Franchisor terminated the franchise based on franchisee's failure to file business reports or to pay franchise fees. Franchisor obtained an arbitration award in the United States but a Chambers Judge refused to register the award in Saskatchewan. Franchisor appealed. The franchise agreement provided that all disputes were to be submitted to arbitration except for termination by franchisor for failure to report. Franchisor contended that the exception referred only to criminal conduct. Held, the appeal was dismissed. S. 36(1)(a)(iii) of the Act allowed a Court to refuse to register an award if it dealt with a dispute not falling within the terms of the submission to arbitration. Such was the case. The clear wording of the agreement favoured franchisee.

Contracts --- Franchising contracts -- Interpretation

Unequal bargaining power.

Where a franchise agreement is proffered by a large corporation to a franchisee who is not in an equal bargaining position, the contract cannot be said to have been negotiated. The agreement is akin to a contract of adhesion and ought to be interpreted against the franchisor.

Gerwing J.A.:

The arbitration purported to take place under a franchise agreement between the appellant and the respondent, which provided, in part, pursuant to an amendment to the original franchise agreement:

22.1 Mediation and Arbitration

(b) All disputes, controversies or claims arising out of or relating to this Agreement shall be settled by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association or its successor except for termination by AAMCO which is based in whole or in part, upon the fraudulent acts of Franchisee or Franchisee's failure to deal honestly and fairly with any customer of the center or Franchisee's failure to accurately report his gross receipts to AAMCO. Arbitration shall be conducted in Philadelphia, Pennsylvania, unless otherwise agreed to by the parties.

The reasons provided by the appellant in terminating the franchise included the following:

Due to your total failure to file business reports or pay franchise fees and other sums to AAMCO, your indebtedness to AAMCO has continued to increase at a rapid rate. ...

Because of your actions enumerated above, as well as the other material breaches of your franchise agreement outlined in the letter dated August 21, 1989, AAMCO hereby immediately terminates your franchise agreement, dated February 22, 1983.

The schedule to The International Commercial Arbitration Act provides in Article 35 reasons why courts in this jurisdiction may refuse to register arbitration agreements such as that proffered in this matter. One of the reasons is that the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration. This is provided in Article 36(1) (a) (iii) which reads as follows:

Article 36. Grounds for refusing recognition or enforcement

(1) Recognition or enforcement of an arbitral award, irrespective of the country in which it was made, may be refused only:

(a) at the request of the party against whom it is invoked, if that party furnishes to the competent court where recognition or enforcement is sought proof that:

(iii) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decision on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced;

The respondent contends that the dispute deals with a matter which was not contemplated or does not fall within the terms of the submission to arbitration and that the chambers judge was correct in refusing registration. We are of the view that he was correct to do so. The appellant sought to limit the meaning of the exception "franchisee's failure to accurately report his gross receipts to AAMCO" by calling upon principles of contractual interpretation such as noscitur a sociis. It suggested that the words were limited to instances of dishonesty. Such limitation to fraudulent or quasi-fraudulent circumstances of failure to report is not of course apparent from the clear wording of the contract. Indeed it
might be said the clear words favour the respondent and the appellant is asking us to read additional words into this phrase. In any event, even if there is ambiguity, the principles are not applicable here. This contract is one which was not in any true sense of the word negotiated, but is a franchise agreement proffered by a large corporation to a franchisee, who was not in an equal bargaining position. This is akin to a contract of adhesion and is subject, in our view, to being interpreted against the grantor. (See Chitty on Contracts, 24th ed. at p. 334). The franchisor drew this contract and must now accept the clear words of it and is also subject to ambiguities being resolved contra proferentem. We are of the view that applying these principles, there is no reason to limit the failure to report proceeds to criminal or quasi-criminal conduct. That being the case, and failure to report having been cited as at least part of the reason for the termination we are of the view that the issues in the award were not arbitrable.

8" This appeal turns solely upon the interpretation of the franchise agreement and the principles of common law relating to interpreting such a contract.

9" In the end result we are of the view that the conclusion of the chamber judge was correct and that the appeal must be dismissed with costs on double Column V.

Referring Principles:
   IV.5.4 - Interpretation against the party that supplied the term