IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Harder v. InCor Holdings Limited,*
2024 BCSC 1788

Date: 20240809
Docket: S237204
Registry: Vancouver

Between:

**Lorne Harder, Springhill Investments Ltd.
and Harder Investments Ltd.**

Plaintiffs

And:

**InCor Holdings Limited, George Molyviatis, Jocelyn Bennett,
Pangaea Resources Limited, InCor Energy Minerals Limited,
InCor LeadFX Limited Partnership, LeadFX Inc., InCor Holdings PLC
and InCor Services Limited**

Defendants

Before: The Honourable Justice Morley

Oral Reasons for Decision on Territorial Competence

(In Chambers)

Counsel for the Plaintiffs appearing by videoconference:	P. J. Sullivan S. R. Shuchat
Counsel for the Defendants appearing by videoconference:	D. R. Shouldice
Place and Date of Hearing:	Vancouver, B.C. August 7 - 8, 2024
Place and Date of Judgment:	Vancouver, B.C. August 9, 2024

[1] **THE COURT:** These are oral reasons for decision. If a transcript is ordered, I reserve the right to edit it for errors or omissions, to address repetition, to add citations to case authorities. The substance of the reasons will not change, nor will the result.

Introduction

[2] The application is brought by three of the defendants to the underlying action, Pangaea Resources Limited ("Pangaea"), InCor Services Limited ("InCor Services"), and LeadFX Inc. ("LeadFX").

[3] Pangaea, InCor Services and LeadFX say the British Columbia Supreme Court does not have territorial competence over the claims against them under s. 3 of the *Court Jurisdiction and Proceedings Transfer Act*, S.B.C. 2003, c. 28 [*CJPTA*]. The defendants other than Pangaea, InCor Services, and LeadFX all concede that the B.C. Courts have territorial jurisdiction over the claims against them.

[4] The underlying action is brought by a British Columbia investor, Lorne Harder, and his two holding companies against George Molyviatis, Jocelyn Bennett and the corporate defendants (the "InCor Group"). Mr. Harder says he and his companies advanced approximately $11.5 million in loans to the InCor Group with only $2 million being paid back. He says these loans are now due and owing.

[5] The plaintiffs say the Court has territorial competence over their claims against Pangaea, InCor Services and LeadFX under both

a) s. 3(e), where there is a real and substantive connection between British Columbia and the facts on which the proceeding against that person is based; and

b) s. 3(b), which is that during the course of the proceeding that person submits to the court's jurisdiction. This is often referred to as "attornment".

Analysis

[6] In determining the factual basis on which to adjudicate these two questions, the approach is set out by the Court of Appeal in *Ewert v. Höegh Autoliners AS*, 2020 BCCA 181 at paras. 16 and 17:

> [16] At the first stage of the analysis, the plaintiff must show that one of the connecting factors listed in s. 10 exists [s. 10 of the *CJPTA*.] The basic jurisdictional facts relied on by the plaintiffs 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. The role of the chambers judge is not to prematurely decide the merits of the case or to determine whether the pleaded facts are proven on a balance of probabilities; the plaintiff's burden is low: [citations omitted].
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> [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: [citations omitted]. 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": *Club Resorts Ltd. v. Van Breda*, 2012 SCC 17 at para. 95. However, the presumption is strong and "likely to be determinative": [citation omitted]. The burden on the defendant to rebut the presumption [at the second stage] is heavy: [citations omitted]. At this stage of the analysis, a connecting factor is already established: the defendant's task is to show why a real and substantial connection does not follow, despite the strong presumption that it does.

Is There a Real and Substantial Connection Between B.C. and the Facts Alleged Against Pangaea, LeadFx and InCor Services?

[7] The factors that can support a real and substantial connection are set out in a non-exhaustive way at s. 11 of the *CJPTA*. The factors relied on by the plaintiffs differ in relation to each of the defendants and I will take them in turn.

[8] Beginning with Pangaea, the plaintiffs rely on s. 10(e), (f) and (g) of *CJPTA*.

[9] Sub-paragraph 10(e)(i) says a real and substantial connection is presumed to exist if the proceeding concerns contractual obligations, and those were to a substantial extent, to be performed in British Columbia. Sub-paragraph 10(e)(ii) adds that a real and substantial connection is presumed to exist if, by its express terms, the contract is governed by the law of British Columbia.

[10] The amended notice of civil claim states the following at paras. 39 and following:

> 39. On or around June 21, 2021, some or all of the Defendants approached some or all of the Plaintiffs seeking short term advancement funds.
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> 40. Pangaea and InCor Holdings were both parties to the Pangaea Short Term Loan. The Pangaea Short Term Loan was entered into in the Province of British Columbia, is subject to the laws of British Columbia and governed by the laws of British Columbia.
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> 41. Specifically, Molyviatis and Bennett on behalf of Pangaea and InCor Holdings made the following representations to Mr. Harder that:
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> (a) InCor Holdings needed financial assistance;
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> (b) Pangaea Resources was a company owned in majority by Molyviatis and Bennett;
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> (c) InCor Holdings and Pangaea Resources invested in a convertible debenture with Besra Gold Inc., a Malaysian gold exploration company, years ago;
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> (d) Given a sequence of events, which are not admitted to be true, including the fallout of a lender, they required $4,000,000 in funds, in order to advance the IPO of Besra;
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> (e) That they were seeking these funds from me [presumably Mr. Harder] on a “short-term” “for a maximum of 3 months” in order to get the Besra IPO closed;
>
> (f) In exchange for the financial assistance, Springhill would receive 1 million Besra CDI's and security over the assets of Pangaea; and
>
> (g) There would be large benefits to InCor Holdings if Besra completed the IPO, including but not limited to, putting InCor in a position to begin repayments to Springhill on its earlier advancements.

[11] And indeed, there is an email in the record from Ms. Bennett that essentially sets out the statements, or certainly at minimum arguably sets out the statements as set out in the pleading. The pleading goes on to say:

> 42. To induce the plaintiffs to advance the Pangaea Short Term Loan, Bennett and Molyviatis, on behalf of InCor Holdings, and at the direction of Pangaea, provided the plaintiffs with a promissory note (the "June 2021 Promissory Note"). The June 2021 Promissory Note is governed by the laws of British Columbia.

[12] The record reveals that there is a June 21, 2021 promissory note, and it specifically states that it is governed by the laws of British Columbia. The pleading goes on to say:

> 43. Further to the Pangaea Short Term Loan, Bennett and Molyviatis, as representatives of Pangaea, and on behalf of Pangaea, promised that Pangaea would grant security over the assets of Pangaea. Pangaea never provided the written pledge of security as represented by Ms. Bennett and Mr. Molyviatis as authorized representatives of Pangaea.
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> 44. The Plaintiffs, or some of them, relied on these representations, and to their detriment, funds in the amount of $4,000,000 leading to the Pangaea Short Term Loan.

[13] On its face this is an allegation that there was a contract to which Pangaea was a party, that on its terms says it is subject to the laws of British Columbia, which would certainly be sufficient for s. 10(e)(i).

[14] In response to this, Pangaea says it is not a party to that contract, because the promissory note itself does not include Pangaea as a party. This is true, but not determinative. *Both* parties dispute that the promissory note of June 2021 represents the actual agreement between them, albeit in different ways.

[15] Ms. Bennett deposes that, "the June 2021 Note was to be a loan provided by Mr. Harder, through one of his holding companies, to Pangaea directly. However, Mr. Harder required that the June 2021 Note be structured as a loan to InCor for his own tax planning purposes." This provides some confirmation that the original deal was that Pangaea was on the hook for repayment.

[16] The fact that Pangaea is not a party to the promissory note on its face is a basis for a reasonable defence that there was no privity of contract between Pangaea and the plaintiffs in relation to the obligations contained in the promissory note. On the substance, this is a defence that Pangaea can advance and may be successful. However, there is also an argument the plaintiffs may make against Pangaea, namely that the earlier commitment by Ms. Bennett remains in force and it was a promise the Pangaea specifically would provide security over its own assets in respect of the loan subsequently documented in the promissory note.

[17] As the Court of Appeal in *Ewert* warns, it is not for me on an application like this to decide which substantive argument would be successful. Who will succeed will depend on issues of fact and law. The issue is the territorial question of which jurisdiction would be appropriate to determine that. Pangaea is necessarily *relying* on the terms of the promissory note as a defence for itself because its absence as one of the parties to the promissory note is the basis of its privity defence. That promissory note provided that the relevant law is in British Columbia. That means it is *British Columbia's* law of privity of contract that is relevant. The claim "concerns contractual obligations" arising from a contract that, by its express terms, says it is governed by the law of British Columbia. Thus, s. 10(e) applies to the claim against Pangaea.

[18] Section 10(e), in my view and in reviewing the pleadings, also applies to LeadFX. The allegations in the amended notice of civil claim is that loans were advanced to LeadFX. These loans were not, according to both pleadings and the evidence before me, documented. They were "advanced" by an investor in British Columbia based on representations occurring in British Columbia, and so there is at least an arguable case of jurisdiction over any contract that arose in British Columbia, and referring to the amended notice of claim in paragraphs 49 to 54, I am satisfied that that sets out an arguable case that there is contractual obligation in British Columbia and there is no real evidence before me from the defendants to refute that.

[19] Section 10(e) does not apply to the claim against InCor Services, which never had a contract with the plaintiffs, but it is alleged that InCor Services, and indeed also the other two applicants, received monies from the plaintiffs and that they did so in a context in which there was unjust enrichment. Section 10(f) applies if one of the essential elements of unjust enrichment arose in British Columbia.

[20] In this case, there is no question that the alleged deprivation was in British Columbia because this money has come from a British Columbia investor. A juristic reason for the deprivation would inevitably be the existence of a contract and rules of privity of contract, in this case a contract that is or at least arguably is in British Columbia. Therefore, at least two of the essential elements of restitution arise in British Columbia which would be sufficient for a connection under s. 10(f).

[21] The misrepresentation and conspiracy claims are tort claims. They arise in terms of representations essentially that all occur by phone, video or email, with the representee in British Columbia at all or at least most of the material times in which these representations occurred. That is sufficient for there to be a real and substantial connection of these torts with British Columbia.

Have Pangaea, LeadFx and InCor Services Submitted to the Jurisdiction of the B.C. Supreme Court?

[22] In any event, even if there was not a real and substantial connection, all of the defendants filed a response to civil claim, which included specific admission that British Columbia is the appropriate jurisdiction. This was asserted in para. 90 of the original notice of civil claim. The original response to civil claim – filed on November the 3rd – specifically admitted para. 90.

[23] In my view, it is difficult to think of a clearer case of submitting to a Court's jurisdiction than filing a pleading that admits that that Court has jurisdiction. This is not necessary, but it is sufficient.

[24] I have no evidence as to why the defendants did this. They subsequently provided an amended response to civil claim at the end of November that crossed

out that admission, but the admission has not been removed under Rule 7-7(5)(c), and there is no evidence before me that would be the basis for a removal of an admission.

[25] In any event, s. 3(b) of the *CJPTA* makes clear, if in the course of a proceeding a person submits to the Court's jurisdiction, that is sufficient for territorial competence, and so again different questions might arise as to the convenient forum, but just for whether or not there is territorial competence, it is sufficient if a person has submitted to the Court's jurisdiction.

Conclusion and Order

[26] I therefore dismiss this application.

[27] Costs are to the plaintiffs in the cause.

"The Honourable Justice Morley"