

CANADA / JUDGMENT

Buhler v. Lewis

2020 BCSC 485

COURT

Supreme Court of British Columbia

DECIDED

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2020 BCSC 485 Buhler v. Lewis

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Buhler v. Lewis,

2020 BCSC 485

Date: 20200213

Docket: M36567

Registry: Chilliwack

Between:

Amanda Lee Buhler

Plaintiff

And

Keith Robert Lewis, Kelly Roy Travis Buhler

and Willowbrook Motors Ltd.

Defendants

- and -

Docket: M36580

Registry: Chilliwack

Between:

Bailey Douglas Blackstock

Plaintiff

And

Keith Robert Lewis, Kelly Roy Travis Buhler

and Willowbrook Motors Ltd.

Defendants

Before: The Honourable Mr. Justice T. Armstrong

Oral Reasons for Judgment

In Chambers

Counsel for the Plaintiffs in both actions:

T. Zoobkoff

Counsel for the Defendants Buhler and Willowbrook Motors Ltd.:

H. Edmonds (by teleconference)

J. Peterson, Articled Student

Place and Date of Hearing:

New Westminster, B.C.

February 10, 2020

Place and Date of Judgment:

Chilliwack, B.C.

February 13, 2020

Introduction

- [1] THE COURT: This decision concerns claims by the plaintiffs, Amanda Buhler and Bailey Blackstock, for damages for personal injuries suffered by them in a car accident that happened February 14, 2018, in the State of Arizona. If a transcript of these reasons should be required, I reserve the right to edit the transcript to ensure that it accurately reflects my intentions and reasoning. Nothing in the result or the reasoning will change.
- [2] At the time of the accident, the defendant, Kelly Buhler, is alleged to have been driving a vehicle that collided with the vehicle alleged to have been driven by a Keith Lewis. Mr. Buhler's vehicle was apparently owned by Willowbrook Motors Ltd. and both Mr. Buhler and Willowbrook are seeking orders that the plaintiffs' claim be dismissed because the British Columbia Supreme Court lacks jurisdiction to decide their claims or, in the alternative, because British Columbia is not a proper forum for the determination of those claims.

- [3] The plaintiffs' notices of civil claim were filed July 15 and July 16, 2019, respectively. Each notice of civil claim contains an endorsement claiming the right to serve their originating process on the defendant, Keith Lewis, outside of British Columbia. Mr. Lewis has not appeared to this action, although served with the notice of civil claim. The defendants, Willowbrook and Mr. Buhler, filed jurisdictional responses as permitted by Rule 21-8 and rely on subrules (1) and (2) of the Supreme Court Civil Rules, B.C. Reg. 168/2009, requesting the court dismiss the claim on the ground that this court does not have jurisdiction in respect of claims made, or that it should decline to exercise its jurisdiction. The applicant defendants have made this application within 30 days of filing their jurisdictional responses and have not submitted to the jurisdiction of this Court. Their responses were made under R. 21-8(1)(b). Part 2 of the Court Jurisdiction and Proceedings Transfer Act, S.B.C. 2003, c. 28 [CJPTA], and in particular, ss. 3, 10, and 11 are central to this application.
- [4] Both Ms. Buhler and Mr. Blackstock pleaded that they were passengers in a vehicle that was owned by Willowbrook and driven by Mr. Buhler on February 14, 2018 in Arizona. Willowbrook is a registered company in British Columbia with an address on 2nd Street in Sydney, BC. Willowbrook was the registered owner of Mr. Buhler's vehicle and that vehicle was licenced in British Columbia at the time. The notices of civil claim allege that Mr. Buhler and Mr. Lewis were each driving negligently when they caused the collision resulting in the plaintiffs suffering damages. Mr. Lewis' vehicle was apparently licenced in Arizona at the time it struck Mr. Buhler's vehicle on a highway near Phoenix. The allegations against Mr. Buhler and Mr. Lewis suggest that each of them is alleged to have failed to obey a traffic light.
- [5] The plaintiff, Amanda Buhler, has pled that she suffered injuries to her face, neck, and back. She claims to have suffered a concussion, headaches, tinnitus, mood problems, sleep disturbances, and anxiety. Her injuries have resulted in the loss of past and future income. She has incurred and will continue to incur healthcare costs and she claims compensation for her future care needs and claims that she has been deprived of the ability to maintain her own home. She also seeks damages necessary to reimburse the Province of British Columbia for healthcare services paid under various provincial statutes. The foundation of this claim is set out in the Health Care Costs Recovery Act, S.B.C. 2008, c. 27.
- [6] Mr. Blackstock claims injuries limited to his neck, right shoulder, and back. He also claims past and future income loss, future care costs, loss of housekeeping capacity, and costs recoverable under the Health Care Costs Recovery Act.
- [7] In their applications, the defendants contend that the Supreme Court of British Columbia does not have jurisdiction to decide the issues in this litigation and, alternatively, invite the court to decline to hear the plaintiffs' actions for damages because this jurisdiction is a *forum non conveniens*.

- [8] The plaintiffs raise a preliminary objection concerning the admissibility of evidence in affidavits sworn by the defendants' solicitors. They contend that all of the defendants' evidence is essentially hearsay evidence and inadmissible because the question to be answered may result in a final order. They say Rule 22-2(12) and 22-2(13) preclude admission of hearsay evidence or evidence based on information and belief where the applicant is seeking a final order. On this application, the defendants have made no request under R. 22-2(13)(b)(ii) for leave of the court to accept evidence based on information and belief or from some other person or source. The plaintiffs contend that if the defendants are successful on this application, their actions would be dismissed or stayed and the result would be in essence a final order. Thus, they contend that because the application is for a final order and there are burdens of proof on the defendants, information obtained from others is not admissible.
- [9] Overall, the defendants accept that Willowbrook is a British Columbia corporation resident in BC and that Mr. Buhler is, for the purposes of this application, a resident of BC. The plaintiffs rely on s. (3)(d) of the CJPTA to establish territorial competence in this court to allow the action to proceed in B.C. It also suggests there is a real and substantial connection between British Columbia and the facts on which this claim is based. The defendants contend there is no real or substantial connection between the plaintiffs' claims and the British Columbia courts. The facts determining whether a real and substantial connection exists are set out in s. 10 of the CJPTA.

Analysis

- [10] The parties are agreed that I must make two findings in order to dispose of the applications: first, I must decide if British Columbia has territorial competence to decide the issues, and second, I must decide if the defendants have established that British Columbia is a forum non conveniens for this litigation. Questions of jurisdiction and forum conveniens are now based on the provisions of the CJPTA. Section 1 of the CJPTA defines the term "territorial competence," what used to be described as "jurisdiction simpliciter," as follows:

"territorial competence" means the aspects of a court's jurisdiction that depend on a connection between

- (a) the territory or legal system of the state in which the court is established, and
- (b) a party to a proceeding in the court or the facts on which the proceeding is based.

The terms "territorial competence" and "jurisdiction" are interchangeable in this application.

Territorial Competence

- [11] A finding of territorial competence depends exclusively on the rules set out in the CJPTA: see *Stanway v. Wyeth Pharmaceuticals*, 2009 BCCA 592, at para. 12. Section 2 of the Act provides as follows:

- (1) In this Part, "court" means a court of British Columbia.
- (2) The territorial competence of a court is to be determined solely by reference to this Part.

[12] The substantive rules for determining territorial competence are set out in s. 3 which provide as follows:

A court has territorial competence in a proceeding that is brought against a person only if

- (a) that person is the plaintiff in another proceeding in the court to which the proceeding in question is a counterclaim,
- (b) during the course of the proceeding that person submits to the court's jurisdiction,
- (c) there is an agreement between the plaintiff and [the defendant] to the effect that the court has jurisdiction in the proceeding,
- (d) that person is ordinarily resident in British Columbia at the time of the commencement of 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.

[13] In *The Original Cakerie Ltd. v. Renaud*, 2013 BCSC 755 [Original Cakerie], Madam Justice Ballance outlined the evidentiary requirements of the facts to be established by a plaintiff asserting territorial competence. She said (para. 22):

A determination of the court's territorial competence starts with an examination of the plaintiff's pleadings. Where the plaintiff pleads circumstances that give rise to the presumption of a real and substantial connection under s. 10, it need not support its allegations with evidence. Where jurisdictional facts are not pleaded, it is open to the plaintiff to adduce affidavit evidence to raise the presumption of territorial competence. In cases where the defendant tenders evidence that challenges the plaintiff's jurisdictional facts or to demonstrate that the plaintiff's claim is tenuous or without merit, the plaintiff is required to adduce evidence that satisfies the court that it has a good, arguable case that the contentious facts can be established [see] *Purple Echo Productions, Inc. v. KCTS Television*

The court said (para. 23):

Jurisdictional facts need not be established on the balance of probabilities. The court is not tasked with making a determination as to whether those jurisdictional facts are actually true. The judicial objective at this early stage of the litigation is to determine whether there are facts, alleged or deposed which, if true, would provide a foundation for jurisdiction. The applicable burden is to establish an arguable case.

[14] In that case, Madam Justice Ballance was referring to the real and substantial connection test under s. 10, but she said that the facts pleaded by the plaintiff triggering one or more of the assumptions under s. 10 was all that was required. In my view, the same principle

applies to a consideration of the facts under s. 3(c) of the CJPTA. Once a plaintiff has demonstrated the jurisdictional facts establishing territorial competence, the burden shifts to the defendant to displace the plaintiff's choice: see *Environmental Packaging Technologies, Ltd. v. Rudjuk*, 2012 BCCA 343, at para. 37.

[15] The defendants acknowledge that Willowbrook is ordinarily resident in BC at the time of the commencement of the action. However, they initially argued that Mr. Buhler was not ordinarily resident in BC at the commencement of the proceeding. There was no evidence concerning the relationship between Mr. Buhler and Willowbrook or the reasons that Mr. Buhler was driving Willowbrook's vehicle in Arizona. It may very well have been a leased vehicle. I simply do not know. The application that was filed January 16 included a statement in the affidavit of Henry Edmonds made January 14, 2020. That affidavit contained mostly hearsay evidence, some of which reflected information he obtained from Mr. Buhler and other information obtained from a review of documents. He filed a second affidavit on January 16 reporting on a conversation he had with the defendant, Mr. Buhler, indicating that Mr. Buhler's residence may have changed in the spring of 2019.

[16] I have no doubt that the plaintiffs might have taken out an appointment to examine Mr. Buhler if he had provided affidavit evidence indicating when, if ever, he had moved out of British Columbia before commencement of this proceeding.. On this point, there is no affidavit from Mr. Buhler concerning his residence on the date the claims were commenced. Counsel for the defendants said in his first sworn affidavit, January 14, 2020:

At the time of the commencement of the proceedings when the notice of civil claim was filed on July 15, 2019, it is unknown whether Buhler, the defendant, was a B.C. or an Alberta resident. In a phone call with me on November 19, 2019, Buhler informed me that he moved to Alberta sometime after the accident.

[17] That assertion was reinforced by Mr. Edmonds' second affidavit in which it is indicated Mr. Buhler informed him that, in fact, he had moved to Alberta in the spring of 2019. On an extremely important point, Mr. Edmonds' hearsay evidence cannot be accepted as evidence of those facts based on information and belief because the defendants seek a final order to dismiss the plaintiffs' claim.

[18] In *Araya v. Nevsun Resources*, 2016 BCSC 1856, Mr. Justice Abrioux, as he then was, articulates the law concerning affidavit evidence admissible for applications under Rule 22-2:

[144] Since Nevsun is seeking final orders on two of the preliminary applications, I agree with the plaintiffs that hearsay evidence is permissible in affidavits filed in response to these applications pursuant to Rule 22-2(13)(b)(i) of the Supreme Court Civil Rules, and not permissible in affidavits filed in support of these applications.

- [145] This is consistent with the approach in Alberta, where the applicant who seeks to dismiss an action on the ground of lack of jurisdiction seeks a final disposition of the action, and, like other applicants for summary judgment, cannot rely on hearsay. The respondent, not seeking to dispose of the action but rather that it proceed to trial, may rely on hearsay: *Court v. Debaie*, 2012 ABQB 640
- [19] Paragraphs 3, 4, 7, and 8 of Mr. Edmonds' first affidavit are all assertions of fact based on some type of information and belief and hearsay. In some instances, there is no source of the information and belief listed and I am of the view that reliance on information and belief and the failure to articulate the source is also fatal to allegations set out in that part of the affidavit.
- [20] Thus, on this application, there is very little evidence from the defendants that can be relied upon under either issue that must be decided. The notice of civil claim contains the allegations that Mr. Buhler resided at Box 1313 Pritchard, BC, when the notice of civil claim was filed. Moreover, in the end, I understood that the defendants had conceded during the argument of their application that for the purposes of the application, Mr. Buhler was a resident in BC at the time the NOCCs were filed. Further, s. 7 of the CJPTA stipulates the circumstances constituting Willowbrook as a corporation ordinarily resident in BC for the purposes of establishing territorial competence under s. 3(d). It had a registered records office in British Columbia and is thus ordinarily resident in this province.
- [21] Overall, I am satisfied that this court has territorial jurisdiction in this proceeding on the pleadings. Based on the pleadings alone, I accept the allegation that Mr. Buhler was driving at the time of the collision, was a resident of British Columbia, that Willowbrook was a corporation ordinarily resident in British Columbia at the time of the commencement of the proceeding, and that those two facts as prescribed under s. 3(d) of the CJPTA create in this court territorial competence to decide the case.
- [22] The defendants are entitled to rebut this presumption of jurisdiction and establish facts which demonstrate the presumptive factors do not point to any relationship or a weak relationship between the subject matter of the litigation and the forum chosen by the plaintiff. The defendants contend that Mr. Lewis resides in Arizona and this court has no jurisdiction over him. Again, that is a fact which is not established on this application, albeit it is referred to in documents appended to Mr. Edmonds' affidavit.
- [23] One example of circumstances where the plaintiff's claim against a corporation has no real or substantial connection to a province may be where an action is commenced and the litigation against a corporation is not related to the defendants' business activities in the province chosen by the plaintiff. In this case, there is no evidence concerning the role of Willowbrook or its connection with the plaintiffs' or the defendants' activities at the time of the accident. Overall, the burden of proving insufficient connecting factors rests with the defendant in this case and, on that point, nothing has been established.

- [24] The defendants argued that notwithstanding the fact that the plaintiffs and two defendants in the proceeding were ordinarily resident in British Columbia, there was still no real or substantial connection to British Columbia. They referred to *Williams v. TST Porter dba 6422217 Canada Inc.*, 2008 BCSC 1315 [Williams], a decision of Mr. Justice Hinkson, as he then was, and the comment that the mere registration of a corporate defendant in British Columbia could not be used to bootstrap a claim and permit a claim to proceed in this province where no other defendants reside in British Columbia. In this case, the defendants contend they have demonstrated an absence of substantial connection similar to those factors set out in Williams and thereby have rebutted the presumptive connecting factors.
- [25] In Williams, the court concluded that the merely establishing residence of the plaintiff in British Columbia and residence of the corporate defendant were insufficient to meet the test under s. 3(e) of the CJPTA and was not substantial connection between British Columbia and the facts on which the plaintiff proceeded against the defendants. However, in this case, Mr. Buhler was resident in British Columbia at the time these proceedings were commenced and that fact creates a significant distinction between the facts set out in Williams.
- [26] In *Club Resorts Ltd. v. Van Breda*, 2012 SCC 17 [Club Resorts], the Supreme Court of Canada decision that I was referred to, LeBel J. said there were some factors that were presumptively connecting. However, he said that neither the presence of the plaintiff in the jurisdiction or the fact that damages were sustained in the jurisdiction or the combined effect of a number of non-connecting factors would support the finding of presumptive connecting factors, see paras. 86, 89, and 93. The facts in this case are different. The two defendants, a driver and an owner, reside in British Columbia as does the plaintiff. The owner of the vehicle is vicariously liable for the tort of the driver, see the Motor Vehicle Act, R.S.B.C. 1996, c. 318, s. 86. I thus conclude that the evidence relied on by the defendants and the circumstances do not support a conclusion that there is an absence of substantial connection and Williams does not assist the defendants on this application.

Forum Non Conveniens

- [27] Next, the defendants claim that notwithstanding the court's jurisdiction, the court should decline to exercise jurisdiction because BC is a forum non conveniens and this court should not decide the case. I have found the court has territorial jurisdiction for the reasons noted above. Section 11 of the CJPTA requires the court to engage in an analysis of the forum conveniens based on s. 11(2) and the authorities cited below. The limitation period for this action, I was told, will expire February 14, 2020. I am informed that neither counsel is aware of any proceedings commenced in the State of Arizona. The defendants carry the burden to establish the existence of a more appropriate forum in this litigation. The test is set out in *Club Resorts* at para. 103:

If a defendant raises an issue of forum non conveniens, the burden is on him or her to show why the court should decline to exercise its jurisdiction and displace the forum chosen by the plaintiff. The defendant must identify another forum that has an appropriate connection under

the conflicts rules and that should be allowed to dispose of the action. The defendant must show, using the same analytical approach the court followed to establish the existence of a real and substantial connection with the local forum, what connections this alternative forum has with the subject matter of the litigation. Finally, the party asking for a stay on the basis of forum non conveniens must demonstrate why the proposed alternative forum should be preferred and considered to be more appropriate.

[28] The court should decline to hear an action on the basis of forum non conveniens only in exceptional circumstances: see *Spar Aerospace Ltd. v. American Mobile Satellite Corp.*, 2002 SCC 78, at paras. 77 to 79. It has been said that s. 11 is a complete codification of the forum non conveniens test and is to be applied without exception. Section 11 provides the following stipulations:

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.

(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,
- (b) the law to be applied to issues in the proceeding,
- (c) the desirability of avoiding multiplicity of legal proceedings,
- (d) the desirability of avoiding conflicting decisions in different courts,
- (e) the enforcement of an eventual judgment, and
- (f) the fair and efficient working of the Canadian legal system as a whole.

[29] In *JTG Management Services Ltd. v. Bank of Nanjing Co. Ltd.*, 2015 BCCA 200 [JTG Management] at paras. 20 to 23, the court expanded on some of the considerations to be included in this analysis. It said that in determining whether to decline to exercise territorial competence over the dispute, the judge must consider each of the enumerated factors set out in 11(2) and may consider the factors discussed in *Original Cakerie*. These include:

where each party resides;

where each party carries on business;

where the cause of action arose;

where the loss or damage occurred;

any juridical advantage to the plaintiff in this jurisdiction;

any juridical disadvantage to the defendant in this jurisdiction;
the convenience or inconvenience to potential witnesses;
the cost of conducting the [litigation] in this jurisdiction;
applicable substantive law;
the difficulty and cost of providing foreign law, if necessary;
where there are parallel proceedings in any other jurisdiction.

[30] The court went on to say (para. 23):

I note that the factors discussed in *The Original Cakerie Ltd.* decision are based on the plain language of s. 11(2) and are additional factors that a court may but is not required to consider in determining whether to decline to exercise territorial competence. The only inquiry mandated by the Act is a consideration of the enumerated factors in s. 11(2) (as these are the factors that the court "must" consider). A court need not limit its consideration to these factors, as *The Original Cakerie Ltd.* case illustrates. Those factors are simply a more detailed articulation of the criteria set out in s. 11(2) (notably having to do with location of the parties or avoiding having a multiplicity of proceedings)

[31] In the *Club Resorts* case, the court reiterated that seeking a stay on the basis of *forum non conveniens* requires the applicant to show that an alternative forum is clearly more appropriate. The defendants in this case seek to depart from the normal state of affairs and it is their burden to show that it would be fairer or more efficient to do so and that the plaintiff should be denied the benefit of his or her decision to select BC as the appropriate forum under the conflict rules, see para. 109.

[32] The court should not grant a stay solely because there are comparable forums in other states capable of deciding the question. In the circumstances of this case, the defendants are obliged to establish that Arizona was in a better position to dispose thoroughly and efficiently of the litigation. The Supreme Court of Canada also observed that different states can properly entertain actions and supply substantive law of another state or country where the case is heard; that is, the differences in laws between British Columbia and Arizona are not impediments to the territorial competence of the BC court. The defendants made the point that, relying on a decision of *Wong v. Wei* (1999), 65 B.C.L.R. (3d) 222, 8 B.C.T.C. 251 (BCSC) [Wong], the laws of British Columbia could be applied to determine the heads of damage and measure of the quantification of damages despite the accident occurring outside BC.

[33] I will address the considerations mandated by ss. 11(2)(a) to (f) as relied upon by the defendants in their argument. Counsel made no comment on the additional factors referred to in *JTG Management*. The defendants argue that the tort occurred in Arizona and that the law of that state governs the claim. The defendants, again referring to Wong, addressed the question of an accident in the State of California that was to be tried in British Columbia. In

that case, there was no difficulty with trial in British Columbia because the BC driver in the California accident had conceded that they would attorn to the jurisdiction of the court. That case simply decided that the heads of damage and measure of the damages would be decided in British Columbia. Nevertheless, the *lex loci* was determined to be California. The result was confirmed in *Somers v. Fournier*, [2001] O.T.C. 501, 106 A.C.W.S. (3d) 429 (Ont. SCJ), another case provided to me by defence. Thus, it seems to me there is no bar to the British Columbia court deciding heads and quantum of damage in this case.

- [34] The defendants argue that Mr. Lewis is a resident of Arizona and that there is a strong possibility of conflicting judgments between Arizona and BC. Thus, they say s. 11(2)(d) should persuade this court that Arizona is a more appropriate forum to hear the proceeding. The plaintiffs contend that there is no admissible evidence to support any of the defendants' assertions concerning the forum conveniens analysis. Because this is an application for a final order, reliance on hearsay evidence is not permitted and, thus, I cannot take into account the alleged fact that Mr. Lewis currently resides in Arizona, although I was told that he had an insurance representative who had been in contact with some counsel in this matter. Thus, the pleadings that allege that Mr. Lewis resides in Arizona are accepted for the purpose of the application alone.
- [35] I pause to observe that the limitation period is expiring on Friday and that there is no evidence before me concerning anything that has happened or that might have been happening in the State of Arizona concerning Mr. Lewis. Thus, this late in the day, I do not accept that there is a strong possibility of conflicting judgments between Arizona and British Columbia. That is the type of information, supported by admissible evidence, that must be adduced by the defendants.
- [36] In argument, the defendants pointed out that videoconferencing can lessen the inconvenience and expense to a party whose witnesses are out of the jurisdiction. Of course, those considerations affect both parties. The defendants invited me to conclude that the plaintiffs could with little inconvenience and some extra cost appear by video; the plaintiffs and their witnesses could appear by video connection with courts in the State of Arizona and, thus, the conduct of the case in that jurisdiction would not be deleterious to the plaintiffs' interest. This is a consideration that operates whichever court the case proceeds in. I conclude that the availability of videoconferencing is really a neutral factor and does not improve the defendants' claim that BC is a forum non conveniens.
- [37] I infer that the overwhelming need for the plaintiffs to prove their claims would involve a substantial number of more witnesses travelling to Arizona to prove the plaintiffs' case, including experts, and that nothing in terms of making a finding that Arizona is the more appropriate forum is affected or influenced by the availability of videoconferencing. I accept that the plaintiffs and their medical witnesses might be able to appear, but that process is usually less convenient and oftentimes less effective than personal appearances in court. That is the very reason that witnesses ordinarily are invited to testify in the presence of the court. Overall, I am not satisfied that the evidence presented by the defendants about

technology confirms that Arizona is a place that is a better jurisdiction to decide this proceeding. There was no evidence on whether or not Arizona is a jurisdiction that would accept video technology, in any event, and thus I am not able to conclude on that basis that Arizona would be a better place for this case to be tried.

- [38] There is no helpful evidence on the eventual enforcement of judgment against Mr. Lewis in Arizona. Any comment on that issue is entirely speculative. It must be repeated, that if this application is successful, final judgment and dismissal of the plaintiff's claims in BC will occur.
- [39] In the absence of affidavit evidence from someone in Arizona explaining the enforcement or the enforceability of British Columbia judgments in Arizona, there seems to be no indication on the evidence that Arizona would be a preferable or a more convenient forum for this case.
- [40] Lastly, the defendants do not suggest that the fair and efficient working of the Canadian legal system will be impacted by a decision favouring British Columbia as the appropriate forum as opposed to Arizona. Neither party provided legal opinions concerning the advantages or disadvantages of this litigation proceeding in Arizona or BC.
- [41] In the result, I am not satisfied that the defendant has met the burden of establishing that British Columbia is a forum non conveniens for this litigation and this dispute.

Conclusion

- [42] In the result, the application of the defendants is dismissed.
- [43] THE COURT: Okay. I think it is appropriate in the circumstances and given the nature of the application that the plaintiffs have their costs --
- [44] MR. EDMONDS: Very good, My Lord.
- [45] THE COURT: -- of this application. Thank you.

"Armstrong J."

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