IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Giles v. Taylor,*
2023 BCSC 240

Date: 20230217
Docket: S210388
Registry: Victoria

Between:

Francis Eric Boyd Giles

Plaintiff

And

Diana Lynn Taylor, and Brian Earl Taylor, and Ultralight Sport Aviation LLC

Defendants

Before: The Honourable Chief Justice Hinkson

Reasons for Judgment

The Plaintiff, Francis Giles:	In Person
Counsel for the Defendants:	D. Young
Place and Date of Hearing:	Victoria, B.C. August 4, 2021; July 21, 2022 November 14, December 13, 2022 January 11, 2023
Place and Date of Judgment:	Victoria, B.C. February 17, 2023

[1] The plaintiff, Francis Eric Boyd Giles, is the president of two Tennessee companies: World Aircraft Company ("WAC"), which designed and manufactured light sport aircraft, and TG Airtech LLC ("TG"), which sold the aircraft and aircraft parts that WAC manufactured.

[2] The personal defendants are residents of Michigan, one of the United States of America. I will refer to Brian Earl Taylor as Mr. Taylor and to Diane Lynn Taylor as Ms. Taylor.

[3] The defendant Ultralight Sport Aviation LLC ("Ultralight") is a company duly registered in Michigan, and alleged by Mr. Taylor to be his alter ego.

I. PARTIES' APPLICATIONS

[4] The parties agree that there were oral dealings between them for the sale of an airplane, but disagree on the terms of their contracts. The plaintiff pleaded that the defendants failed to pay him $783,000 USD for the intellectual property rights to the airplane and $31,200 USD for associated technical services. The plaintiff submits his claim totals $814,200 USD and converts to $1,025,103.40 CAD.

[5] The defendants submit that this Court has no jurisdiction over the proceeding and it is the plaintiff who has failed to repay debts he owes them.

[6] The parties have filed the following proceedings:

a) Some of the defendants filed a first complaint against the plaintiff, WAC, TG and the three other companies in Circuit Court of Cass County, Michigan, on January 6, 2021. The plaintiff was never served with that complaint, which was dismissed on July 30, 2021.

b) On February 1, 2021, the plaintiff filed a Notice of Civil Claim in the Victoria Registry of this Court, which was served on the personal defendants, individually, and left for service on the corporate defendant at its place of business on February 6, 2021.

c) The plaintiff then filed an application for default judgment in this Court on July 21, 2022.

d) Some of the defendants filed a second complaint against the plaintiff, WAC, TG and the three unknown companies in the Circuit Court of Cass County, Michigan, on December 2, 2022. The plaintiff was served on December 13, 2022.

e) The defendants filed a Response to Civil Claim in this Court on December 8, 2022.

f) The defendants filed a Notice of Application challenging the jurisdiction of this Court on December 8, 2022.

[7] The plaintiff's application for default judgment in the amount of $1,025,103.40 plus costs and interest was heard by Justice Murray on July 28, 2021, but was adjourned so that the plaintiff could provide further information in support of that application.

[8] I heard the application on August 4, 2021, and I dismissed it on the basis that the plaintiff had not shown that the work he alleged the defendants contracted him to do was to be performed within British Columbia.

[9] Subsequently, the plaintiff renewed his application based upon a letter from the defendant Mr. Taylor dated January 7, 2019, set out below.

[10] The defendants have not attorned to the jurisdiction of this Court, and instead filed a jurisdictional response, a response to the plaintiff's Notice of Civil Claim, and an application, supported by affidavits for:

(a) An Order that the within proceeding be dismissed or stayed on the basis that the Court has no jurisdiction over the defendants;

(b) In the alternative, an Order that the within proceeding be stayed on the basis that the Court declines to exercise its jurisdiction over the defendants;

(c) Costs.

[11] The plaintiff has renewed his application for default judgment against the defendants.

[12] As highlighted below, the plaintiff and the defendants significantly disagree on the material facts of their dealings.

[13] I will deal with the jurisdictional challenge first, and then the application for default judgment. For the reasons below, I dismiss the defendants' jurisdictional challenge and the plaintiff's application for default judgment.

A. Sale & Manufacture of Airplane

[14] The plaintiff and at least some of the defendants entered into an oral contract for the manufacture and sale of a two-passenger, all-metal light airplane ("the Airplane") by the plaintiff. According to the defendants, this contract was agreed to in March 2016 and they agreed to pay $104,410 USD for the Airplane.

[15] The Airplane was to be produced in Tennessee. The plaintiff or his companies failed to either build or supply the airplane to the defendants.

[16] The plaintiff asserts that in December 2018, the defendants approached him with a suggestion that they be given the right to manufacture the Airplane at a facility, to be established by the defendants, in either Indiana or Michigan. He swore that the defendants stated they had investors interested in putting money into their airplane manufacturing company, and that after much discussion, the parties entered into an agreement in January, 2019.

[17] The defendants agree that it was contemplated they would move the WAC manufacturing facility to either Indiana or Michigan where they had investors and production would begin again, allowing them to recapture their moneys via aircraft sales.

[18] The plaintiff asserts that the defendants agreed to pay him $783,000 USD for the intellectual property rights to the Airplane. The intellectual property included all the electrical drawings for the Airplane (the "IP Rights").

[19] The defendants specifically deny that they ever agreed to purchase any intellectual property rights to the Airplane or that they ever agreed to a price of $783,000 USD.

[20] The defendants assert that as a means of facilitating the transaction, it was agreed that the vendor would not be the plaintiff in his personal capacity, but rather various shell companies wholly owned and controlled by him, including:

(a) WAC;
(b) TG;
(c) World Aircraft Corporation;
(d) World Aircraft, Inc.; and
(e) Skykits Corporation.

[21] The plaintiff denies the existence of World Aircraft Corporation, World Aircraft Inc., and Skykits Corporation. He asserts that these entities are not known to him and that they have never been associated with him.

[22] In his Application Response of December 23, 2022, the plaintiff appears to agree that the defendants did pay some funds for the Airplane which was never produced. However, this particular sale is not the subject of the present litigation.

[23] The plaintiff also asserts that as part of the agreement for the IP Rights, he was required to recode all the Airplane part drawings to allow manufacture of the parts on the defendants' specific machinery (the "Services"). The plaintiff contends that he agreed to use his unique expertise to assist the defendants, wherever possible, to make their manufacturing business a success. He was the sole developer of the Airplane which required precise work and technical expertise to assemble. The plaintiff submits that it would have been "impossible" for the defendants to manufacture the Airplane without him, given their lack of experience in aerospace manufacturing.

[24] Under this plan the plaintiff would return to Victoria, BC, for back surgery and, while there, perform the Services for which defendants would pay him $5,040 USD per month.

[25] The plaintiff also pleaded that under this arrangement, the defendants agreed to pay him $30 USD per hour for six months, or longer, to a minimum of $31,200 USD to produce the Airplane part drawings. The Airplane part drawings would become the intellectual property of the defendants who would own all intellectual property rights to the Airplane. All the Airplane part drawings were required to be produced by the plaintiff in his home office in Victoria, BC. All payments would be to his US dollar bank account in Victoria, BC. He also pleaded that he rented an apartment in Victoria, BC, to be used in part, as a home office to produce the Airplane part drawings at a cost of $1,200 CAD per month.

[26] In support of his position, the plaintiff submitted a letter authored by Mr. Taylor. On January 7, 2019, Mr. Taylor wrote a letter that stated:

> I have known Eric for five years. In November 2018, I bought his aircraft manufacturing business as part of our recent expansion.
>
> Eric's design and development knowledge in aircraft manufacturing is invaluable to the success of our company.
>
> Since Eric is returning to Canada, I have hired him as a consultant to continue with developing our aircraft designs and drawings as a well as our 3D interactive assembly and maintenance manuals (the first of their kind in the aviation industry).
>
> His fixed salary is US$5,040.00 monthly, payable to company TG Airtech. Additionally, he also has a profit sharing position with the company – that will prove to be very lucrative in the future, due to his valuable contributions.

[27] The defendants admit that they were aware that the plaintiff indicated that he intended to return to Canada. However, they specifically deny that they agreed to pay the plaintiff's rent costs or the $30 USD per hour for six months or longer.

[28] This disputed transaction for the IP Rights and the Services is the basis of the present litigation and for which the plaintiff seeks default judgment.

[29] The plaintiff alleges that, as part of their dealings, he and the defendants agreed that if they were unable to resolve a dispute, they would submit to mediation or judicial resolution under British Columbia law. The plaintiff pleaded that he had stated he would not enter into the agreement unless it was governed by BC law.

[30] The plaintiff contends that he was adamant that he would not enter into the agreement with the defendant without a stipulation that any disputes would be resolved pursuant to BC law, arguing that his only protection was the BC Court system.

[31] The defendants deny that they ever agreed to be subject to this Court's jurisdiction.

B. The Loans

[32] The defendants present a different story. They contend that when the plaintiff failed to complete the design and construction of the Airplane, he cited financial difficulties as the reason for the delay. The defendants pleaded that as a result, on or around the fall of 2017, the plaintiff sought various loans from Mr. Taylor.

[33] Mr. Taylor contends that in order to facilitate the plaintiff's construction of the Airplane, he agreed to lend the plaintiff, either in his personal capacity or to one of his corporate interests, a total of $200,000 USD. The loan was allegedly advanced in three installments:

(a) October 3, 2017, for the sum of $100,000 USD;

(b) November 14, 2017, for the sum of $50,000 USD; and

(c) March 12, 2018, for the sum of $50,000 USD.

[34] Mr. Taylor swore that the plaintiff was to repay the loan in full, together with accrued interest at a rate of 2.5 percent per month, by October 2, 2018, with payments of 1 percent of the principal balance due at the end of each month. In his Affidavit of December 16, 2022, Mr. Taylor submitted documents he claims are the promissory notes evidencing the loans.

[35] The plaintiff does not agree that he received a $200,000 USD loan from Mr. Taylor.

[36] The defendants contend that in or around December 2018, the parties agreed to settle the plaintiff's debts arising from the sale of the Airplane and the loan. The plaintiff was, allegedly, to transfer title in WAC's aircraft equipment and some of his personal property to Mr. Taylor, with Mr. Taylor bearing the cost of transportation of the equipment from Tennessee to Michigan. The defendants refer to this as the "Original Settlement Agreement".

[37] The defendants further contend that after the parties entered the Original Settlement Agreement, the plaintiff advised that he was planning to move from Tennessee to Victoria, BC, and so, pursuant to the terms of the Original Settlement Agreement, Mr. Taylor caused the equipment to be transferred from Tennessee to Michigan. After the equipment had been transferred to Michigan, the plaintiff allegedly refused to transfer title to Mr. Taylor, which Mr. Taylor asserts was in breach of the terms of the Original Settlement Agreement.

[38] Mr. Taylor further contends that in or around early 2019, in recognition of the collapse of the Original Settlement Agreement, and the impasse between the parties with regards to the equipment, the parties entered into a new arrangement that he refers to as the "New Settlement Agreement", wherein it was agreed that:

> (a) Mr. Taylor would assist in the sale of the equipment to a third-party on the plaintiff's behalf, and to use funds generated from the sale to reduce the plaintiff's indebtedness arising from funds he received under purchase agreement and the loan, totalling 304,410 USD.
>
> (b) As funds generated from the sale of the equipment represented only a fraction of the amounts owing under the outstanding debt, the plaintiff would render "services in-kind" to repay the balance of his indebtedness, particularly through his design and development of a two-passenger, all-metal, light airplane, to be manufactured by the defendants.
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> (c) The value of the work to be performed by the plaintiff was to be quantified at an agreed rate of 5,040 USD per month, payable to the plaintiff's company TG Air Tech LLC, the debtor under the Promissory Notes, and one of the Shell Entities controlled by him; and
>
> (d) There would be no actual monetary payments to the plaintiff, until such time that the combined value of the monies raised from the sale of the equipment and generated through his services in-kind repaid in full the outstanding debt.

[39] The defendants assert that the New Settlement Agreement is the only currently valid iteration of the negotiated settlement between the parties, arising from the plaintiff's failure to deliver the Airplane to Mr. Taylor and/or Ultralight under the purchase agreement, and his failure to repay the loan.

[40] The defendants accept that the plaintiff was to return to Canada for back surgery which was performed in June 2020 and, while there, would perform the Services and the defendants would pay him $5,040 USD per month as stated in their letter of January 1, 2019. Curiously, the defendants also pleaded that there was no agreed price for the Services, and rather they would be paid on a “quantum meruit” basis.

[41] The plaintiff denies that there were two settlement agreements, and denies ever hearing of them. The plaintiff submits that the "Original Settlement Agreement" extinguished itself “before the ink was dry” on it. He asserts that the agreement makes no sense at all. He questions what sane person would give away their personal property to satisfy an unsecured company loan.

[42] There is some correspondence with respect to the plaintiff’s version of the facts and the defendants. However, a central difference is that the defendants pleaded that any payments flowing from the provision of the Services were intended to satisfy a debt they were owed by the plaintiff.

[43] The parties also agree that WAC’s material and equipment was moved to the defendant’s location in Michigan. Also, the defendants accept that they also moved the plaintiff’s personal acreage equipment. The plaintiff values the WAC equipment at $650,000 USD and the acreage equipment at $75,000 USD.

[44] Yet, the plaintiff rejects that the property was transferred to satisfy a debt. Rather, the plaintiff contends that the defendants agreed to purchase his personal acreage equipment or sell some of it for him because he would get more money for it in Michigan than Tennessee. He asserts that once the equipment was in their

possession, the defendants refused to pay the sale price and refused to return the equipment.

[45] Ultimately, on June 7, 2019, Mr. Taylor sent the plaintiff an email stating: "to be clear i [sic] have terminated any further business dealings with you due to deceit and being uncooperative".

II. DISCUSSION

A. Jurisdiction

[46] The defendants argue that their fundamental position is that:

a) the Notice of Civil Claim does not establish facts that, if true, would establish that this Court has jurisdiction over the defendants;

b) this Court does not have jurisdiction (territorial competence) in regard to the defendants in this action; and

c) if this Court does have territorial competence, I should nonetheless find it is not the appropriate forum to hear the dispute.

[47] The defendants have properly contested the Court's jurisdiction by filing a jurisdictional response in the prescribed form, prior to filing their response to civil claim, in compliance with 21-8(1) of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009 [*Rules*]. I am satisfied that by filing a response to civil claim the defendants have not implicitly attorned to this Court's jurisdiction.

1. Territorial Competence

[48] The plaintiff must establish that the Court has territorial competence to hear the dispute. Whether the Court has jurisdiction over a dispute is governed by the *Court Jurisdiction and Proceedings Transfer Act,* S.B.C. 2003, c. 28 [*CJPTA*].

[49] Part 2 of the *CJPTA* addresses territorial competence in a proceeding. Subsections 3(b), (c) and (e) thereof provide:

> 3 A court has territorial competence in a proceeding that is brought against a person only if
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> […]
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> (b) during the course of the proceeding that person submits to the court's jurisdiction,
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> (c) there is an agreement between the plaintiff and that person to the effect that the court has jurisdiction in the proceeding,
>
> […] or
>
> (e) there is a real and substantial connection between British Columbia and the facts on which the proceeding against that person is based.

[50] Section 10 of the *CJPTA,* provides a non-exhaustive list of factors that create the presumption that a real and substantial connection exists between British Columbia and the facts of the proceeding.

[51] In *Ewert v. Hoegh Autoliners AS,* 2020 BCCA 181, leave to appeal ref'd [2020] S.C.C.A. No. 376 [*Ewert*], the Court of Appeal set out the procedural and analytical stages of the inquiry under s. 10 of the *CJPTA.* In *Ewert* at paras. 16–17, Justice MacKenzie wrote:

> [16] At the first stage of the analysis, the plaintiff must show that one of the connecting factors listed in s. 10 exists. The basic jurisdictional facts relied on by the plaintiff are taken to be true if pleaded (sometimes referred to as a presumption that the pleaded facts are true). The defendant challenging jurisdiction is entitled to contest the pleaded facts with evidence. If the defendant contests the pleaded facts with evidence, the plaintiff is required only to show that there is a good arguable case that the pleaded facts can be proven. […]
>
> [17] At the second stage, if one of the connecting factors is established either on undisputed pleadings or on disputed pleadings but with a good arguable case, the "mandatory presumption" of a real and substantial connection (and, therefore, territorial competence) is triggered: *Stanway v. Wyeth Pharmaceuticals Inc*., 2009 BCCA 592 at para. 20, leave to appeal ref'd [2010] S.C.C.A. No. 68 [*Stanway*]. This is, of course, distinct from the "presumption" that pleaded facts are true. At this stage, because the connecting factor has already been established, it is presumed that a real and substantial connection exists, and therefore that the court has territorial competence. The defendant may now attempt to rebut the presumption of real and substantial connection by establishing "facts which demonstrate that the presumptive connecting factor does not point to any real relationship between the subject matter of the litigation and the forum or points only to a weak relationship between them": *Van Breda* at para. 95; *Canadian Olympic*

> at para. 24. However, the presumption is strong and "likely to be determinative": *Stanway* at paras. 20–22. […]

[52] A fleeting, tenuous, weak or relatively unimportant connection will not be enough to establish a real and substantial connection to the jurisdiction: *Canadian Olympic Committee v. VF Outdoor Canada Co.*, 2016 BCSC 238 at para. 25.

[53] However, even if territorial competence is established, I may still decline to exercise jurisdiction if there is another court that is a more appropriate forum: s. 11 of the *CJPTA*.

[54] The facts in this case are highly disputed, therefore I must consider whether the plaintiff presented "a good arguable case that the pleaded facts can be proven": *Ewert* at para. 16.

[55] I am satisfied that, while imperfect, the notice of civil claim pleads the basis of a good arguable case that this Court has territorial competence over this dispute.

[56] The plaintiff primarily relies on s. 10(e), (h) of the *CJPTA* to establish territorial competence. The subsections read:

> 10 Without limiting the right of the plaintiff to prove other circumstances that constitute a real and substantial connection between British Columbia and the facts on which a proceeding is based, a real and substantial connection between British Columbia and those facts is presumed to exist if the proceeding
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> […]
>
> (e) concerns contractual obligations, and
>
> (i) the contractual obligations, to a substantial extent, were to be performed in British Columbia,
>
> (ii) by its express terms, the contract is governed by the law of British Columbia, or
>
> […]
>
> (h) concerns a business carried on in British Columbia,

[57] The plaintiff also contends that all money transaction between the parties occurred in Tennessee and British Columbia, and says that there were no money transactions in Michigan.

[58] As pleaded, the dispute concerns payment for the provision of the Services and sale of the IP Rights.

[59] I find that there is correspondence between the parties' stories on the material jurisdictional facts. In particular, the parties agree that the plaintiff would perform the Services and it was contemplated that the Services would be performed in Victoria as the plaintiff needed to return to Canada.

[60] In my view, Mr. Taylor's written confirmation that the plaintiff was to perform the Services in British Columbia at $5,040 USD per month satisfies s. 10(e)(i) of the *CJPTA*, as the contract was to be substantially performed in British Columbia. This finding is supplemented by the expectation of the plaintiff's intended further "valuable contributions" in the "future".

[61] Further, the plaintiff has pleaded that the parties expressly contracted to settle any disputes they may have in the British Columbia courts. While this assertion is highly contested, I find that the plaintiff has made a good arguable case that this fact can be proven. This satisfies s. 10(e)(ii) of the *CJPTA*.

[62] Thus, s. 10 creates the presumption of a "real and substantial connection" between British Columbia and the facts in this action. As set out in *Ewert* at para. 17, this is a strong presumption that is likely determinative.

[63] The defendants say they have rebutted the presumption that this Court has territorial jurisdiction with evidence that Mr. Taylor never agreed to wire any funds to the plaintiff, asserting that rather, any amounts to be paid to the plaintiff were in fact set-offs to be applied to the plaintiff's outstanding debt owed to Mr. Taylor. They also deny that he ever agreed to attorn to this jurisdiction or to rely on British Columbia law, having no familiarity with its legal system up until the time this action was initiated.

[64] The defendant's further argue that the plaintiffs allegations are merely bald assertions with no basis in evidence and he has not shown that he has a good arguable case that these facts can be proven. But the same can be said of Mr. Taylor's allegations.

[65] The defendants further argue that at all material times, the personal defendants were resident in the state of Michigan, and that at all material times up until January 2019, the plaintiff was resident in the state of Tennessee, and only relocated to Victoria, British Columbia, in or around January 2019.

[66] The defendants submit, and I accept, that neither the plaintiff's residence in British Columbia, nor his assertion that he sustained damages here, if true, are factors enumerated in s. 10 of the *CJPTA.* However, these were not factors I relied on in my analysis. Section 10 is not a closed list, but I need not decide whether these factors can otherwise establish a real and substantial connection.

[67] Ultimately, even if I accepted the defendants' version of the events, they conceded that the contractual obligations pursuant to what they term the New Settlement Agreement were to be performed in both Michigan and British Columbia. Mr. Taylor was to sell the equipment, which was by then physically located in Michigan, and apply those funds as a set-off to the plaintiff's debt obligations. The residual obligations owed were to be paid for by the plaintiff through his provision of services to be performed in British Columbia. It is these services that concern the plaintiff's present claims.

[68] In the result, I am satisfied that this Court has jurisdiction over the plaintiff's claims against the defendants.

[69] I note briefly that the plaintiff's claim also relates to the sale of the IP Rights associated with the Airplane that was designed in Tennessee. Therefore, it may seem that only the contract for the provision of the Services can be connected to British Columbia. However, Justice LeBel, writing for the Court, in *Club Resorts Ltd. v. Van Breda*, 2012 SCC 17 at para. 99 [*Club Resorts*], held that:

> [99] I should add that it is possible for a case to sound both in contract and in tort or to invoke more than one tort. Would a court be limited to hearing the specific part of the case that can be directly connected with the jurisdiction? Such a rule would breach the principles of fairness and efficiency on which the assumption of jurisdiction is based. The purpose of the conflicts rules is to establish whether a real and substantial connection exists between the forum, the subject matter of the litigation and the defendant. If such a connection exists in respect of a factual and legal situation, the court must assume jurisdiction over all aspects of the case. The plaintiff should not be obliged to litigate a tort claim in Manitoba and a related claim for restitution in Nova Scotia. That would be incompatible with any notion of fairness and efficiency.
>
> [Emphasis added.]

[70] While LeBel J. was writing in the context of facts giving rise to overlapping causes of action, the principle applies in this case. The provision of Services and the sale of the IP Rights are closely intertwined. Indeed, the plaintiff argued they are part of the same agreement entered into to allow the defendants to manufacture the Airplane. It would be unfair and inefficient to require the plaintiff to pursue only his claim for the Services in this Court. I have found there is a real and substantial connection between the parties' legal and factual situation and British Columbia, therefore this Court "must assume jurisdiction over all aspects of the case": *Club Resorts* at para. 99.

[71] That said, I am sceptical as to whether Ms. Taylor is properly a party to this proceeding. It is unclear what her involvement in the dealings was, beyond being Mr. Taylor's wife. However, this is not an application for summary resolution of the claims against Ms. Taylor.

2. Forum Conveniens

[72] In the alternative, the defendants argue that even if this Court has territorial competence over this action, this Court is an inappropriate forum and should exercise its discretion to stay this action in favour of a more appropriate forum. In this regard, the defendants rely upon s. 11 of the *CJPTA*.

[73] Sections 11(1), (2)(a), (f) of the *CJPTA,* provide:

> 11(1) After considering the interests of the parties to a proceeding and the ends of justice, a court may decline to exercise its territorial competence in the proceeding on the ground that a court of another state is a more appropriate forum in which to hear the proceeding.
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> 11(2) A court, in deciding the question of whether it or a court outside British Columbia is the more appropriate forum in which to hear a proceeding, must consider the circumstances relevant to the proceeding, including
>
> (a) the comparative convenience and expense for the parties to the proceeding and for their witnesses, in litigating in the court or in any alternative forum,
>
> […]
>
> (f) the fair and efficient working of the Canadian legal system as a whole.

[74] Section 11 of the *CJPTA,* allows courts to decline to exercise jurisdiction over a proceeding on the basis that there is a more appropriate forum to hear the case. The caselaw uses the terms “clearly more appropriate”, “more appropriate”, and “clearly established as more appropriate” to refer to the single standard of “more appropriate”: *Newman v. Beta Maritime Ltd*., 2016 BCSC 2257 at para. 30. In making this determination, the court must consider the factors in s. 11(2).

[75] The defendants submit that the factors in s. 11(2) “overwhelmingly favour” litigating the matter in Michigan. I accept that the proceedings have some connection to Michigan, including that the defendants have no presence in British Columbia. However, I ultimately disagree with the defendants’ argument.

[76] The plaintiff is 75-years-old with numerous serious medical conditions. He presented letters from his general practitioner and his specialist in physical medicine and rehabilitation, that attest to his lack of mobility as well as his requirement for weekly medical procedures and appointments.

[77] The plaintiff asserts that he lives in subsidized housing because he is unable to get the money owed to him. He contends that travel to Michigan to deal with these proceedings would involve travelling through at least two airports, on two airplanes and in two cars, for a total of 11 hours or more. He says that he cannot travel in a car for even one hour let alone 11.

[78] The plaintiff says that if the Court were to decline to exercise jurisdiction over his claim, he would be without a legal recourse since he cannot travel. I do not accept that this is necessarily the case, as the pandemic has brought about the use of virtual hearings from remote locations, but I have no evidence of the availability of such hearings in the state of Michigan.

[79] While the need for specific witnesses is unclear, I am satisfied that the comparative convenience and expense for the parties in litigating in this Court or in Michigan favour their respective choice of forum. The plaintiff's vulnerability relative to the defendants favours British Columbia as the most appropriate forum.

[80] I am also satisfied that the agreement, as alleged by the plaintiff, to attorn to this jurisdiction or to rely on British Columbia law makes the fair and efficient working of the Canadian legal system favour the proceedings in British Columbia.

[81] In the result, I decline to order that these proceedings be stayed on the basis that the Court declines to exercise its jurisdiction over these proceedings.

B. Default Judgment

[82] I have already summarized above why I am unwilling to grant default judgment on the plaintiff's past application. The filing of the defendants' response to civil claim on December 8, 2022, albeit long after the plaintiff initially sought default judgment, is sufficient to defeat the plaintiff's application when it was finally heard.

[83] I therefore dismiss the application for default judgment.

III. CONCLUSION & COSTS

[84] The dismissal of the defendants' jurisdictional application entitles the plaintiff to his costs related to that application, which I order to be paid forthwith.

[85] Although the plaintiff's application for default judgment has been dismissed, had the defendants complied with the *Rules,* the application would likely not have been brought. I consider that the plaintiff is thus entitled to his costs related to his serial applications for default judgment, which I also order to be paid, forthwith.

[86] I do not consider it necessary that I hear any future applications in this case, and the parties are free to bring any further applications before other members of the Court.

"The Honourable Chief Justice Hinkson"