COURT OF APPEAL FOR ONTARIO

CITATION: Abaxx Technologies Inc. v. Pasig and Hudson Private Limited, 2024 ONCA 164
DATE: 20240301
DOCKET: COA-23-CV-0627

Gillese, Thorburn and Gomery JJ.A.

BETWEEN

Abaxx Technologies Inc. and
Abaxx Technologies Holdco Inc.

Plaintiffs (Appellants)

and

Pasig and Hudson Private Limited, Green Tiger Markets Pte. Ltd., John H. Knorring, Carlos W. Korten and Suresh Dixit

Defendants (Respondents)

Marek Z. Tufman, for the appellants

Bevan Brooksbank and Nadine Tawdy for the respondents, Pasig and Hudson Private Limited, Carlos W. Korten and Suresh Dixit

Jeffrey Percival and Adam Ostermeier for the respondents, Green Tiger Markets Pte. Ltd. and John H. Knorring

Heard: February 26, 2024

On appeal from the order of Justice Michael Dineen of the Superior Court of Justice dated May 1, 2023.

REASONS FOR DECISION

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[1] This is an appeal of the motion judge's dismissal of this action on the basis that Ontario has no jurisdiction over the claim. The appellants argue that the motion judge erred in finding that Ontario did not have jurisdiction over the issues raised in the claim, and there was no real and substantial connection to Ontario. The appellants also claim the demands of fairness, efficiency and justice require that Ontario assume jurisdiction. Finally, they argue that the motion judge improperly embarked upon a "disguised, unrequested and premature Rule 20 [summary judgment] and/or Rule 21 motion [for determination of an issue before trial]".

[2] We do not accept these submissions. As we explain below, we agree with both the motion judge's decision and his reasons for decision.

[3] The appellants, Abaxx Techonologies Inc. and Abaxx Holdings Inc. (together "Abaxx") are both incorporated in Ontario. They have amalgamated.

[4] Abaxx operates businesses incorporated in Singapore and is the majority shareholder of Abaxx Singapore Pte. Ltd., which was the holding company of Abaxx Exchange Pte. Ltd. and Abaxx Clearing Pte. Ltd.

[5] The respondent, Pasig and Hudson Private Limited ("P & H") is a business incorporated in Singapore. The respondents, Carlos Korten and Suresh Dixit are the CEO and President of P & H, respectively. Korten lives in the United States and Dixit lives in France.

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[6] The respondent, Green Tiger Software is incorporated in New York and is the sole shareholder of the respondent, Green Tiger Markets Pte. Ltd. (“GTM”).

[7] The respondents, Korten and Dixit are shareholders of Green Tiger Software and the respondent, John Knorring is the Chief Executive Officer of both Green Tiger companies.

[8] A dispute arose from work the respondent P & H and the individual respondents did for the appellants or companies controlled by them. The only contract filed was a Master Services Agreement between P & H and Abaxx Exchange Pte. Ltd. dated April 10, 2019 (the “Agreement”).

[9] Knorring entered into two agreements with entities related to Abaxx: an advisory consulting agreement signed on October 1, 2018, and an employment agreement to act as the CEO of Abaxx Singapore dated November 19, 2018.

[10] In June 2019, Knorring terminated both agreements claiming he had not been paid.

[11] GTM was incorporated by Knorring, Korten and Dixit in Singapore in 2021.

[12] In their Statement of Claim, the appellants allege that the respondents breached their fiduciary duties, conspired to misappropriate intellectual property, inventions, and corporate opportunities related to energy trading in the Philippines and elsewhere, breached their duty of confidence and good faith, misappropriated corporate information, and submitted fraudulent invoices. The appellants claim

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Ontario is the governing law and the jurisdiction for the adjudication of any disputes.

[13] The respondents brought companion motions to dismiss the claim on the ground that the claim lacks a real and substantial connection to Ontario that would ground jurisdiction over the claim in this province, and, in the alternative, that Singapore would be the preferable forum.

[14] None of the respondents have a presence in Ontario nor did they attorn to the jurisdiction.

[15] The motion judge correctly identified the test to establish the requisite jurisdictional connection to Ontario as set out in *Club Resorts Ltd. v. Van Breda*, 2012 SCC 17, [2012] 1 S.C.R. 572, at para. 90, namely that (i) the defendant is domiciled or resident in the jurisdiction, (ii) the defendant carries on business in the jurisdiction, (iii) the tort was committed in the jurisdiction, or (iv) a contract connected with the dispute was entered into in the jurisdiction.

[16] He noted that the moving party must demonstrate a “good arguable case” on the basis of the pleadings and/or the evidence filed on the jurisdiction motion: *Ontario (Attorney General) v. Rothmans Inc.*, 2013 ONCA 353, 115 O.R. (3d) 561, at para. 54, leave to appeal refused, *British American Tobacco P.L.C. v. Ontario*, [2013] S.C.C.A. No. 327. The presumption of jurisdiction arising from these factors may be rebutted by showing that there is at most, a weak relationship between the

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subject matter of the litigation and the proposed forum: *Lapointe Rosenstein Marchand Melançon LLP v. Cassels Brock & Blackwell LLP*, 2016 SCC 30, [2016] 1 S.C.R. 851, at para. 27.

[17] He was also keenly aware that the court's obligation to accept the material facts pleaded by plaintiffs as true "does not extend to bald conclusory statements of fact, unsupported by material facts": *Truscott v. Co-Operators*, 2023 ONCA 267, at para. 110.

[18] The motion judge noted that all of the respondents were domiciled and resident outside of Ontario and none of the business at issue was carried on in Ontario.

[19] He held that the only contract filed on this motion is the Agreement and that, although the Agreement provides that it is governed by the laws of Ontario, it was formed in Singapore between two companies incorporated in Singapore. In any event, the appellants are not parties to the Agreement. As for the contract with Knorring, there is nothing in the record that permits an inference that there was a breach of this contract giving rise to the appellants' claim.

[20] Second, he held that although the appellants pleaded that Knorring breached the terms of his contract and disclosed confidential information or intellectual property belonging to the appellants, that claim was refuted by Knorring. The appellants adduced no evidence to support their allegations against

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Knorring nor have they identified what intellectual property is alleged to have been appropriated.

[21] Third, the appellants pleaded that a tort of conspiracy took place in Ontario resulting in damages to the Abaxx corporation in Ontario. However, Knorring and Korten denied participating in any conspiracy to damage Abaxx and Dixit filed an affidavit adopting the position of Korten. (Dixit was not challenged on his position that he adopted and accepted what Knorring and Korten said about the alleged conspiracy.) The appellants led no evidence to refute the individual respondents' position, to establish the nature of the alleged conspiracy, or to substantiate the damages allegedly resulting therefrom.

[22] The motion judge held that,

> [The appellants'] very vague allegations were challenged and expressly denied by the [respondents]. The [appellants] accordingly could not simply rely on the bare assertion of damages suffered in Ontario without leading some evidence to support the assertion, which they have failed to do. The [appellants] operate not only in Ontario but also through subsidiary corporations and have not led any evidence identifying the nature of any damage they suffered nor any acts of any of the [respondents] that would show an arguable case of a conspiracy in Ontario.

[23] He therefore concluded that, "[t]he record as a whole shows that any connection between the dispute and such a contract is weak" and that, "[t]his is a low threshold but I find on the record before me the [appellants] have failed to meet

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it.” Assuming that the Agreement and or contracts constitute a presumptive connecting factor, the respondents rebutted it.

[24] We see no error in the motion judge’s articulation of the test, his application of the test to the evidence, or his findings of fact. The appellants had the opportunity to lead evidence to challenge the rebuttal of the presumption of jurisdiction but failed to do so. We therefore agree with the motion judge that the appellants did not demonstrate that there was a “good arguable case” made out on the pleadings and or evidence filed on the motion. Nor do the demands of fairness, efficiency and justice augur in favour of the court in Ontario assuming jurisdiction over this claim, as the appellants have not demonstrated that Ontario should assume jurisdiction over any of the parties or any of the claims.

[25] Finally, we do not agree that the motion judge improperly embarked on a “disguised, unrequested and premature Rule 20 and/or Rule 21 motion.” The threshold posed by a “good arguable case” is commensurate with a genuine issue to be tried and is a higher threshold than the plain and obvious standard applied on a Rule 21 motion.

[26] For the above reasons, the appeal is dismissed. The respondents are entitled to their partial indemnity costs. The partial indemnity costs payable to the respondents Pasig and Hudson Private Limited, Korten and Dixit are $31,595.14

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all-inclusive, and the partial indemnity costs payable to Green Tiger Markets Pte. Ltd. and Knorring are $21,935.95 all-inclusive.

“E.E. Gillese J.A.”

“Thorburn J.A.”

“S. Gomery J.A.”

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