

Arbitration Case Comment

Boxer Capital Corporation v. JEL Investments Ltd., 2015 BCCA 24

The [Boxer Capital case](#) is noteworthy as it presents the first opportunity that the BC Court of Appeal has had to comment on the application of the principles on an appeal of an arbitration in a commercial matter as set out in the Supreme Court of Canada decision, *Sattva Capital Corp v. Creston Moly Corp*, 2014 SCC 53, which I have discussed previously in one of my [mailers](#), and represents the high water mark in judicial restraint in the oversight of arbitration decisions in commercial matters generally, and contractual interpretation, in particular.

The circumstances of the Boxer Capital case are not as noteworthy as the tortuous process that the Arbitration followed. Chief Justice Bauman of the BC Court of Appeal states succinctly (at paragraphs 3 and 4 of the Judgment quoted below) the paradigm that I have written about in the past - How can we be confident that an Arbitration will be more cost effective and efficient than a court action?

“Commercial Arbitration is intended to provide a speedy and, in the vast majority of cases, final determination of the issue or issues between the parties. The issues between the sophisticated commercial parties in the present case are not terribly complex. They involve the construction of a joint venture agreement. Yet I count two separate arbitrations and nine judicial proceedings to date in this saga. Surely this procedural history is inconsistent with objectives of commercial arbitration. This appeal serves as a reminder of the importance of judicial restraint in the review of arbitral awards....”

The Court makes it clear throughout the Decision that arbitration is intended to be “an alternate dispute mechanism” and not “one more layer of litigation.” The specific issue before the Court was whether a second arbitrator was bound by the decision of the first arbitrator or the Judge

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who heard the appeal of the first arbitration. The second arbitrator held he was not bound and while the Judge in the Supreme Court who heard the appeal of the Award (pre Sattva) set aside the second arbitrator's decision holding he was bound, the Court of Appeal re-instated that decision emphasizing the deference that needed to be paid to the second arbitrator's decision.

Thus, Boxer Capital gives further support to commend arbitration in a commercial setting as the best prospect of minimizing the cost of litigation and enhancing its efficiency. It also emphasizes the importance of making sure the Arbitrator selected is a person who the parties will have confidence in someone who has the ability to render a fair and just decision, because the prospects of a successful appeal are not likely to be good.



Herb Silber, Q.C. brings a strong combination of experience, knowledge and empathy to the arbitration process as Arbitrator or counsel. Herb's approach creates the positive, respectful atmosphere critical to a successful arbitration process.



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