

SUPREME COURT OF NOVA SCOTIA

Citation: *Baxter Senior Living LLC v. Advanced Commercial Credit International Limited*, 2024 NSSC 260

Date: 20240905
Docket: 518252
Registry: Halifax

Between:

Baxter Senior Living LLC

Plaintiff

and

Advanced Commercial Credit International (ACI) Limited

Defendant

DECISION

Judge: The Honourable Justice Jamie Campbell

Heard: August 22, 2024, in Halifax, Nova Scotia

Counsel: Manon Landry, for the Plaintiff
Derek Brett, for the Defendant

By the Court:

[1] This is the decision on a motion brought under *Nova Scotia Civil Procedure Rule* 4.07, seeking to have the court decline jurisdiction to hear a matter. It is not about any eventual outcome of the matter. It is not about the merits. It is not a summary judgment motion. It is only about jurisdiction. And courts can have jurisdiction over a matter even if it has no chance whatsoever of succeeding.

[2] Baxter Senior Living LLC wants to enforce a foreign judgment against a Nova Scotia company, Advanced Commercial Credit International. Advanced Commercial Credit International says that Baxter has a judgment but there is no judgment against Advanced Commercial Credit International. There is nothing to enforce against Advanced Commercial Credit International in Nova Scotia, so the court should decline jurisdiction.

[3] Baxter is a limited liability company with its head office in Anchorage, Alaska. It provides assisted living facilities for seniors. Baxter sued Advanced Commercial Credit International in the District Court of the State of Alaska and obtained a judgment against the company identified as Advanced Commercial Credit International on June 30, 2022. There was no appeal filed with respect to the Alaska judgment. Baxter then sought to enforce that judgment, for \$71,318.19 USD in Nova Scotia.

[4] There are however two Advanced Commercial Credit International companies. One is a Nova Scotia company, and the other is incorporated in the Commonwealth of Virginia. Baxter sought to enforce the judgment against the Nova Scotia company. The principal of both companies, Terry Taylor, said that the Nova Scotia company had nothing to do with the transaction that gave rise to the judgment in Alaska. It was the Virginia Advanced Commercial Credit International and not the Nova Scotia Advanced Commercial Credit International that was involved with a financing agreement with Baxter about a seniors' home to be built in Alaska.

[5] Baxter determined in November 2022 that there were in fact two corporate entities, with the same name, Advanced Commercial Credit International, with the same sole shareholder and director, Terry Taylor, of Fall River, Nova Scotia. That information was not before the court in Alaska and Baxter made a motion in Alaska under the Alaskan Rules of Civil Procedure seeking clarification of the June 30, 2022 decision. The relief sought was to clarify whether the judgment against Advanced Commercial Credit International was against only the Virginia

company or also against the Nova Scotia company and another company associated with Terry Taylor.

[6] The District Court of Alaska issued a decision on the motion on August 10, 2023. Baxter's request to have the Nova Scotia Advanced Commercial Credit International added as a co-defendant and co-judgment debtor was denied. The court noted that the company is a separate legal entity which had never been served with a complaint or given an opportunity to answer and defend against Baxter's claims for damages. So, at this point, there certainly appears to be no judgment against the Nova Scotia company, Advanced Commercial Credit International.

[7] The motion by the Nova Scotia incorporated Advanced Commercial Credit International is to have the court decline jurisdiction to hear the enforcement motion. After all, they say, there is nothing to enforce. And on its face that makes for a rather compelling argument. But process matters. As Ms. Landry noted on behalf of Baxter, evidence and argument about whether the judgment against the Virginia incorporated Advanced Commercial Credit can be enforced against the Nova Scotia incorporated Advanced Commercial Credit International are not before the court. The Nova Scotia Advanced Commercial Credit International was not added as a party or as a co-judgment debtor by the Alaskan District Court, but Baxter wants to argue that the judgment can still be enforced against it. The only issue at this stage is whether the court should decline jurisdiction to hear the matter at all. And that determination should be made without prejudging the merits.

[8] The *Court Jurisdiction and Proceedings Transfer Act*, S.N.S. 2003, c. 2, s. 4(d), provides that the court has jurisdiction, or territorial competence, in a proceeding brought against a person if that person is ordinarily a resident in Nova Scotia at the time of the commencement of the proceedings. The "proceedings" here, are the enforcement proceedings brought against the Nova Scotia incorporated Advanced Commercial Credit International. Section 8 of the *CJPTA* provides that a corporation is resident in Nova Scotia if it has its head office in Nova Scotia. And the Advanced Commercial Credit International company that was incorporated in Nova Scotia has its head office in Nova Scotia. It is therefore a resident of Nova Scotia and under s. 4(d) the courts in Nova Scotia have jurisdiction.

[9] Section 4(e) provides as well that the court has jurisdiction if there is a real and substantial connection between Nova Scotia and the facts on which the proceeding against the person is based. The proceeding, again, is the enforcement

proceeding, not the case that gave rise to the judgment. Section 11(k) says that a real and substantial connection is presumed to exist when the claim is for the enforcement of a judgment made inside or outside Nova Scotia. The claim in this case is for enforcement of an Alaskan judgment. This court has jurisdiction to deal with the issue of the enforcement of the Alaskan judgment against the company with its head office here.

[10] The court may still decline to exercise that jurisdiction. Section 12 provides that after considering the interests of the parties and the ends of justice, the court may decline to exercise its territorial jurisdiction on the ground that a court of another state is a more appropriate forum in which to hear the proceeding. Once again, it must be noted that the proceeding in this case, is the enforcement against a Nova Scotia company of an Alaskan judgment. In deciding whether another court is more appropriate in which to hear the matter, the court must consider the circumstances relevant to the proceeding including several enumerated factors. One of them is the comparative convenience and expense for the parties. Advanced Commercial Credit International has its head office in Nova Scotia and its principal is resident in Nova Scotia. Alaska would not be a more cost efficient or convenient forum for a hearing on the issue of enforcement. The law to be applied, as it relates to enforcement of a judgment will be the law of Nova Scotia. The court must consider the desirability of avoiding a multiplicity of legal proceedings and the potential for conflicting judgments. Again, it is critical to distinguish between the subject matter of the Alaskan claim and the enforcement of the Alaskan judgment. The District Court of Alaska has ruled that the judgment was against Advanced Commercial Credit International incorporated in Virginia and not against Advanced Commercial Credit incorporated in Nova Scotia. Whether that judgment can nevertheless be enforced against the Nova Scotia Advanced Commercial Credit International may be a separate and distinct issue for argument.

[11] This court has jurisdiction to decide the issue of whether the Alaskan judgment can be enforced against Advanced Commercial Credit International incorporated in Nova Scotia. There has been no other court in any other jurisdiction identified and shown to be a more appropriate forum to deal with that precise issue. Baxter's argument, that there is no judgment to be enforced, as evidenced by the decision of the District Court of Alaska, is an argument on the merits, for the second stage of the process. It is not an argument that applies to the determination of whether the court has jurisdiction that it should exercise.

[12] The motion by Advanced Commercial Credit International is dismissed.
Costs are awarded in favour of Baxter in the amount of \$1,250, payable forthwith.

Campbell, J.