
CANADA / JUDGMENT

Miller v. Monit International Inc.

2001 SCC 13

COURT

Supreme Court of Canada

DECIDED

1 March 2001

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Miller v. Monit International Inc.

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Neutral citation

2001 SCC 13

Report

[2001] 1 SCR 432

Case number

27307

Judges

McLachlin, Beverley; L'Heureux-Dubé, Claire; Gonthier, Charles Doherty; Iacobucci, Frank; Major, John C.; Bastarache, Michel; Binnie, William Ian Corneil; Arbour, Louise; LeBel, Louis

On appeal from

Quebec

Subjects

Civil procedure

Courts

Notes

SCC Case Information: 27307

Decision Content

Miller v. Monit International Inc., [2001] 1 S.C.R. 432, 2001 SCC 13

Monit International Inc. Appellant

v.

Bernard Miller Respondent

Indexed as: Miller v. Monit International Inc.

Neutral citation: 2001 SCC 13.

File No.: 27307.

Hearing and judgment: November 1, 2000.

Reasons delivered: March 1, 2001.

Present: McLachlin C.J. and L'Heureux-Dubé, Gonthier, Iacobucci, Major, Bastarache, Binnie, Arbour and LeBel JJ.

on appeal from the court of appeal for quebec

Civil procedure – Declinatory exceptions – Lack of jurisdiction by reason of subject matter – Crown leasing premises used by international organization for its head office from building owner – Former employee of organization bringing action against owner seeking damages for health problems allegedly suffered because of inadequate air quality in building – Owner bringing motion to dismiss for lack of jurisdiction – Whether Superior Court has jurisdiction to hear claim – Code of Civil Procedure, R.S.Q., c. C-25, arts. 31, 164.

Courts – Jurisdiction – Civil claim for damages – International organizations – Immunity – Crown leasing premises used by international organization for its head office from building owner – Former employee of international organization bringing action against building owner seeking damages for health problems allegedly suffered because of inadequate air quality in building – Whether Superior Court has jurisdiction to hear claim – Code of Civil Procedure, R.S.Q., c. C-25, art. 31.

The respondent M was employed as an interpreter by the International Civil Aviation Organization (“ICAO”). The appellant (“Monit”) owned the building in Montreal where, pursuant to a lease agreement with the federal Crown, ICAO’s head office was situated. M brought an action against the Crown and Monit seeking damages for health problems he alleged he suffered because of inadequate air quality in the building. At trial, Monit brought a motion to dismiss for lack of jurisdiction pursuant to art. 164 of the Code of Civil Procedure. The Superior Court dismissed the motion, and that decision was upheld by a majority of the Court of Appeal.

Held: The appeal should be dismissed. The Superior Court is competent to hear the claim.

For the reasons stated in *Miller v. Canada*, the success or failure of this action at trial has nothing to do with the internal operations of the international organization. Despite its lease agreement with the Crown, Monit, as owner, remained responsible for ensuring that the premises were maintained in a manner that ensured safe occupancy. Monit's claim that the inviolable nature of the ICAO headquarters prevented its entrance into the premises is not supported by the evidence. M presented evidence that Monit was the only party in control of the air and ventilation system. This evidence suggests that ICAO was only one of many lessees in that building. It also suggests that people regularly entered the building and that both the Crown and Monit were given permission to enter the actual ICAO premises on numerous occasions owing to the air problems.

There is no reason to remove M's right to bring a legal action in the ordinary courts of Canada merely because of evidentiary difficulties that Monit may face. This is not a jurisdictional matter, but one for the trial judge. In any event, any evidence required by Monit should already be within its control. If ICAO truly had no control over the ventilation system, any evidence with respect to the maintenance of the building and the ventilation system, including remedial work completed, would be within the control of Monit rather than ICAO.

Cases Cited

Applied: *Miller v. Canada*, [2001] 1 S.C.R. 407, 2001 SCC 12.

Statutes and Regulations Cited

Code of Civil Procedure, R.S.Q., c. C-25, arts. 31, 164.

Headquarters Agreement between the Government of Canada and the International Civil Aviation Organization, Can. T.S. 1992 No. 7, arts. 4, 21, 32, 33.

Supplementary Agreement between Canada and the International Civil Aviation Organization, Can. T.S. 1980 No. 18, arts. II, VI, VII.

APPEAL from a judgment of the Quebec Court of Appeal, [1999] R.J.Q. 719, [1999] Q.J. No. 754 (QL) (sub nom. *Canada v. Miller*), dismissing the appellant's appeal from a judgment of the Superior Court, [1998] R.J.Q. 260, [1997] Q.J. No. 4022 (QL) (sub nom. *Canada v. Miller*), dismissing the appellant's declinatory exception. Appeal dismissed.

Paul A. Melançon and Hugues Duguay, for the appellant.

Leonard E. Seidman and Sabrina Seal, for the respondent.

The judgment of the Court was delivered by

1 Bastarache J. — This appeal raises the issue of whether the Court of Appeal was correct to find that the Superior Court of Quebec has jurisdiction over a civil claim commenced against a Canadian corporation by a former employee of an international organization located in Quebec for damages suffered at his place of employment.

2 This case was heard on November 1, 2000 in conjunction with *Miller v. Canada*, [2001] 1 S.C.R. 407, 2001 SCC 12, released concurrently, which raises a similar issue. This appeal was dismissed from the bench with reasons to follow.

I. Factual Background

3 The respondent Bernard Miller is a British citizen who, between January 2, 1990 and May 7, 1994, was employed as an interpreter for the International Civil Aviation Organization (“ICAO”), which is a specialized agency of the United Nations. At all material times, Monit International Inc. was the owner of 1000 Sherbrooke Street West in Montreal where, pursuant to a lease agreement with Her Majesty the Queen in Right of Canada (“the Crown”), the head office of ICAO was situated.

4 The facts in this case are essentially those summarized in *Miller v. Canada*.

5 Miller alleges that Monit, and not ICAO, was responsible for building maintenance, heating, cooling and ventilation, and that, in that role, Monit employed all building services staff and operated the aforementioned equipment for ICAO and other lessees of the building. Further, he alleges that through a variety of acts, Monit contributed to the air quality problem in the building.

6 Miller further alleges that Monit was aware of the air quality problems and failed to warn him and other employees of the risk to their health. Both the Crown and Monit had tried to fix problems with the air quality in the building, but were unsuccessful.

7 Miller claims that he is unable to work due to his present medical condition. He has brought an action against the Crown and Monit seeking damages in the amount of \$2,164,585.46 jointly and severally, as well as \$25,000 in punitive damages against Monit. The claim against Monit is based on the argument that, as owner of the building, Monit was responsible for the poor air quality in the building and, having been aware of this health hazard, it is liable for its failure to warn the employees of ICAO of the resulting danger to their health. At trial, Monit brought a motion to dismiss for lack of jurisdiction pursuant to art. 164 of the Quebec Code of Civil Procedure, R.S.Q., c. C-25. The Quebec Superior Court denied the motion; this decision was appealed to the Quebec Court of Appeal and was heard in conjunction with *Miller v. Canada*. The appeal was dismissed, Mailhot J.A. dissenting.

8 Monit alleges that Miller's claim falls entirely within working conditions and thereby exclusively within the area of labour relations. It argues that this subject matter is totally governed by the ICAO Service Code and, pursuant to the international agreements between ICAO and the Canadian government, the administrative regime in the Service Code must be followed. As such, the Superior Court does not have jurisdiction to hear these claims.

9 Miller argues, and the Superior Court and Court of Appeal agreed, that the claim is not based on his employment relationship, but rather, on the extra-contractual delictual acts of Monit. Therefore, the international immunity from which ICAO benefits cannot be afforded to Monit and, since this dispute is not between the respondent and his employer, nor between the Crown and ICAO, the Superior Court is competent to hear the case on its merits.

II. Statutory Framework

10 Code of Civil Procedure, R.S.Q., c. C-25

31. The Superior Court is the court of original general jurisdiction; it hears in first instance every suit not assigned exclusively to another court by a specific provision of law.

Headquarters Agreement between the Government of Canada and the International Civil Aviation Organization

Article 4

Inviolability of premises

- (1) The headquarters premises of the Organization shall be inviolable.

...

- (3) The property and assets of the Organization, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial, or legislative action, except with the consent of and under the conditions agreed to by the Secretary General of the Organization. This section shall not prevent the reasonable application of fire protection regulations.

Article 21

Purpose of privileges and immunities

- (1) Privileges and immunities under Articles 19 and 20 are accorded to officials in the interests of the Organization and not for the personal benefit of the individuals themselves. The Secretary General of the Organization shall have the right and the duty to waive the immunity of any official in any case where, in his opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the Organization. In the case of the President of the Council and the Secretary General of the Organization, the Council of the Organization shall have the right to waive the immunity.

- (2) Without prejudice to their privileges and immunities, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of Canada. They also have a duty not to interfere in the internal affairs of Canada.

Article 33

Other Disputes

The Organization shall make adequate provision for appropriate modes of settlement of:

- (a) disputes arising out of contracts or other disputes to which the Organization is a party;
- (b) disputes involving any officials of the Organization if their immunity has not been waived in accordance with Article 21.

Supplementary Agreement between Canada and the International Civil Aviation Organization

Article II

Obligations under the Lease

1. Taking into consideration that the said premises are rented solely and exclusively for the needs of the Organization's Headquarters, the Government of Canada shall, as the Lessee, assure that the Lessor complies with its obligations as specified in the lease or as they may be prescribed in the Civil Code of the Province of Quebec or under any other law.
- ...
3. Notwithstanding any references in this Supplementary Agreement to the Lease between the Government of Canada and the owner of the premises, the mutual rights and obligations of the Government of Canada and the Organization with respect to the Headquarters premises shall be governed by this Supplementary Agreement.

Article VI

Settlement of Disputes

Any dispute between the Organization and the Government of Canada concerning the interpretation or application of this Supplementary Agreement shall be settled in accordance with Article VII, Section 31, of the Headquarters Agreement.

Article VII

Court actions

1. Without prejudice to the privileges and immunities of the Organization as defined in the Headquarters Agreement, the Government of Canada reserves its right to refer any cause of action related to the Lease to the competent courts of Canada.

2. The Organization shall, in such circumstances, facilitate the proper administration of justice and assist the Government of Canada by providing all relevant evidence.

III. Judicial History

11 Benoît J. and the Court of Appeal heard this case together with the companion case, *Miller v. Canada*. In their reasons, they referred to the Crown rather than Monit in dealing with what appear to have been identical submissions. It is for this reason that reference is sometimes made to the Crown rather than Monit in the following description of the case history.

A. Quebec Superior Court, [1998] R.J.Q. 260

12 Benoît J. held that the Superior Court has jurisdiction to hear the respondent's claims. He reviewed the contractual relationships between the parties and held that there was no contractual link between Monit and Miller, nor any contractual obligations owed by Monit to Miller.

13 According to Benoît J., any litigation between Monit and ICAO, or between Miller and ICAO, is outside the jurisdiction of the Superior Court because of the Organization's immunity from all legal suits and the available recourse to an international administrative body. Further, any litigation between Miller and his employer would be governed by the ICAO Service Code provisions.

14 Benoît J. also found that art. 32 of the Headquarters Agreement only concerns the parties to the Agreement and art. 33(b) only involves claims against an ICAO employee where immunity has not been lifted. As such, neither is applicable in the present case.

15 Monit argued that the act of signing the lease by the Crown was an international obligation falling within the *jure imperii* rule and, therefore, the Canadian courts have no jurisdiction over matters related to the lease. Benoît J. held that, although the act of signing the agreements is a *jure imperii* act of Canada, Miller's claim is not based on the lease nor on the agreements, but, instead, on Monit's failure to properly maintain its building and failure to warn of the dangers therein.

16 Monit also alleged that the only recourse available for unsafe working conditions is before the international administrative tribunals. Benoît J. held that the obligation to provide a healthy working environment only falls within "working conditions" if it is within the control of the employer. Benoît J. noted that Miller had alleged that Monit was invited into the premises by ICAO, was aware of toxic substances in the air and did not warn him of the resultant danger to his health; he held that the legal issues are therefore those of establishing causation and damages, which have to be determined on the merits. Benoît J. stated that, whether the person to be warned was an international employee or not, the obligation remained the same and the Superior Court is competent to hear the extra-contractual claim.

17 Finally, Benoît J. found that, since Miller was not claiming employee benefits from his employer in this suit and that there was no possibility of contradictory judgments or double indemnity, the forum non conveniens rule was not applicable.

B. Quebec Court of Appeal, [1999] R.J.Q. 719

Nuss J.A.

18 The majority of the Court of Appeal dismissed the appeal, thereby confirming that the Quebec Superior Court has jurisdiction to consider the respondent's claim. The Crown's position, adopted by Monit, was that, because Miller was an employee, anything to do with employee/employer relations was covered by the immunity and privileges of international organizations. Nuss J.A. held that the Superior Court was correct in emphasizing that Miller's claim was not against ICAO and held that the Crown, and impliedly Monit, could not clothe itself in the privilege and immunity vested in international organizations.

19 The Crown argued that all obligations of the Canadian government, if any, flowed from the agreements; Nuss J.A. held that Miller was not a party to these agreements and not bound by them. As such, the relationship of the Crown to ICAO was not relevant.

20 Nuss J.A. held that if the Crown, and impliedly Monit, harmed a person, saving a case where domestic law had given them immunity, they may be sued in Canadian courts. There is no principle of law providing that, because a party is involved with an international organization, it is not subject to an action filed in Canadian courts.

21 The Crown argued that, because Miller was covered by the ICAO Service Code, his recourse must follow the rules in the Code, which do not authorize suits against it. This was also the position of Monit. Nuss J.A. held that these rules apply to cases involving Miller and ICAO, and here, Miller is not bringing an action against ICAO. Further, even if the alleged acts did occur during the respondent's employment with ICAO, immunity from suit that vests in ICAO is not transferred to the Crown nor, impliedly, to Monit.

22 Monit relied on the Crown's argument but Nuss J.A. held that it did not have the status of the Crown nor Canada's relationship with ICAO or the United Nations. Thus, Nuss J.A. found that the status of Monit is no different than that of any other person in Quebec who commits an act for which he or she is extra-contractually responsible.

Mailhot J.A. (dissenting)

23 Mailhot J.A. agreed with almost all aspects of Monit's claim which relied heavily on the arguments of the Crown in the parallel case and would have allowed the appeal. She held that Miller's declaration clearly shows that actions occurring during his employment are the basis of the claim and that the building has territorial immunity due to the Headquarters Agreement. These claims are tied to the working conditions and Miller's health problems which manifested themselves as soon as he started working in his office on the 13th floor and in the interpretation booths.

24 Mailhot J.A. held that there was nothing in the agreements permitting an employee to sue the Crown, and impliedly Monit, for working conditions inside the building, but they do include provisions stating a mechanism to deal with disputes. Article 33 of the Headquarters Agreement refers to “Other Disputes”.

25 Mailhot J.A. remarked that Miller entered work each day, not at the invitation of Monit, but rather as an employee of ICAO. If there is any recourse, it is against the employer. She viewed the damages requested by Miller, which include medical reimbursement and employment retraining, as employee benefits. Because of ICAO immunity and internal mechanisms, she stated that Miller cannot sue ICAO in court and that the present action is an attempt to do indirectly what he cannot do directly.

26 Mailhot J.A. found that there was a risk of double indemnity or contradictory judgments, and a risk of interfering in the internal affairs of ICAO. The application and interpretation of international agreements is not for ordinary courts; they should not interfere in the adjudicative choice made by the sovereign parties. Finally, she held that, although there is no legal link between Monit and Miller, Monit is the owner of the building and has signed a lease with the Canadian government. As such, Monit’s obligations are towards the lessee (Canada), whose obligations were assumed by the occupant, ICAO. Therefore, Monit has no obligations towards the respondent.

IV. Issues

27 There is only one issue that must be addressed for the determination of this appeal: Did the Court of Appeal err in determining that the Quebec Superior Court has jurisdiction to hear the claim of Mr. Miller against Monit? For the appellant to succeed, it must show, pursuant to art. 31 of the Code of Civil Procedure, that the respondent’s case is assigned exclusively to a court other than the Superior Court by a specific provision of law.

V. Analysis

28 Monit’s arguments are substantially the same as those of the Crown in *Miller v. Canada*. It argues that, in considering the jurisdiction of the Superior Court, this Court must consider the context in which these injuries were incurred. In particular, Monit argues that the respondent acknowledged that these injuries were in relation to his employment when he included a statement to that effect in his declaration. The appellant submits that, because of the link between Miller’s injuries and his employment, any damages fall within the exclusive jurisdiction of his employer, ICAO, because of the immunity provisions in the Headquarters Agreement.

29 There is a claim against both the Crown and Monit for failure to warn of the dangerous air quality in the building, but there is an additional claim that Monit, as owner, failed to properly maintain the building in which the respondent worked. The appellant argues that any attempt by Miller to prove such a claim will impinge on the immunity of ICAO and interfere in its internal processes. In addition, Monit submits that it will face severe difficulties in preparing a full

answer and defence to such a claim because of the immunity of ICAO and its employees and the inviolable nature of its premises.

30 Monit was the owner of the premises in question. It had no contractual relationship with ICAO or its employees. Despite its lease agreement with the Crown, as owner, it remained responsible for ensuring that the premises were maintained in a manner that ensured safe occupancy. Monit argues that the inviolable nature of the ICAO headquarters prevented its entrance into the premises. Such a claim does not appear to be supported by the evidence in this case. Miller states that ICAO had absolutely no responsibility for maintenance of the building and that it had no control over the ventilation system. Although the Crown and Monit both argue that they were not permitted to enter the building, the respondent presented evidence that Monit was the only party in control of the air and ventilation system. This evidence suggests that ICAO was only one of many lessees in that building. It also suggests that people regularly entered the building and, although the actual ICAO premises could not be entered without permission, due to the air problems both the Crown and Monit were given permission to enter on numerous occasions. In fact, Monit was a member of a Joint Working Group which was created to resolve the air quality problems.

31 Monit argues that it would face difficulties in preparing its defence if the action was allowed to proceed; however, as with the Crown, this is not a reason to deny jurisdiction. In any event, as argued by the respondent, any evidence required by Monit should already be within its control. If ICAO truly had no control over the ventilation system, any evidence with respect to the maintenance of the building and the ventilation system, including remedial work completed, would be within the control of Monit rather than ICAO. There is no reason to remove the respondent's right to bring a legal action in the ordinary courts of Canada merely because of evidentiary difficulties that Monit may face. This is not a jurisdictional matter, but one for the trial judge.

32 The success or failure of this action at trial has nothing to do with the internal operations of the international organization and, as such, for the reasons stated in *Miller v. Canada*, the appeal is dismissed with party and party costs, and this case is returned to the Quebec Superior Court for determination on its merits.

Appeal dismissed with costs.

Solicitors for the appellant: Marchand, Magnan, Melançon, Forget, Montréal.

Solicitors for the respondent: Seal Seidman, Montréal.

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