre les procédures dans toute affaire :
(a) on the ground that the claim is being proceeded with in another court or jurisdiction; or	**a)** au motif que la demande est en instance devant un autre tribunal;
(b) where for any other reason it is in the interest of justice that the proceedings be stayed.	**b)** lorsque, pour quelque autre raison, l'intérêt de la justice l'exige.

[23] Canpotex also cites the *Arbitration Act*, RSNB, 2014, c.100 [*Arbitration Act*] in support of their position. I have reproduced below the relevant provisions of the *Arbitration Act*:

Definitions

1 The following definitions apply in this Act

"arbitration agreement" means an agreement by which two or more persons agree to submit to arbitration a dispute that has arisen or may arise between them. (*convention d'arbitrage*)
"arbitrator" includes an umpire. (*arbitre*)

"court", except in sections 6 and 7, means The Court of King's Bench of New Brunswick. (*cour*)

Limitation on court intervention

6 No court shall intervene in matters governed by this Act, except as this Act provides.

Stay of proceeding

7(1) If a party to an arbitration agreement commences a proceeding in respect of a matter to be submitted to arbitration under the agreement, the court in which the proceeding is commenced shall, on the motion of an- other party to the arbitration agreement, stay the proceeding.

7(2) Despite subsection (1), the court may refuse to stay the proceeding in any of the following cases:

(a) a party entered into the arbitration agreement while under a legal incapacity;

(b) the arbitration agreement is invalid;
(c) the subject matter of the dispute is not capable of being the subject of arbitration under New Brunswick law;
(d) the motion was brought with undue delay; or

Définitions

1 Les définitions qui suivent s'appliquent à la présente loi.

« arbitre » S'entend également d'un surarbitre. (*arbitrator*)

« convention d'arbitrage » Convention en vertu de laquelle au moins deux personnes consentent à soumettre à l'arbitrage un différend survenu ou susceptible de survenir entre elles. (*arbitration agreement*)
« cour » Sauf aux articles 6 et 7, s'entend de la Cour du Banc du Roi du Nouveau-Brunswick. (*court*)

Intervention judiciaire limitée

6 La cour ne peut intervenir dans les affaires que régit la présente loi, sauf aux termes que prévoit celle-ci.

Suspension d'instance

7(1) Si une partie à la convention d'arbitrage introduit une instance relativement à une question qui doit plutôt faire l'objet d'un arbitrage en vertu de la convention, la cour saisie, sur motion présentée par une autre partie à la convention d'arbitrage, est tenue de suspendre l'instance.

7(2) Par dérogation au paragraphe (1), la cour peut refuser de suspendre l'instance dans l'un des cas suivants:

a) une partie a conclu la convention d'arbitrage alors qu'elle était frappée d'incapacité juridique;
b) la convention d'arbitrage est invalide;
c) la question objet du différend n'est pas arbitrable selon le droit néo-brunswickois;

d) la présentation de la motion a été indûment retardée;

(e) the matter is a proper one for default or summary judgment.	**e)** la question est tout à fait propre à l'obtention d'un jugement par défaut ou d'un jugement sommaire.
7(3) An arbitration of the dispute may be commenced and continued while the motion is before the court.	**7(3)** L'arbitrage du différend peut être entamé pendant que la cour est saisie de la motion.
7(4) If the court refuses to stay the proceeding	**7(4)** Si la cour refuse de suspendre l'instance :
(a) no arbitration of the dispute shall be commenced, and **(b)** an arbitration that has been commenced shall not be continued, and anything done in connection with the arbitration before the court made its decision is without effect.	**a)** l'arbitrage du différend ne peut être entamé; **b)** l'arbitrage qui a été entamé ne peut se poursuivre, et tout ce qui a été fait dans le cadre de l'arbitrage avant que la cour ne rende sa décision ne produit aucun effet.
7(5) The court may stay the proceeding with respect to the matters dealt with in the arbitration agreement and allow it to continue with respect to other matters if it finds that	**7(5)** La cour peut suspendre l'instance relativement aux questions dont traite la convention d'arbitrage et permettre qu'elle se poursuive relativement aux autres questions, si elle estime :
(a) the agreement deals with only some of the matters in respect of which the proceeding was commenced, and **(b)** it is reasonable to separate the matters dealt with in the agreement from the other matters.	**a)** que la convention ne traite que de certaines questions à l'égard desquelles l'instance à été introduite; **b)** qu'il est raisonnable de dissocier les questions dont elle traite des autres questions.
7(6) There is no appeal from the court's decision.	**7(6)** La décision de la cour est insusceptible d'appel.

[24] While not raised by the parties, I note that the FCA in *General Entertainment and Music Inc. v. Gold Line Telemanagement Inc*. 2023 FCA 148 [*General Entertainment*] discussed the requirements for a mandatory stay of court proceedings in favour of an arbitration agreement.

[25] Also in *Lin v. Uber Canada Inc*., 2024 FC 977 [*Lin*], Justice Gascon from this Court set out the approach for assessing a request for a stay in favour of arbitration at paras 36 to 47.

Justice Gascon reiterated this approach more recently in *Zanin v. Ooma Inc*., 2025 FC 51 [*Zanin*] at paras 139-141.

[26] I invited the parties to make post-hearing submissions with respect to the above noted case law. I thank counsel for their helpful submissions which I will address in further details below.

IV. Issues

[27] The Plaintiff raises the following issues in their written submissions:

a. Does the parties' choice of forum and of law oust the jurisdiction of this Court?
b. Is the summary judgment procedure appropriate?
c. Should summary judgment be granted in this case?

[28] The Defendant frames the issues before me as follows:

a. Should the Court grant QSL's motion considering the record before it?
b. Should the Court order a stay of proceedings to allow arbitration to take place?

[29] At the hearing, the parties further elaborated on their respective positions. In light of the parties' position, I find the issues before me can best be framed as follows:

a. Is there a genuine issue for trial with respect to QSL's claim?
b. If there is no genuine issue for trial, should the Court decline to grant the summary judgment and stay the proceeding in favour of arbitration?

A. *Is there a genuine issue for trial with respect to QSL's claim?*

[30] As noted above, QSL initiated a claim against Canpotex for unpaid invoices for services rendered and disbursements incurred pursuant to the Agreement.

[31] In support of their claim, QSL submitted a sworn affidavit by Dominic Picard, the Chief Financial Officer of QSL [Picard Affidavit]. Apart from setting out some basic background information about the business relationship between QSL and Canpotex, the Picard Affidavit also attaches the various invoices for costs and expenses that QSL issued to Canpotex as well as the supporting documentation for each of these invoices. In addition, the Picard Affidavit attached a copy of the Agreement that QSL claims Canpotex is in breach of.

[32] Canpotex does not dispute that QSL has incurred the costs and expenses as set out in the invoices, nor does it dispute the accuracy of the total amount of QSL's claim. Rather, Canpotex takes the position that QSL's claim should be referred to the arbitrator as per Article 16 of the Agreement, since Canpotex has served the NOA on QSL for damages allegedly caused by QSL's negligent performance and breach of the Agreement.

[33] I note that in the NOA, Canpotex also does not dispute the amount of costs and expenses incurred by QSL in their performance of work. Similarly, in the NDA, while Canpotex denies the claim of QSL, it does so by asserting that the litigation ought to be resolved by arbitration, and not by disputing the amount claimed by QSL.

[34] As noted above, in their Statement of Defence and Counterclaim, Canpotex pleads legal/direct set off and/or equitable set off as a defence to QSL's claim. At the hearing, counsel for Canpotex continued to plead that the set-off is a live issue before the arbitration panel, and as such, the Court should be reluctant to give summary judgment.

[35] One of the leading decisions on the subject of set-off is the FCA's decision in *Atlantic Lines & Navigation Co. Inc. v. Didymi (The),* 1987 CanLII 5370 (FCA), [1988] 1 FC 3 [*Didymi*].

[36] In *Didymi*, Justice Stone, then of the FCA, reviewed the principal grounds for invoking "set-off." Justice Stone set out three categories of set-off: a) set-off under statute, b) abatement, and c) equitable set-off. Justice Stone explained that equitable set-off was "originated with equity's practice of intervening by interim injunction to prevent a claim at law being carried to judgment, or judgment being enforced, before any cross-claim had been adjudicated upon:" *Didymi* at page 16.

[37] Referencing Lord Denning's comment in *The Nanfri*, [1978] 3 ALL ER 1066 (C.A.) [*The Nanfri*], Justice Stone noted that it is only "cross-claims that arise out of the same transaction or are closely connected with it" and "which go directly to impeach the plaintiff's demands" such as to render it "manifestly unjust to allow him to enforce payment without taking into account the cross-claim" that may be the subject of an equitable set-off: *Didymi* at page 20.

[38] The criterion for equitable set-off was refined further in *M/V Inuksuk I (Ship) v Sealand Marine Electronics Sales and Services Ltd*., 2023 FCA 170 [*M/V Inuksuk I*] where Justice Gauthier, as she then was, summarized the law of the equitable defence of set-off as follows:

> [60] For equitable set-off to apply, it requires a close connection between the cross-claim on which the defence is based and the plaintiff's claim. Because of this close connection, it may be arguable that the cross-claim would be characterized as integrally connected to the federal power over navigation and shipping. Despite my serious reservations about this argument, I will simply follow the reasoning proposed by the appellants as they recognized that it was essential to their thesis that the jurisprudential criteria for establishing equitable set-off be met.
>
> [61] In *Telford*, in the context of assignment of mortgages, the Supreme Court of Canada endorsed the test for equitable set-off outlined by the British Columbia Court of Appeal in *Coba Industries Ltd. v. Millie's Holdings (Canada) Ltd*. (1985), 65 B.C.L.R. 31, 20 D.L.R. (4th) 689 (C.A.) [*Coba Industries*]:
>
> > 1. The party relying on a set-off must show some equitable ground for being protected against his adversary's demands: *Rawson v. Samuel*, [1841] Cr. & Ph. 161, 41 E.R. 451 (L.C.).
> >
> > 2. The equitable ground must go to the very root of the plaintiff's claim before a set-off will be allowed: [*Br. Anzani (Felixstowe) Ltd. v. Int. Marine Mgmt* (U.K.) Ltd., [1980] Q.B. 137, [1979] 3 W.L.R. 451, [1979] 2 All E.R. 1063].
> >
> > 3. A cross-claim must be so clearly connected with the demand of the plaintiff that it would be manifestly unjust to allow the plaintiff to enforce payment without taking into consideration the cross-claim: . . . [*Fed. Commerce and Navigation Co. v. Molena Alpha Inc.*, [1978] Q.B. 927, [1978] 3 W.L.R. 309, [1978] 3 All E.R. 1066].
> >
> > 4. The plaintiff's claim and the cross-claim need not arise out of the same contract: *Bankes v. Jarvis*, [1903] 1 K.B. 549 (Div. Ct.); *Br. Anzani*.
> >
> > 5. Unliquidated claims are on the same footing as liquidated claims: *Nfld. v. Nfld. Ry. Co.*, [1888] 13 App. C. 199 (P.C.)].

> (*Telford* at 212, citing *Coba Industries*) [underline added]
>
> [62] In *The Didymi*, our Court, exercising its jurisdiction over a maritime matter, adopted the same approach a few months before *Telford*. This Court applied the principles from *Fed. Commerce*, also known as *The Nanfri* (particularly in passages later expressly referred to in *Telford* at pp. 213-214), which, in its view, were in harmony with the principles set out in *Coba Industries*.
>
> > On the authorities already referred to, a right of equitable set-off relies on much more than the mere existence of a cross-claim. As Lord Denning put it in *The Nanfri* in a passage already recited, it is only "cross-claims that arise out of the same transaction or are closely connected with it" and "which go directly to impeach the plaintiff's demands" such as to render it "manifestly unjust to allow him to enforce payment without taking into account the cross-claim" that may be the subject of an equitable set-off.
>
> (*The Didymi* at 410-11)
>
> [63] Thus, equitable set-off requires the cross-claim to go to the very root of the plaintiff's claim; only cross-claims that go directly to impeach the plaintiff's claim meet the test. It is because of the nature of this connection that equity cannot countenance separating them: to do so would be manifestly unjust.
>
> [Emphasis in original]

[39] Thus, the question I need to consider is whether Canpotex has established a claim for equitable set-off that goes to the very root of QSL's claim such that it goes directly to impeach QSL's claim. For reasons set out below, I conclude it has not done so.

[40] Other than asserting, as they also did in the NOA, that it suffered damages caused by QSL's negligence performance of its services, Canpotex provides no evidence to the Court to establish its set-off claim, let alone that the claim goes to the very root of QSL's claim.

[41] As QSL rightly points out, the incident that gave rise to the alleged damages suffered by Canpotex took place on January 23, 2023, while the QSL's claim for unpaid invoices incurred from services rendered subsequently. Canpotex provides no evidence linking any of these subsequent services and expenses that formed the basis of the QSL's claim to the incident that gave rise to the damages it allegedly suffered. Nor is there any evidence that QSL's claim arises from the same transaction as Canpotex's claim: *Didymi* at page 20.

[42] I also reject the additional argument by Canpotex at the hearing that their set-off claim has a sufficient nexus to the Plaintiff's claim due to the ongoing services provided by QSL that fall under the same umbrella of the Agreement. As I understand it, the jurisprudence does not purport to create such a wide berth for a defendant to dock their equitable set-off claim. On the contrary, the case law recognizes a cross-claim only when its connection to the plaintiff's claim is of such a nature that equity cannot countenance separating them: *M/V Inuksuk I* at para 63. The mere presence of an ongoing agreement between the parties that gives rise to ongoing contractual obligations, in my view, is not the kind of connection that the courts have in mind to ground a set-off claim.

[43] Having found Canpotex has not established their set-off claim, I now consider whether there is any genuine issue with respect to the Plaintiff's claim requiring a trial. In my view, the answer to this question is in the negative.

[44] Specifically, I find the Plaintiff has proven, on a balance of probabilities, the following:

a. QSL has incurred costs and expenses in their performance of work on behalf of Canpotex as per the Agreement;

b. QSL issued invoices to Canpotex for their costs and expenses;

c. Canpotex does not deny QSL has incurred costs and expenses and does not dispute the total amount of the invoices issued by QSL;

d. The Agreement requires Canpotex to pay such invoices as expeditiously as is reasonable on receipt of the invoice; and

e. Canpotex failed to pay the invoices as required by the Agreement.

[45] Moreover, while asserting legal/direct set off and/or equitable set off, Canpotex has not put forth any evidence to demonstrate a nexus between its set-off claim and QSL's claim.

[46] In light of the above, and considering the FCA's teaching on what constitutes a genuine issue, I find there is no genuine issue for trial with respect to QSL's claim: *Witchekan Lake First Nation*.

B. *Should the proceeding be stayed?*

[47] Canpotex argues that the parties are required by Article 16 of the Agreement to resolve their dispute by arbitration. Canpotex asserts further that the Court is bound by subsection 7(1) of the *Arbitration Act* to stay the proceeding, and that none of the exceptions listed in subsection 7(2) apply to this case.

[48] QSL, on the other hand, submits that once the Court finds there is no genuine issue for trial, the statutory exception under paragraph 7(2)(e) of the *Arbitration Act* applies. Besides, QSL submits that if the Court agrees with QSL that there is no genuine issue for trial, it follows that there is no issue to be referred to the arbitral panel.

[49] Before analyzing the parties' positions, it is important to set out the general approach the courts take in deciding whether to stay a proceeding in favour of arbitration.

[50] In *General Entertainment*, the FCA noted that in *Peace River Hydro Partners v Petrowest Corp*., 2022 SCC 41 [*Peace River*], the SCC set out a framework for considering applications for stays of proceedings in favour of arbitration. The SCC noted that there are two general components to the stay provisions in provincial arbitration legislation across the country: (a) the technical prerequisites for a mandatory stay of court proceedings; and (b) the statutory exceptions to a mandatory stay of court proceedings; though interrelated, these two components ought to remain analytically distinct: *Peace River* at paras 76-77.

[51] As the SCC explained, under the first component, the applicant for a stay in favour of arbitration must establish the technical prerequisites. If the applicant discharges this burden, then under the second component, the party seeking to avoid arbitration must show that one of the statutory exceptions applies, such that a stay should be refused; otherwise, the court must grant a stay and cede jurisdiction to the arbitral tribunal: *Peace River* at paras 78-79.

[52] At para 88, the SCC elaborated on the second step in *Peace River*:

> At this second stage, the key question is whether, even though the technical requirements for a stay are met, the party seeking to avoid arbitration has shown on a balance of probabilities that one or more of the statutory exceptions apply. If not, the court *must* grant a stay. The mandatory nature of stay provisions across jurisdictions in Canada reflects the presumptive validity of arbitration clauses and the principle of party autonomy.

[53] In this case, the first part of the *Peace River* two-step framework is not in issue.

[54] With respect to the second part, subsection 7(2)(e) of the *Arbitration Act* provides, as one of the statutory exceptions, that "the matter is a proper one for default or summary judgment." The question before me is whether my finding that there is no genuine issue for trial for QSL's claim brings this matter under the statutory exception, and if so, whether I should refuse to stay the proceeding on that basis.

[55] With that, I now turn to Canpotex's arguments in support of a stay of proceeding.

[56] Canpotex cites several decisions from the New Brunswick Court of Appeal [NBCA] to support their interpretation of section 7 of the *Arbitration Act*.

[57] Specifically, Canpotex cites *SNC-SNAM, G.P. v Opron Maritimes Construction Ltd.*, 2011 NBCA 60 [*SNC-SNAM*] at para 32 for submitting that "[t]he legislative intent reflected in s.7 if unambiguous: the court must stay a proceeding if the conditions in s.7(1) are met, unless at least one of the criteria enumerated in s.7(2) exists." I note, however, QSL asserts that one of the criteria in subsection 7(2) applies to the case at hand.

[58] Canpotex also relies on the comment by Justice Deschenes of the NBCA in *Ouelette Sea Products Ltd. v Cap-Pele Herring Export Inc.*, 2010 NBCA 12 [*Ouelette Sea Products Ltd.*] about the exclusive jurisdiction of arbitrators under the *Arbitration Act,* to argue that "the arbitral tribunal has the authority to rule on the issue of its own jurisdiction, and whether or not the different agreements are valid or invalid:" *Ouelette Sea Products Ltd.* at para 27. Canpotex points out that this competence-competence principle of arbitrators' exclusive jurisdiction was

confirmed by the SCC in *Dell Computer Corp. v Union des consommateurs*, 2007 SCC 34 at para 84 and adopted in *UBS Holding Canada Ltd. v Harrison et al.* 2014 NBCA 26 at para 20. Canpotex submits that there is a valid and enforceable arbitration clause in the Agreement; if QSL wishes to question the validity of this clause, it must be done before an arbitrator and not before the Court.

[59] Further, citing *669610 N.B. Ltd. v Thunder Process Group Inc.*, 2015 NBQB 87 at para 18 which confirmed the "*prima facie*" test should be employed to determine whether an issue must be referred to arbitration, Canpotex submits that, *prima facie*, an arbitration clause exists in this case, and the motion brought by QSL specifically seeks an order for compliance with the provisions of the Agreement, including Article 6. Accordingly, the issues raised in QSL's motion are, on their face, covered by the broadly-worded arbitration clause and should be dealt with by an arbitrator.

[60] With respect, while these cases reinforce the presumptive validity of the arbitration clauses in the Agreement, they do not answer the question as to what happens when one party asserts a statutory exception to avoid a mandatory stay of proceeding. I note further that Canpotex's submissions, including their post-hearing submissions, do not address the two-step framework set out by the SCC in *Peace River* at all.

[61] Canpotex also submits that none of the exceptions under s.7(2) of the *Arbitration Act* apply. Specifically, Canpotex submits this matter is not a proper one for summary judgment. In support, Canpotex points to two decisions from Ontario, *MDG Kingston Inc. v MDG Computers*

Canada Inc. 2008 ONCA 656 [*MDG Kingston*] and *Wasylyk v Lyft*, 2024 ONSC 664 [*Wasylyk*] to argue that the summary judgment exception is a limited one and should be exercised sparingly and only in the simplest and clearest of cases where summary judgment would demonstrably be the most just and expeditious way to resolve the dispute.

[62] Canpotex submits that the parties involved have agreed to submit "any dispute" arising out of the Agreement to arbitration; this agreement should be respected and not circumvented. There are significant live issues between the parties, and it would not be in the interests of justice to preclude Canpotex's rights under the Agreement or at law, i.e. the right to set-off.

[63] I do not find Canpotex' arguments persuasive, and the cases it cites do not assist them.

[64] I find *Wasylyk* distinguishable on the facts, as the motion judge in that case refused to grant a summary judgment not because of the existence of an arbitration clause, but because in the context of an employment law class action, there is no dispositive summary judgment: *Wasylyk* at para 109.

[65] In *MDG Kingston*, dealing with provisions in Ontario's Arbitration Act that replicate the relevant provisions in the *Arbitration Act*, the Ontario Court of Appeal [ONCA] took issue with the motion judge ordering a "partial summary judgment dealing only with liability, then a full court trial of the issue of damages." The ONCA noted at para 39 that the effect of the order was to remove the damages issue from arbitration and send it to trial in circumstances where the matter did not fall with the exception clause of Ontario's Arbitration Act because the whole

matter was not a proper matter for summary judgment. The ONCA thus concluded the finding of partial summary judgment was not a proper basis to refuse the mandatory stay.

[66] In the case before me, the QSL is not seeking any "partial summary judgment." The QSL provides sufficient evidence to support their claim in its entirety, while Canpotex, who is required to put their best foot forward, files no evidence in support of their set-off claim.

[67] Further, as QSL submits, in *MDG Kingston*, the ONCA noted that the five circumstances listed under subsection 7(2) of the Ontario Arbitration Act – which mirror subsection 7(2) of the *Arbitration Act* – are "all cases where it would be either unfair or impractical to refer the matter to arbitration; …. impractical because a party was not disputing the claim or it was a claim that was clear and could be resolved by summary judgment without a referral to arbitration:" *MDG Kingston* at para 36.

[68] The ONCA continued at para 37 in *MDG Kingston*:

> The purpose of s. 7(2) of the Arbitration Act is to provide a limited exception to the mandatory requirement that courts enforce arbitration clauses and not take jurisdiction where the parties have legitimately agreed to arbitrate their disputes. One of those exceptions arises when one party defaults and there is therefore no need to enlist an arbitrator to make any findings. Another is where the case is properly one for summary judgment, i.e., there are no genuine issues for trial, and therefore, as with a default situation, there are no issues that require the assistance of an arbitrator.

[69] The above noted passage was cited with approval by Justice Moldaver, as he then was, writing for the majority in *Telus Communications Inc. v Wellman* 2019 SCC 19 at para 65.

[70] In sum, rather than supporting the position of Canpotex, *MDG Kingston* confirms the impracticality of referring QSL's claim to arbitration when there is no genuine issue to be tried.

[71] The fact that the Plaintiff's claim falls within one of the statutory exceptions also distinguishes this case from *General Entertainment* in which only the technical prerequisites under step one were relevant, and the FCA did not have to address the second step of the framework as set out in *Peace River*: *General Entertainment* at para 31. Similarly, in *Lin*, the plaintiffs asked the Court to "read in" a statutory exception which Justice Gascon refused to do. Here, the *Arbitration Act* clearly provides for a statutory exception that the Plaintiff may rely on under subsection 7(2)(e). Likewise, in *Zanin*, Justice Gascon found that the plaintiff did not prove, on a balance of probabilities, any reasonable cause of action that would void the arbitration agreement. In the case at hand, QSL has established their claim against Canpotex, on a balance of probabilities, without any genuine issue for trial.

[72] Thus, applying the two-step approach set out in *Peace River*, as QSL has shown on a balance of probabilities that one of the statutory exceptions under the *Arbitration Act* applies to its claim, it is no longer mandatory for the Court to stay the proceeding regarding QSL's claim in favour of arbitration.

[73] Under section 50.1 of the *Federal Courts Act*, I may still exercise my discretion to stay the proceeding on the ground that the claim is being proceeded with in another court or jurisdiction; or it is in the interest of justice that the proceedings be stayed.

[74] But as counsel for the QSL submitted in his post-hearing submission, and I agree, that the undisputed and unpaid invoices is a matter that is unrelated to the matter of the parties' dispute over an incident which occurred a year before these invoices are incurred. Further, given that the matter concerning the invoices is undisputed and not subject to any equitable set-off, there is nothing upon which an arbitral tribunal can exercise its arbitral jurisdiction as there is nothing to arbitrate. Under these circumstances, I find it is not in the interest of justice to stay the proceeding.

[75] My decision not to stay the proceeding should in no way be interpreted to suggest that Canpotex has no basis to claim damages against QSL arising from the incident that took place in January 2023. Indeed, I make no finding on the Canpotex's claim which is and shall remain part of an ongoing arbitration process between the parties.

[76] Further, as counsel for Canpotex explained at the hearing, once the arbitration is underway, the *Arbitration Act* permits the disclosure of further evidence. As such, I find that Canpotex will not be denied the opportunity to put forth evidence and arguments regarding its claims against QSL, and that Canpotex may continue to seek relief, be it equitable or contractual, before a competent arbitral panel.

[77] Finally, with respect to Canpotex's counter claim for damages against QSL for breach of contract for disclosing commercially sensitive documents and information, and for breach of the Arbitration clause, QSL proposes, and I agree, that I should refer any claim with respect to breach of confidentiality to arbitration.

V. Conclusion

[78] The Plaintiff's motion for summary judgment is granted. The Defendant's motion to stay the proceeding is denied, subject to one proviso.

VI. Costs

[79] The Plaintiff is awarded its legal costs throughout according to the middle column of Column III of Tariff B.

ORDER in T-447-25

THIS COURT ORDERS that:

1. Plaintiff's motion for summary judgment against Canpotex Terminals Limited is granted;
2. Defendant Canpotex Terminals Limited shall pay QSL Canada Inc. the sum of $201,923.99 together with interest, post-judgement, at the rate of 5% from the date of judgment to the date of payment;
3. The Statement of Defence, dated March 13, 2025, and the counterclaim(s) contained therein are dismissed, save for the disagreement about the undertaking of confidentiality which shall be referred to arbitration; and
4. Plaintiff is awarded its legal costs throughout according to the middle column of Column III of Tariff B.

"Avvy Yao-Yao Go"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-447-25
STYLE OF CAUSE:	QSL CANADA INC. v CANPOTEX TERMINALS LIMITED
PLACE OF HEARING:	HELD VIA VIDECONFERENCE
DATE OF HEARING:	MAY 15, 2025
ORDER AND REASONS:	GO J.
DATED:	JUNE 4, 2025

APPEARANCES:

David G. Colford	FOR THE PLAINTIFF
J. Paul M. Harquail	FOR THE DEFENDANT

SOLICITORS OF RECORD:

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