
CANADA / JUDGMENT

Woosnam v. Juring

2014 BCSC 1661

COURT

Supreme Court of British Columbia

DECIDED

6 August 2014

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2014 BCSC 1661 Woosnam v. Juring

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Woosnam v. Juring,

2014 BCSC 1661

Date: 20140806

Docket: S155602

Registry: New Westminster

Between:

Calvin Henry Woosnam

Plaintiff

And:

David M. Juring dba Technology Mining Corporation,

dba Technology Bank, dba Technology Mining Company,

Technology Mining Company, LLC dba Technology Mining Company,

and Resilient Integrated Systems, LLC

Defendants

Before: The Honourable Mr. Justice A. Saunders

Oral Ruling

In Chambers

Appearing on his own behalf:

The Plaintiff, C.H. Woosnam

Counsel for the Defendants:

J. Hill

Place and Date of Hearing:

New Westminster, B.C.

August 5, 2014

Place and Date of Judgment:

New Westminster, B.C.

August 6, 2014

- [1] THE COURT: The defendants, which are two Texas-based companies and a Texas-based businessman, apply for a stay of this proceeding on jurisdictional grounds. The defendants submit that this court lacks territorial competence in respect of the allegations made in the notice of civil claim. Alternatively, the defendants submit that jurisdiction, if it exists, ought to be declined on the basis that Texas is the more appropriate forum. In the further alternative, the defendants say that jurisdiction must be declined in any event by reason of an arbitration clause in the parties' contract.
- [2] The jurisdictional or territorial issues raised by this application are determined in the first instance with respect to the pleadings themselves. However, I have also considered affidavit evidence submitted on factual matters that bear on the question of territoriality: *Thumbnail Creative Group Inc. v. Blu Concept Inc.*, 2009 BCSC 1833.
- [3] The plaintiff filed and served no affidavit material in response to the application. The notice of application was originally filed February 6, 2014. It followed the filing by the defendants of a jurisdiction response to the notice of civil claim, on January 13, 2014.
- [4] The application was originally set to be heard February 24, 2014. The defendants consented to a request by the plaintiff that their stay application be adjourned for medical reasons, and to afford the plaintiff the opportunity to obtain legal advice. The plaintiff brought on an application on March 4, 2014, for default judgment. Master Scarth adjourned the default judgment application pending the hearing of the stay application and ordered that the stay application be heard on March 26, 2014.

- [5] On March 26th, the plaintiff again sought an adjournment to enable him to consult with counsel. The application was adjourned to the next available full day in New Westminster - as it turned out, yesterday, August 5, 2014 s with that date being ordered to be peremptory on the plaintiff. The plaintiff advised me that he had been unable to retain counsel, at least on a retainer that is within his means.
- [6] Notwithstanding the clear provisions in the civil rules governing the filing and service of an application response and of all affidavit evidence a respondent intends to refer to, the plaintiff filed and served no such material in advance of the application. This was despite repeated written warnings from defence counsel that such would likely be required.
- [7] The plaintiff indicated to me that he has evidence which could have been filed during the hearing, but none of that material was disclosed to the defendant in advance of this application. At the outset, given the history of this application, I declined to accept any affidavits that have not been properly brought before the court. I did give the plaintiff considerable leeway in the course of his submissions to make statements as to matters that are not in evidence. However, the law is clear that jurisdiction applications must be decided strictly upon the court record: *MTU Maintenance Canada Ltd. v. Norman G. Jensen, Inc.*, 2007 BCCA 552 at paras. 29 through 31.
- [8] In the end result, however, the plaintiff did agree with the facts that I determine to be essential to the adjudication of this application. The other matters raised by the plaintiff were, in my view, simply not relevant to the issues at hand.
- [9] The plaintiff's claim, in essence, is for remedies said to result from the defendant's alleged breach of terms of a contract of employment. The plaintiff and the defendant Mr. Juring, together with certain other individuals, entered into a series of unenforceable letter agreements or letters of intent in 2007 and 2008, it being contemplated that the plaintiff would entered into an enforceable employment contract at some future point. Ultimately in December 2008, after the two defendant companies - Technology Mining Company LLC ("TMC"), and the other defendant, its wholly-owned subsidiary Resilient Integrated Systems, LLC ("Resilient") - were incorporated, the plaintiff did entered into such a contract with TMC.
- [10] To digress for a moment, the nature of the business of TMC is described in the Affidavit #1 of Mr. Juring, sworn February 5, 2014. He describes it in terms of the nature of the business of TMC's subsidiary, the defendant Resilient. He says the following at paras. 9 and 10:
9. Resilient is a wholly owned subsidiary of the Company that develops security and safety products for the transportation, mining and energy industries as well as for commercial buildings, stadiums and areas --

I think he might means "arenas",

-- and borders and perimeters. In particular, Resilient has developed an Intelligent Communications & Monitoring System Cable, which includes a ruggedized multi-media, high-speed, power and communications cable, which is capable of withstanding temperatures of up to 1,200 degrees Fahrenheit for a minimum of 1 hour while maintaining communications and power.

10. Neither the Company nor Resilient has ever transacted any business within British Columbia, and neither has ever registered there as an extraprovincial company. Neither the Company nor Resilient has any office in British Columbia. Neither the Company nor Resilient has ever sold goods in or to, nor provided services in, or (to my knowledge) to a person or a company located in, British Columbia.
- [11] A written employment contract styled as the "Executive Agreement" is in evidence. The Executive Agreement provided that it was the entire agreement between the parties thereto and superseded all previous agreements.
- [12] The plaintiff acknowledges having signed the Executive Agreement. He does say in addition that after he signed the agreement he was repeatedly frustrated in his attempts to obtain a copy that had been signed by the company. A copy has now been produced by the defendants that bears the signatures of both the plaintiff, and Mr. Juring on the company's behalf.
- [13] The plaintiff expressed to me doubt as to whether his own electronic signature on this copy of the Executive Agreement was placed there by him. Nevertheless he conceded that the Executive Agreement was and was intended to be the governing document in respect of his employment.
- [14] I also note that the Executive Agreement specifically provides that it may be executed in counterpart.
- [15] The plaintiff made no reference to the Executive Agreement in the subject notice of civil claim. He says that was because he did not have a jointly signed copy and was unsure of the legal effect of one party only having signed.
- [16] In accordance with an earlier letter of intent and in accordance with the terms of the Executive Agreement and its appendices, the plaintiff assigned outright to the company TMC certain intellectual property, including ownership of a series of patents.
- [17] In his amended notice of civil claim filed November 12, 2013, the plaintiff alleged that he entered into an agreement contract in May 2007 and that he agreed to the transfer of intellectual property, particularized as 16 separate, filed, or submitted but not yet filed "breakout patents" or "process patents", and four internet domain names, in consideration of the company agreeing to pay him a salary and a signing bonus and to cover his expenses.

[18] Although the amended notice of civil claim is silent on what services the plaintiff provided to the company, the plaintiff stated during his submissions that he maxed out his credit cards through making airplane trips to attend meetings, including annual attendance at a CSA committee. Further details are provided in the aforementioned affidavit of Mr. Juring. He says, at para. 17:

During his work for the Company, Mr. Woosnam travelled to Texas and Florida, including to conduct high temperature testing at the Southwest Research Institute ("SwRI") in San Antonio, Texas, and to do further testing and work on production techniques with Dekoron Unitherm LLC in Florida. The Company paid for the use of SwRI's furnace on two occasions, as well as Mr. Woosnam's expenses during this time, and he stayed at my home for several days when travelling through Dallas.

None of this is refuted by the plaintiff.

[19] Mr. Juring says that the plaintiff resigned his positions as chief technology officer of TMC and Resilient in July 2013. Again, this is not denied by the plaintiff.

[20] The amended notice of civil claim alleged, under the heading "Legal Basis Part 3", that the defendants repeatedly deposited or wired into his bank account small sums towards his expenses, but that those payments did not cover his past or current expense amounts. He alleges that he was never paid his monthly salary and that he was never paid his US\$40,000 signing bonus. He submits that he is owed approximately \$1.3 million.

[21] On this basis the notice of civil claim seeks rescission of the transfer to the company of the aforementioned intellectual property - the patent and internet domain names. The notice of civil claim also seeks the following under part 2 "Relief Sought," beginning at para. 4:

- 4) The Plaintiff states and verily believes to be true, this action against the Defendants is for Intellectual Property rights only and reserves [the] right to pursue damages for non-payment of employment compensation separately.
- 5) General Damages
- 6) Special Damages
- 7) Exemplary, punitive and aggravates damages

I believe in para. 7 he means 'aggravated' damages

[22] These allegations must be scrutinized in light of the evidence before the court to determine whether there is a basis for the action proceeding in British Columbia.

[23] The plaintiff, in my view, has established no basis for a claim against the defendant Mr. Juring. The notice of civil claim on its face does allege a contract of employment to which Mr. Juring was a party, but it is evident from the documentation in evidence and from the plaintiff's submissions that Mr. Juring was only personally a signatory to the unenforceable

letter agreements that were being signed before the two corporate defendants were incorporated. There was no suggestion that it was ever mutually intended that Mr. Juring be personally liable on the employment contract. In this regard the naming of Mr. Juring as a defendant appears to have stemmed from the plaintiff's misapprehension of the character or enforceability of the Executive Agreement, as I alluded to earlier.

- [24] One other thing that bears mention is the following plea under the heading of "Part 1: State of Facts", at para. 9:

The plaintiff states and verily believes to be true the transfer of the Intellectual Property was fraudulent in the defendant's motives and the Plaintiff inducement to enact the Intellectual Property transfers was fraught with the promise of moneys to be paid.

There are no particulars of this alleged fraudulent motive. Fraud is not stated in part 3 of the amended notice of civil claim as one of the legal bases of the action. No reliance on this particular allegation was asserted by the plaintiff in his submissions.

- [25] Although the transfers of the intellectual property are alleged in the amended notice of civil claim to have been induced by the defendants' promises to compensate the plaintiff, no particulars are provided as to the dates the assignment or assignments were made, or as to the dates the changes in registration were effected, or as to the timing relative to any particular promises or relative to the plaintiff's apparent acquiescence, over the years, in the continuing non-payment of his salary, bonuses and expenses.

- [26] Although neither the word "breach" nor the phrase "breach of contract" is to be found in the notice of civil claim, I read the notice of civil claim as impliedly alleging a right to obtain rescission of the intellectual property transfers or assignment by reason of the defendant employer's breach of the employment contract. I put that characterization of the claim to the plaintiff twice during the course of his arguments, and I understood him to agree to that characterization of the nature of his claim.

- [27] The territorial competence of this court to adjudicate this dispute must be established by bringing the facts of this case within the scope of s. 3 of the Court Jurisdiction and Proceedings Transfer Act, SBC 2003, c. 28 (the "Act"). Subsections 3(a) through (d) of the Act have no application on the facts of this case. For this court to have jurisdiction, it must be shown that the case fits within subsection (e), that:

- (e) There is a real and substantial connection between British Columbia and the facts on which the proceeding is based.

- [28] A real and substantial connection is presumed to exist under the Act if the proceeding falls within any of the classes set out in s. 10. For that reason, Rule 4-5 of the Supreme Court Civil Rules provides that service of an originating pleading such as a notice of civil claim may be effected without leave so long as the pleading includes an endorsement setting out which of the circumstances enumerated in s. 10 of the Act is being relied upon.

- [29] In this case the amended notice of civil claim served on the defendants did not bear such an endorsement. The plaintiff purported then to serve the defendants with a second amended notice of civil claim containing an endorsement, but contrary to the civil rules no leave of the court to make that amended to the amended notice of civil claim had been obtained. That second amended notice of civil claim is therefore a nullity, and its service on the defendants was invalid.
- [30] As the first amended notice of civil claim did not include the required endorsement, leave of the court was required to serve it outside British Columbia. No leave was obtained. Rule 4-5(6) provides that service without leave is not invalid if the document could have been served validly apart from the provisions of Rule 4-5. That means that the onus on this application is on the plaintiff to establish that leave would have been obtained had it been sought.
- [31] The plaintiff's burden is to demonstrate that he has a good arguable case with a real and substantial connection between this jurisdiction and each defendant or between this jurisdiction and the subject matter of the litigation: *Marren v. Echo Bay Mines Ltd.*, 2003 BCCA 298.
- [32] It is not contended that that there is a connection between this jurisdiction and the defendants. What this case turns on is whether there a connection between this jurisdiction and the subject matter of the litigation.
- [33] As I have explained, the plaintiff provided no evidence in support of his position. I am therefore constrained to consider the plaintiff's claim to jurisdiction solely in light of the pleadings and the evidence adduced by the defendants.
- [34] I turn first to consider the pleadings in light of the provisions of s. 10 of the Act that were relied upon by the plaintiff in his invalid second amended notice of civil claim. The endorsement to that pleading cited five subsections of s. 10: (a), (c), (e), (i) and (k).
- [35] Subsection 10(a) of the Act refers to actions brought to enforce, assert, disclose or determine rights to property in British Columbia. This subsection in my view has no application. The plaintiff's claim is not for a determination of the ownership of the intellectual property. Rather, it claims a form of relief that would, if granted, result in his previous ownership of the intellectual property rights being restored to him through rescission of the employment contract.
- [36] Subsection 10(i) concerns claims for injunctive relief. No such relief is sought.
- [37] Subsection 10(k) concerns claims for enforcement of foreign judgments. It does not apply.

- [38] Section 10(c) deals with proceedings brought to set aside contracts in relation to property in British Columbia. It is arguable, in my view, that the notice of civil claim is brought to set aside the employment contract, in particular its provisions related to the transfer of the intellectual property. However, I cannot conclude on the evidence before me that the intellectual property at a whole is located in British Columbia.
- [39] I accept the defendants' submissions that the situs of intangible property is to be determined by where it has the strongest contacts: *Tucows.com Co. v. Lojas Renner S.A.*, 2011 ONCA 548.
- [40] The patents particularized in the notice of civil claim are at least predominantly US patents or US patent applications. There is one reference to a breakout patent application known by its file number with a Canadian law firm, but that factor does not appear to be consequential in my view. The apparent intent of the employment contract was that this intellectual property, registered with the US Patent and Trademark Office, would be used by the defendant US corporations in pursuant of their product design, manufacturing and sales objectives. It is not demonstrated that these patents have any real and substantial connection with British Columbia.
- [41] The plaintiff asserts that these inventions were conceived of by him in British Columbia. He also points to the continuing presence in British Columbia of certain personal property connected with the creation of the patents, such as he says prototypes and test equipment. That property is said to be located at present in a storage locker in Coquitlam. However, even if I were to accept the plaintiff's assertions to that effect without evidence, I would find these factors to be matters of historical interest only and to have no or at least no significant bearing on the current situs of this intellectual property.
- [42] With respect to the internet domain names, two of the four names appear to have registered ownership addresses in Texas. One of the other two names appears to have registered ownership addresses both in Texas and Coquitlam, British Columbia. The fourth has a registered ownership address in Coquitlam only. This is some evidence of a connection with British Columbia, but "having jurisdiction over some claims is not sufficient to give the court jurisdiction over all claims": *Aleong v. Aleong*, 2013 BCSC 1428.
- [43] This leaves us with s. 10(e) of the Act, which covers proceedings concerning contractual obligations to be performed in British Columbia, to be governed by British Columbia law, or in respect of the purchase of property or services other than in the scope of the purchaser's trade or resulting from solicitation of business in British Columbia.
- [44] The contract that is at the centre of this dispute is the plaintiff's employment contract as embodied in the Executive Agreement. The Executive Agreement specifically provides that the plaintiff's services as Chief Technology Officer were to be performed principally at the company's head office in Dallas, Texas. The Executive Agreement contains a choice of law clause applying the laws of Texas and the United States of America. It also contains an arbitration clause requiring that all disputes arising out of or relating to the plaintiff's service to the company or relating to the agreement be determined through arbitration

under the US Federal Arbitration Act, 9 U.S.C. §§ 1-16 (2010). There are exceptions to that arbitration clause, which include disputes concerning the intellectual property assignment. The Executive Agreement provides that these excepted matters are to be within the exclusive jurisdiction of a court of competent jurisdiction in Texas.

- [45] Finally, as I noted earlier, there is reference made in the notice of civil claim to alleged fraudulent motive on the part of a defendant. The intended significance of this allegation is not clear on the face of the pleading. The basis of the allegation is not established on the evidence and the plaintiff placed no weight on the allegation in his submission. I cannot find on the evidence that there is a good arguable case to be made out on the basis of this allegation. Even if there were such evidence, I could not conclude that the gravamen of this proceeding as a whole is a tort committed in British Columbia. I would find that the contract issues, including the choice of law clause, weigh against this court maintaining jurisdiction.
- [46] I conclude that the plaintiff can demonstrate no real and substantial connection between the subject dispute and British Columbia.
- [47] The plaintiff argues that litigating in Texas would be beyond his financial means, and that enforcing the jurisdiction provisions of the Executive Agreement would impose a hardship upon him. That is certainly a factor to be considered in determining which forum is on balance more convenient, but the countervailing factors, including a number of factors raised by the defendants in their submissions - in particular the number of witnesses and the location of the witnesses from Texas who could be required to give evidence in this proceeding, and the fact that Texas law and US law apply - would outweigh this concern.
- [48] I find no grounds for relieving the plaintiff of his agreement to submit this dispute to Texas courts. The pleadings and the evidence do not disclose sufficient grounds for this court to recognize or to assume jurisdiction in the proceeding. The defendants' application for a stay of proceedings is allowed.
- [49] Anything else, counsel?
- [50] MR. HILL: The draft order sought costs at Scale B of this application.
- [51] THE COURT: Any submissions as to costs, Mr. Woosnam? And there are rules, costs follow the event. What is being sought, costs at Scale B, is for matters of ordinary difficulty or importance.
- [52] MR. WOOSNAM: Because of my financial situation, Your Lordship, I have already under a waiver of fees for court costs.
- [53] THE COURT: You mean you attained an indigency order, did you?
- [54] MR. WOOSNAM: Yes. Yes, Your Lordship.
- [55] THE COURT: That is the case, is it, Mr. Hill?

[56] MR. HILL: I believe it was obtained before we got on the record, but I think I have seen it in the file.

[57] THE COURT: Yes.

[58] Well, an indigency order, sir, provides you with a means of avoiding the legal obligation to pay the filing fees before you initiate an action. It is not ordinarily a bar to the costs rule under which a successful party is granted their costs. I appreciate that you may have limited means and that an order for costs may in the pose a hardship to you if collection proceedings were undertaken. It seems to me that there is an at least an equal possibility, if your assets are in fact limited, that the defendants might very well decide not to throw good money after bad and engage in that exercise.

[59] That is not, however, a principle for depriving the defendants of the order to which they are entitled. This claim, sir, is and this attempt to litigate in British Columbia, frankly, was misconceived. You had made under contract a clear agreement to litigate these matters before Texas courts. That is an agreement you entered into voluntarily. I appreciate the contract has not in your view been fulfilled, and you have been disappointed. But that is what the provisions of the contract are there for, to set out the grounds upon which disputes of that nature can be pursued.

[60] So I am going to allow the defendants their costs at Scale B.

"A. Saunders J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/SC/14/16/2014BCSC1661.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/woosnam-v-juring-2014>

Prepared on 29 October 2026 · Esheria