

**CITATION:** Roger Vanden Berghe NV v. Korhani of Canada Inc, 2024 ONSC 4235  
**COURT FILE NO.:** CV-22-00683305-0000  
**DATE:** 20240726

**ONTARIO SUPERIOR COURT OF JUSTICE**

**RE:** Roger Vanden Berghe NV in liquidation by its liquidator, Rik Crivits, Applicant

-and-

Korhani of Canada Inc., Respondent

**BEFORE:** Robert Centa J.

**COUNSEL:** Darren Marr, for the Applicant

Michael Pettle, for the Respondent

**HEARD:** July 26, 2024

**ENDORSEMENT**

[1] The applicant seeks to enforce a final order issued by a court in Belgium against the respondent Korhani of Canada Inc. As Korhani takes no issue with the right of the liquidator to bring this proceeding, I will refer to the applicant at RVB.

***RVB's evidence***

[2] RVB's evidence on this application is largely uncontested. RVB was a Belgian company that sold textiles to Korhani, a Canadian corporation with a head office in Toronto. Korhani placed its orders to RVB in Belgium and the orders were processed in Belgium. The contract of sale specified Belgium and its courts as the non-exclusive jurisdiction for all disputes:

The present terms are applicable to all our contracts, to the exclusion of eventual terms of our buyer. The Belgian law is applied with the exception of the retention of title clause. For this clause the law of the country of buyer's domicile is applied. Disputes arising out of our contracts shall be referred to the Courts of the district of Kortrijk (Belgium) or, at our discretion, to the Courts at the buyer's domicile.

[3] RVB's liquidator determined that Korhani owed RVB approximately €2,663.00 EUR and USD \$167,735.50 under unpaid invoices. On January 10, 2020, RVB commenced a proceeding against Korhani in the Belgian Court by Writ of Summons. RVB served the Writ of Summons on Korhani by registered mail to the business address provided by

Korhani on each of the invoices. On January 27, 2020, Nicole Korhani, an employee of Korhani, signed to acknowledge receipt of the Writ of Summons.

- [4] Korhani did not respond to the Belgian proceeding, and, on December 17, 2020, the Belgian court granted final judgment in favour of RVB. On March 15, 2021, RVB served the judgment on Korhani. RVB received no response.
- [5] On December 17, 2021, Ontario counsel for the RVB wrote to Korhani and demanded payment on the Belgian judgment, which was enclosed with the demand letter. Korhani did not respond to the demand letter and, to date, has paid none of the amounts owing.
- [6] On June 28, 2022, RVP commenced this application to enforce the Belgian judgment.

***Korhani's evidence and position on the application***

- [7] Korhani filed an 11-paragraph affidavit of Hessam Korhani in response to this application. Mr. Korhani states that he is a director of the company.
- [8] Mr. Korhani's evidence focuses exclusively on disputing the amounts owing under the invoices. He states that some of the invoices relate to free samples provided by RVB to Korhani. He states that Korhani's records indicate that it paid some of the invoices and incurred certain expenses in connection with other invoices. That is the extent of the evidence filed by Korhani on this application. Korhani, therefore, has put forward no evidence that the company:
  - a. was not properly served with the Writ of Summons;
  - b. did not have actual notice of the proceeding in Belgium;
  - c. could not have defended the action in Belgium;
  - d. was denied natural justice in the Belgian court or that the court lacked jurisdiction over this dispute; or
  - e. appealed the judgment of the Belgian court.
- [9] Korhani submits that the application should be dismissed. Part IV of Korhani's factum is titled "Law and Argument." It consists of a single paragraph that reads as follows:
  - 11. The Court should dismiss the Application for the following reasons:
    - (a) The amounts alleged to be owing are contested and therefore if granted would amount to fraud and/or a denial of natural justice.

(b) Korhani was unable to defend itself in the proceeding commenced in the Belgian Court which resulted in the Belgian Judgment.

(c) The Belgian Court could not have had a real and substantial connection with the litigants, as Korhani was not present in the proceeding.

- [10] Paragraph 11 of the respondent's factum contains no citations to any case law or evidence in the record.

### ***The law of recognition and enforcement***

- [11] The court is to take a generous and liberal approach to the recognition and enforcement of foreign judgments.<sup>1</sup> The court will enforce a foreign judgment where (1) the foreign court took jurisdiction according to Canadian conflict of law rules, (2) the foreign judgment is final and conclusive, and (3) the responding party does not make out any of the applicable defences of fraud, public policy, or natural justice.
- [12] Justice Vermette recently summarized the legal principles applicable to the recognition and enforcement of foreign judgments.<sup>2</sup> I adopt her summary. Justice Vermette wrote:

The purpose of a proceeding to recognize and enforce a foreign judgment is to allow a pre-existing obligation to be fulfilled; that is, to ensure that a debt already owed by the defendant is paid. Such a proceeding is not based on the original claim the plaintiff pursued against the defendant, but, rather, on the obligation created by the foreign judgment. Barring exceptional concerns, a court's focus when enforcing a foreign judgment is not on the substantive and procedural law on which the judgment is based, but instead on the obligation created by the judgment itself. Since the purpose of an action for recognition and enforcement is to assist in enforcing an already-adjudicated obligation and not to evaluate the underlying claim that gave rise to the original dispute, the enforcing court's role is not one of substance, but one of facilitation. See *Chevron Corp. v. Yaiguaje*, 2015 SCC 42 at paras. 43-44.

Canadian courts have adopted a generous and liberal approach to the recognition and enforcement of foreign money judgments: see *Chevron* at para. 27. All the enforcing court needs is proof that the judgment: (1) was rendered by a court of competent jurisdiction; (2) is final; and (3) is for a definite sum of money: see *Pro Swing Inc. v. Elta Golf Inc.*, 2006 SCC 52 at paras. 10-11. A foreign court will

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<sup>1</sup> *Chevron Corp. v. Yaiguaje*, 2015 SCC 42, [2015] 3 S.C.R. 69, at para. 27.

<sup>2</sup> *Roger Vanden Berghe NV v. Merinos Carpet Inc.*, 2023 ONSC 6728, at paras. 49 to 55.

be found to have properly assumed jurisdiction where it had a real and substantial connection with the litigants or with the subject matter of the dispute, or where the traditional bases of jurisdiction were satisfied: see *Chevron* at para. 27 and *Tracy v. Iran (Information and Security)*, 2017 ONCA 549 at para. 85.

Once the three elements set out above have been established, the burden shifts to the objecting party to establish the availability of a defence to the recognition of a foreign judgment: see *Tracy* at para. 87. The defences available are fraud, public policy and lack of natural justice: see *Beals v. Saldanha*, 2003 SCC 72 at para. 40.

The test that applies to a default judgment is the same than the test that applies to a judgment after trial: see *Beals* at para. 31.

In order to raise the defence of fraud, a defendant has the burden of demonstrating that the facts sought to be raised could not have been discovered by the exercise of due diligence prior to the obtaining of the foreign judgment: see *Beals* at para. 52.

The defence of lack of natural justice will apply where it is proved, to the civil standard, that the foreign proceedings were contrary to Canadian notions of fundamental justice. The domestic court must be satisfied that minimum standards of fairness have been applied to the defendant by the foreign court. A fair process is one that, in the system from which the judgment originates, reasonably guarantees basic procedural safeguards such as judicial independence and fair ethical rules governing the participants in the judicial system. The defence of natural justice is restricted to the form of the foreign procedure, to due process, and does not relate to the merits of the case. Natural justice includes, but is not limited to, the necessity that a defendant be given adequate notice of the claim made against it and that it be granted an opportunity to defend. See *Beals* at paras. 59-60, 62, 64-65.

The defence of public policy has a narrow application and is not a remedy to be used lightly. It prevents the enforcement of a foreign judgment which is contrary to the Canadian concept of justice. This defence turns on whether the foreign law is contrary to our view of basic morality. For example, it prohibits the enforcement of a foreign judgment that is founded on a law contrary to the fundamental morality of the Canadian legal system or that is rendered by a foreign court proven to be corrupt or biased. This defence does not extend to perceived injustices that do not offend our sense of morality. See *Beals* at paras. 71-72, 75.

*It is appropriate to recognize and enforce the Belgian judgment*

- [13] I conclude that the Belgian judgment was rendered by a court of competent jurisdiction, is for a definite sum of money and is final: *Pro Swing*, at paras. 10-11.
- [14] First, I do not accept Korhani’s submission that the Belgian court did not have a real and substantial connection to the dispute because Korhani did not attend the proceeding. Attornment is one of the traditional bases of jurisdiction, but it is not the only one: *Chevron* at para. 27.
- [15] Here the real and substantial connection between Belgium, the litigants, and the dispute is established because Korhani sent its orders to RVB, a Belgian domiciled company, in Belgium. The orders were processed in Belgium. Importantly, the contract of sale specified Belgium and its courts as the non-exclusive jurisdiction for all disputes. Those circumstances are sufficient to establish a real and substantial connection between Belgium, the litigants, and this dispute. I find that the Belgian was a court of competent jurisdiction and properly assumed jurisdiction because it had a real and substantial connection with the litigants and the subject matter of the dispute.
- [16] Second, there is no evidence to suggest that the Belgian judgment is not final or not for a definite sum of money. I do not understand Korhani to suggest otherwise.
- [17] The burden now shifts to Korhani to establish the availability of a defence to the recognition of a foreign judgment. The defences available are fraud, public policy, and lack of natural justice: *Beals*, at para. 40.
- [18] Korhani submits that it contests the amount owed under the invoices and that recognizing the foreign judgment in such circumstances “would amount to fraud and/or denial of natural justice.” I do not accept this submission.
- [19] The defence of natural justice is restricted to the form of the foreign procedure and does not relate to the merits of the case. The defence of a lack of natural justice only applies where the foreign proceedings were contrary to Canadian notions of natural justice. Korhani led no evidence to suggest that the Belgian court did not apply minimum standards of fairness to it. A fair process is one that reasonably guarantees basic procedural safeguards such as judicial independence and fair ethical rules governing the participants in the judicial system: See *Beals* at paras. 59-60, 62, 64-65.
- [20] Although Korhani submits that it “was unable to defend itself in the [Belgian] proceeding, there is no evidence to support that submission. Mr. Korhani’s affidavit did not address, much less deny, RVB’s evidence that Korhani was served with the Belgian Writ of Summons or that it had actual notice of the proceeding. I do not accept this submission.
- [21] Similarly, there are not facts to suggest that the judgment was obtained by fraud. The fact that Korhani disputes the amounts owing does not establish that the foreign judgment was tainted by fraud.

[22] I find that Korhani has not made out any of the defences to the recognition of a foreign judgment.

***Conclusion***

[23] An order will issue recognizing the Belgian judgment and granting the applicant judgment in Ontario for the Canadian dollar equivalent of the amounts awarded in the Belgian judgment.

[24] In addition, RVB is entitled to interest as set out in the Belgian judgment. I am recognizing and enforcing the Belgian judgment, including the interest rates found in that judgment. Those are the applicable interest rates, not the prejudgment or postjudgment interest rates found in the *Courts of Justice Act*, R.S.O. 1990, c C.43

[25] Both parties filed bills of costs. In my view RVB is entitled to its costs of the proceeding on a partial indemnity basis. I do not accept Korhani's submissions that the amount claimed is too high. The hours, hourly rate, and total amount claimed are very reasonable. I find that it is fair and reasonable for Korhani to pay the amount claimed by RVB. I order the respondent to pay \$10,383.59 in costs of the proceeding, including disbursements and HST, within 30 days of the date of these reasons for decision.

[26] I have signed the judgment in the form presented by counsel for RVB.

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Robert Centa J.

Date: July 26, 2024