Court of King's Bench of Alberta

Citation: Kaur v Retzlaff, 2025 ABKB 753

Date: 20251216
Docket: 2203 06895
Registry: Edmonton

Between:

Brajgeet Kaur and Gurpal Singh Sidhu

Plaintiffs

- and -

Allan Reginald Retzlaff

Defendant

Memorandum of Decision
of
Applications Judge B.W. Summers

Introduction

[1] The issue in this Special Chambers hearing before me is whether the Alberta Court of King's Bench should issue a request to the British Columbia Supreme Court to accept a transfer of this Alberta action where the Alberta Court never had jurisdiction *simpliciter*.

[2] Cross applications were presented in chambers. The Defendant applied for an order setting aside the service of the Statement of Claim made on the Defendant in British Columbia on the basis that there was no real and substantial connection between the cause of action and Alberta. The Plaintiffs applied for an order that this Court make a request to the British Columbia Supreme Court to accept a transfer of this case.

[3] Both counsel before me agreed that there are no facts in dispute. The issue before me is purely a question of law.

Facts

[4] The parties to this action were in a motor vehicle collision in Kelowna, British Columbia on June 1,2020.

[5] The Plaintiffs, who reside in Alberta, commenced this action in this jurisdiction on May 4, 2022.

[6] The Defendant, who resides in British Columbia, was served at his home in Kelowna British Columbia on August 25, 2022.

[7] The affidavit of service erroneously states that "a real and substantial connection exists between Edmonton and the facts on which the claim in this action is based, in that the Accident (tort) occurred in the Province of Alberta".

[8] Counsel for the Defendant advised counsel for the Plaintiffs that he believed that there was an issue as to the validity of service as the requirement of a real and substantial connection between Alberta and the facts on which the claim was based to allow for service of the Defendant outside of Alberta and for Alberta Courts to assume jurisdiction was lacking.

[9] On March 20, 2023 counsel for the Plaintiffs filed an Amended Statement of Claim which asserted that there was a real and substantial connection between Alberta and the action by noting the following:

(a) The Plaintiffs are residents of Alberta;

(b) The Plaintiffs required extensive medical treatment in Alberta;

(c) The Plaintiffs' claim is, inter alia, for pain and suffering sustained in Alberta;

(d) All of the Plaintiffs' medical witnesses are in Alberta;

(e) The Plaintiffs would suffer significant unfairness if their claim was not commenced in Alberta; and

(f) It was foreseeable to the Defendant that his negligent conduct while driving could result in harm to extra-provincial parties.

Discussion of legal Issues

Admission made by the Plaintiffs

[10] In her Reply Brief to the Defendant's application and in oral submissions counsel for the Plaintiffs candidly admitted that Alberta lacks jurisdiction *simpliciter* and jurisdiction *conveniens* in this action.

[11] What does that mean?

[12] Jurisdiction *simpliciter* occurs where there are presumptive connecting factors that *prima facie* entitle a court to assume jurisdiction. In the case of a tort the presumptive connecting factors are:

(a) That the Defendant is domiciled or resident in the province;

(b) The Defendant carries on business in the province;

(c) The tort was committed in the province; and

(d) A contract connected with the dispute was made in the province.

Club Resorts Ltd v Van Breda, [2012] 1 SCR 572 ("***Van Breda***") at paragraph 90 on page 618.

[13] In ***Van Breda*** the Supreme Court of Canada also said that presumptive connecting factors are not closed, but the court should look to connections that give rise to a relationship with the

forum that is similar in nature to the cases which result from the listed factors. “All presumptive connecting factors generally point to a relationship between the subject matter of the litigation and the forum such that it would be reasonable to expect that the defendant would be called to answer legal proceedings in that forum”: paragraphs 91 and 92.

[14] If a forum does have jurisdiction *simpliciter*, the courts of that jurisdiction may still decline to exercise that jurisdiction on the basis that there is another jurisdiction that is more convenient for the action to be heard. This is a finding that the forum is *non conveniens.*

[15] The admission by the Plaintiffs that Alberta has neither jurisdiction *simpliciter* nor *conveniens* is an admission that there are no presumptive connecting factors between Alberta and this tort; and even if there were, Alberta would still not be the most convenient forum for the action.

[16] It is not disputed that British Columbia has jurisdiction *simpliciter* and *conveniens.* The alleged tort was committed in British Columbia and the Defendant resides there.

[17] As there was no real and substantial connection between Alberta and this tort, the Defendant’s application to set aside service of the Defendant in British Columbia ought to be granted.

[18] At this stage I use the word “ought to be granted” as there was some disagreement between the parties as to whose application should proceed first. If the Plaintiffs’ application to request a transfer of the action to British Columbia is granted, arguably the Defendant’s application to set aside service could become moot. And perhaps *vice versa*.

[19] Consequently, without deciding which application should precede first, I will consider the issues of: (1) Does this Court have jurisdiction to request that the British Columbia Supreme Court accept a transfer of this action; and (2) If so, should the Court exercise its discretion to request the transfer of the action?

Does this Court have jurisdiction to request that the British Columbia Supreme Court accept a transfer of this action?

[20] The Plaintiffs admit that if they commenced a new action in British Columbia at this time, it would be limitation barred. It is for this reason they seek to transfer this Alberta action to British Columbia.

[21] British Columbia has legislation providing for the transfer of a court action to and from that jurisdiction. That legislation is the *Court Jurisdiction and Proceedings Transfer Act*, SBC 2003 c 28 *(“BC-CJPTA”).*[i]

[22] Alberta does not have legislation like the *BC-CJPTA.* However, the Plaintiffs assert that an Alberta court may request that an action be transferred to another jurisdiction pursuant to its inherent jurisdiction and pursuant to s 8 of the *Judicature Act*, RSA 2000, c J-2. That section states:

> 8 The Court in the exercise of its jurisdiction in every proceeding pending before it has power to grant and shall grant, either absolutely or on any reasonable terms and conditions that seem just to the Court, all remedies whatsoever to which any of the parties to the proceeding may appear to be entitled in respect of any and every legal or equitable claim properly brought forward by them in the proceeding, so that as far as possible all matters in controversy between the

> parties can be completely determined and all multiplicity of legal proceedings concerning those matters avoided.

[23] In the case of ***Canadian Pacific Railway Company v Hatch Corporation,*** 2018 ABQB 558 ("***Hatch***") Madam Justice Kirker found that s 8 of the *Judicature Act* and the inherent authority of the Court of Queen's Bench of Alberta granted her authority to request that Saskatchewan accept a transfer of the action (see paragraphs 117-123). Saskatchewan had its own legislation equivalent to the *BC-CJPTA.*[ii]

[24] The Defendant asserts that a very important distinction between the ***Hatch*** case and this case that makes it distinguishable is that the Alberta court had jurisdiction *simpliciter* in ***Hatch***, but it does not in this case.

[25] In response to this point the Plaintiff cited the following three cases where the transferring court did not have jurisdiction *simpliciter* when it submitted its request to transfer to another court: ***Hancock v MEG Energy Corp,*** 2024 BCSC 1793; ***Bishop v Wagar,*** 2020 NSSC 154; and ***Khalifa v MacDonald,*** 2022 NSSC 157**.** However, in all of these cases the court requesting the transfer was doing so pursuant to that province's *Court Jurisdiction and Proceedings Transfer Act* and the respective *Acts* had the following provision (*BC-CJPTA* provision in s 14(2) is set out below):

> The Supreme Court by order may request a court outside British Columbia to accept a transfer of a proceeding, in which the Supreme Court lacks territorial or subject matter competence if the Supreme Court is satisfied that the receiving court has both territorial and subject matter competence in the proceeding.

[26] It was not disputed that in this case before me that British Columbia would have both territorial competence and subject-matter competence. These are defined terms under the *BC-CJPTA* that I need not consider since it is common ground between the parties that British Columbia has both.

[27] The critical question is whether Alberta, without having a *Court Jurisdiction and Proceedings Transfer Act* may request a transfer with respect to an action commenced in Alberta where Alberta had no jurisdiction *simpliciter*.

[28] I asked counsel for the Plaintiffs if she was aware of any case in Canada where a court in a province without a *Court Jurisdiction and Proceedings Transfer Act* had transferred an action where it did not have jurisdiction *simpliciter.* She candidly admitted to me that she was unaware of any such case.

[29] Without legislation authorizing an Alberta court to request a transfer of a case where it does not have jurisdiction *simpliciter* and there being no common law precedent for doing so, I am not prepared to presume that this is part of this Court's inherent jurisdiction.

[30] Finally, I say by way of *obiter dictum* that I question the utility of a transfer to British Columbia given that the *BC-CJPTA* provides:

> **23**(1) In a proceeding transferred to the Supreme Court from a court outside British Columbia, and despite any enactment imposing a limitation period, the Supreme Court must not hold a claim barred because of a limitation period if
>
> (a) the claim would not be barred under the limitation rule that would be applied by the transferring court, and

(b) at the time the transfer took effect, the transferring court had both territorial and subject matter competence in the proceeding.

(2) After a transfer of a proceeding to the Supreme Court takes effect, the Supreme Court must treat a procedure commenced on a certain date in a proceeding in the transferring court as if the procedure had been commenced in the Supreme Court on the same date. (emphasis added)

[31] I have not analyzed whether Alberta had territorial and subject matter competence within the meaning of the British Columbia legislation, but would think it highly unlikely.

Conclusion

[32] The Defendant's application for an order setting aside service of the Statement of Claim and Amended Statement of Claim upon the Defendant is granted and the action against the Defendant is dismissed. The Plaintiffs' application to request the British Columbia Supreme Court to accept a transfer of this action is dismissed.

[33] If the parties cannot agree on costs, an application may be made in chambers on Webex.

Heard on the 3rd day of December, 2025.

Dated at the City of Edmonton, Alberta this 16th day of December, 2025.

B.W. Summers
A.J.C.K.B.A.

Appearances:

Leilani D. Karr
Brownlee LLP
for the Plaintiffs

Rosemary J. Buckley
Cozens Wiens LLP
for the Defendant

[i] The *BC-CJPTA* follows a uniform format published by the Uniform Law Conference of Canada ("*Uniform CJPTA").* Not all provinces have adopted such legislation.
[ii] Saskatchewan has adopted the *Uniform CJPTA.*