

Publisher's Note

An Update has Arrived in Your Library for:

Please circulate this notice to anyone in your office who may be interested in this publication. <i>Distribution List</i>
<input type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>

MANZER CANADA-U.S. COMMERCIAL LAW GUIDE by Alison R. Manzer and Peter Sullivan Release No. 2, May 2022

Publisher's Release Note

This publication is a practical guide to commercial business and legal issues that can arise for businesses operating in both Canada and the United States. An examination of each of Canada and the United States, on a comparative basis, indicating areas that should be considered by a business commencing, or continuing, business in both countries. The book highlights commercial law in areas where similarities or differences in the legal systems can affect business operations, legal decisions, legal documentation and practices and processes.

THOMSON REUTERS CANADA®

Customer Support

1-416-609-3800 (Toronto & International)

1-800-387-5164 (Toll Free Canada & U.S.)

Fax 1-416-298-5082 (Toronto)

Fax 1-877-750-9041 (Toll Free Canada Only)

E-mail CustomerSupport.LegalTaxCanada@TR.com

This publisher's note may be scanned electronically and photocopied for the purpose of circulating copies within your organization.

This release features updates to the case law summaries under Section 7 (Stay) of Ontario's *Arbitration Act, 1991* in Chapter 2 (Arbitration and Mediation). This release also features updates to the Appendices in Chapter 9 (Selected Regulatory Compliance Issues in Commercial Transactions) including the addition of the Financial Task Force Guidance on Proliferation Financing Risk Assessment and Mitigation, June 2021, and updates to the CRTC's Canada's Anti-Spam Legislation — Frequently Asked Questions for Businesses and Organizations, and the Office of the Privacy Commissioner of Canada's Guidance for Businesses doing e-marketing.

Highlights:

- **Chapter 2 (Arbitration and Mediation) — *Arbitration Act, 1991* (Ontario) — Section 7 (Stay) — Court may refuse to stay the proceeding where the matter is a proper one for default or summary judgment** — An application to stay a civil action so that a matter can proceed to arbitration is typically made at the earliest stage of the proceedings. Most applications for Summary Judgment are made when a proceeding is much further along in terms of oral and documentary disclosure. At this stage, there was only a Statement of Claim and a set of admitted facts. It was not difficult to envision how his matter could neatly be packaged for a Summary Judgment application. The facts were not really in dispute. The central issue has to do with the scope of the Public Health orders and the interpretation of a contract. The terms and the circumstances are not in dispute. At its core, this dispute is really about the interpretation of a contract and the issue is primarily a legal one. The breach of the duty of good faith, however, was something of a wild card. It was easy to see that this type of allegation and this type of relief might require a full trial. Accordingly, even if the Master were to go beyond the requirement in *Medicine Shoppe* case that a Summary Judgment application actually be before the court for the exception in 7(2)(e) to apply, and even if the Master were to adopt an expansive meaning of the subsection, it was doubtful that the Master could conclude with any confidence that this was a proper matter for Summary Judgment. The Master observed that circumstances permitting this exception to apply will be rare since most stay applications will be brought at the earliest opportunity and it will be an unusual case when the court can say so early on that it can be determined summarily. The arbitration clause in the lease is mandatory. Section 7.1 of the *Arbitration Act* is mandatory. Where it applies, the jurisdiction of the court is ousted. The Master was not satisfied that this was an appropriate case to exercise a discretion to decline to stay the action based on Section 7(2)(e) of the Act. An application to stay based on the Summary Judgment Exception was at the very least premature: *Melcor Reit Limited Partnership (Melcor Reit GP Inc.) v. TDL Group Corp (Tim Hortons)*, 2021 Car-

swellAlta 1178, 2021 ABQB 379, [2021] A.W.L.D. 2344, 18 B.L.R. (6th) 1, 332 A.C.W.S. (3d) 423 (Alta. Q.B.).

- **Chapter 2 (Arbitration and Mediation) — Arbitration Act, 1991 (Ontario) — Section 7 (Stay) — Partial Stay** — There was no risk of a multiplicity of proceedings. The issues as between the parties as shareholders of Sarajevo were irrelevant to the calculation of both Elma's and Kabir's net family property in the family law proceeding, as Elma and Kabir had the same number on his/her NFP statement for his/her interest in Sarajevo. The two preconditions set out in s. 7(5) of the *Arbitration Act* were met. The arbitration agreement found in the Shareholder's Agreement deals with the corporate issues, and all claims against Kozo. It was on this basis that Kozo asked the court to stay the corporate claims and separate these claims from the family law claims Elma makes against Kabir. Kozo submitted that denying the stay of the corporate matters would require Kozo's business dispute to be part of the family dispute which would create further complexity and delays. In all of these circumstances, Justice Kraft concluded that there were no circumstances in which the Court could exercise its discretion to refuse the stay of Elma's claims against Kozo in favour of arbitration. All disputes between Elma, Kozo and Sarajevo arising as a result of the Shareholder's Agreement shall be arbitrated. The family law issues as between Elma and Kabir shall be determined after the corporate arbitration is complete and a decision has been rendered by the arbitrator: *Pezo v. Pezo et. al.*, 2021 CarswellOnt 11452, 2021 ONSC 5406, 336 A.C.W.S. (3d) 77 (Ont. S.C.J.).

ProView Developments

Your ProView edition of this product now has a new, modified layout:

- The opening page is now the title page of the book as you would see in the print work
- As with the print product, the front matter is in a different order than previously displayed
- The Table of Cases and Index are now in PDF with no searching and linking
- The Table of Contents now has internal links to every chapter and section of the book within ProView
- Images are generally greyscale and size is now adjustable
- Footnote text only appears in ProView-generated PDFs of entire sections and pages

