

the doctrine of international litispence and forum non conveniens : Quebec courts do not easily decline jurisdiction

On July 4, 2012, in *Bélanger v Lucas Meyer Cosmetics Canada inc. (Unipex Innovations inc.)*,¹ the Quebec Superior Court rendered a decision which clarifies the criteria applicable to a court declining jurisdiction on the basis of international litispence or pursuant to the doctrine of *forum non conveniens*. These two concepts are codified in Quebec law respectively under Articles 3137 and 3135 of the *Civil Code of Quebec* ("C.C.Q").

This decision is also the first application by a Quebec court of the recent Supreme Court series of decisions *Club Resorts Ltd. v Van Breda*,² *Éditions Écosociété Inc. v Banro Corp.*³ and *Breedon v Black*⁴ on the concept of *forum non conveniens*.

Applying the strict criteria set out for declining jurisdiction under the international litispence doctrine and putting into practice the teachings of the Supreme Court on the application of the *forum non conveniens* doctrine, the Superior Court of Quebec refused to dismiss the Quebec proceedings instituted for wrongful dismissal by the President of a multinational corporation in favor

¹ 2012 QCCS 3111.

² 2012 SCC 17.

³ 2012 SCC 18.

⁴ 2012 SCC 19.

of proceedings instituted by the same executive (also shareholder of the corporation) before the Tribunal de Commerce de Paris for eviction from the corporation's shareholders pool.

background

Since October 2004, Mr. Bélanger was the President of a Quebec corporation. As of 2007, Mr. Bélanger started to elaborate a plan for the strategic sale of the corporation to further develop the business. In 2008, the corporation was acquired by Gestcon APP Inc., a Canadian corporation having its principal place of business in Quebec City, its majority shareholder being Groupe Unipex SAS, a French corporation having its principal place of business in Paris.

The Plaintiff, Mr. Bélanger, was appointed as the President and principal officer of the whole Groupe Unipex corporations and as such became the President of a series of corporations conducting business in approximately 50 countries, with the operational head offices being in Quebec City.

As a result, the Plaintiff entered into different agreements such as a Management Package and a Shareholders' Agreement between Groupe Unipex SAS' shareholders.

On March 1, 2011, Mr. Bélanger was summoned to a meeting of the Surveillance Committee of Groupe Unipex SAS, where he learned that his mandate as a president of Groupe Unipex was terminated and he was evicted as a shareholder.

As a consequence of this event, two separate suits were instituted; one before the Tribunal de Commerce de Paris in relation to the eviction of Mr. Bélanger from Groupe Unipex SAS' business and another before the Superior Court of Quebec for wrongful dismissal.

decision

litispence

Article 3137 C.C.Q. sets the principles applicable to the evaluation of international litispence.

In reviewing the applicable criterion, the Court first reiterated that this power is completely discretionary. Therefore, a Court is not bound to decline jurisdiction in favor a foreign authority.

The conditions permitting the decline of jurisdiction are the following:

1. Existence of a foreign recourse susceptible to be recognized in Quebec;
2. Between the same parties;
3. Based on the same facts; and
4. Having the same objects.

The first criterion was not at issue in the present case.

As to the second criterion, the Court held that, even though the parties were not identical in the French and Quebec proceedings, the identity of the parties' criterion was nonetheless fulfilled. Indeed, the French proceedings included two plaintiffs, Mr. Bélanger and his holding company, against one defendant, the parent company, Groupe Unipex SAS, whereas the Quebec proceedings included only Mr. Bélanger and the Canadian subsidiary of Groupe Unipex SAS. Despite both corporations being distinct, the fact that the parent company was sued in France was enough for the Court to determine that it encompassed its Canadian subsidiary for the purposes of this criterion of Article 3137 C.C.Q.

For the third criterion, the Court determined that all of the relevant facts for both the Quebec and the French proceedings would revolve around the meeting of March 1, 2011 and subsequent events.

It is the fourth criterion which was ultimately not fulfilled, leading the Court to refuse to apply the doctrine of litispendence. Indeed, while the Quebec proceedings were instituted for the wrongful dismissal of Mr. Bélanger from his position as President of the Canadian Corporation, the French proceedings sought to obtain compensation for the wrongful eviction of Mr. Bélanger and his holding company from the pool of shareholders of Groupe Unipex SAS.

Therefore, while the Quebec proceedings called for the application of statutory provisions concerning labor and employment law, the French proceedings were analyzed pursuant to the contractual obligations between the parties and the eventual breach of the Management Package and Shareholders' Agreement by the defendants.

Therefore, in this case, the same event gave rise to two distinct sources of indemnification pursuant to two sets of obligations (statutory and contractual) and for these reasons the Court refuses to decline jurisdiction.

forum non conveniens

As alternative motives to have the Quebec proceedings dismissed, the defendant argued that most of the relevant elements for the purposes of the litigation would be in France.

Article 3135 C.C.Q. integrates the principle of *forum non conveniens* in Quebec law.

The Superior Court applied the Supreme Court decision *Breeden v Black*⁵ which sets out the factors most commonly considered by Quebec courts in exercising their discretion to decline jurisdiction pursuant to Article 3135 C.C.Q. These factors are not individually determinative but must be considered globally:

1. The place of residence of the parties and witnesses;
2. The location of the evidence;
3. The place of formation and execution of the contract;
4. The existence of proceedings pending between parties in another jurisdiction and the stage of any such proceeding;
5. The location of the defendant's assets;
6. The applicable law;
7. The advantage conferred on the plaintiff by its choice of forum;
8. The interests of justice;
9. The interests of the two parties;
10. The need to have the judgment recognized in another jurisdiction.

In this case, none of the criteria decisively favored France as being the authority in a better position to decide the matter. Rather, Quebec and France appeared to be appropriate jurisdictions for the Plaintiff's recourse under most of the criteria.

It is worth mentioning that the Court was of the view that since Mr. Bélanger introduced a suit for wrongful dismissal, certain public policy statutes and provisions applicable to labor and

⁵ Supra note 4 at para 25.

employment law would be at issue and this favored Quebec authorities maintaining jurisdiction. Therefore, despite being the President of a multinational corporation, Mr. Bélanger was first and foremost an employee pursuant to Quebec laws.

As such, the doctrine of *forum non conveniens* could not succeed since, according to the Supreme Court's teachings in *Club Resorts Ltd. v Van Breda*,⁶ "the [petitioner] must show that the alternative forum is clearly more appropriate".

commentary

With this decision, the Superior Court set out well the criteria for the application of the doctrine of international litispence and *forum non conveniens*.

On the doctrine of litispence, the Court drew a clear distinction between the object of the two suits. This decision is a warning that the same events can lead to multiple jurisdictional suits. The courts will only decline jurisdiction on the basis of litispence if all four criteria are clearly met.

On the doctrine of *forum non conveniens*, it is important to note that Quebec Courts will very rarely decline jurisdiction based on this argument, even more so when public policy considerations apply.

Finally, despite providing for jurisdiction election clauses in its contracts, one should always keep in mind that these clauses cannot exclude the jurisdiction of Quebec tribunals in all instances. The *Civil Code of Quebec* provides for certain specific legal situations where Quebec tribunals will always be competent.⁷

by Andrei Pascu

⁶ Supra note 2 at para 108.

⁷ See articles 3117, 3118, 3119, 3128, 3129, 3149, 3150 and 3151.

For more information on this topic, please contact:

Montreal **Andrei Pascu** 514.987.5011 andrei.pascu@mcmillan.ca

a cautionary note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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