CITATION: Grand HVAC Leasing Ltd. v. Dupuis, 2025 ONSC 3866
COURT FILE NO.: CV-23-00699901-0000
DATE: 20250630

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	)	
.	)	
GRAND HVAC LEASING LTD.	)	*Sarah A. Walsh and Tyler White,* for the Plaintiff
Plaintiff/ Responding Party	)	
– and –	)	
DAVID DUPUIS, BRENT GOERZ, DAVID ISAAK and LYLE WOOD	)	*R. Bevan Brooksbank and Bradon Willms*, for the Defendants Brent Goerz, David Isaak, and Lyle Wood
Defendants/Moving Parties	)	*Monica Unger Peters,* for the Defendant David Dupuis
	)	**HEARD: June 19, 2025**

L. BROWNSTONE J.

REASONS FOR DECISION

Introduction

[1] The plaintiff, Grand HVAC Leasing Ltd. ("Grand HVAC"), leased equipment to Boaz Pharmaceuticals Inc. ("Boaz"), a cannabis company that was incorporated and operated in Alberta. The four defendants, residents of Alberta all, personally guaranteed Boaz's obligations under the leases.

[2] Boaz became insolvent in 2023. Bankruptcy proceedings are ongoing in Alberta. Grand HVAC made demands on the guarantees, which went unanswered, following which it commenced this action on the guarantees in Ontario. Grand HVAC's claim also seeks damages for conversion and a declaration that Boaz, which is not a party to the action, is a bankrupt.

[3] The defendants move to stay or dismiss the action on the basis that Ontario has no jurisdiction. In the alternative, if the court finds Ontario has jurisdiction *simpliciter*, the defendants ask the court to stay the action in favour of the Albert courts on the basis of *forum non conveniens*.

Issue One: Does Ontario have jurisdiction *simpliciter*?

Governing law

[4] Jurisdiction *simpliciter* can be established in three ways. The defendants may have a presence in Ontario, for example, they may reside or carry on business in Ontario. Second, they may attorn to Ontario's jurisdiction. Third, there may be a real and substantial connection between Ontario and the dispute at the issue of the litigation: *Yip v. HSBC Holdings plc*, 2017 ONSC 5332 at para. 93; aff'd 2018 ONCA 626, 141 O.R. (3d) 641; *Beijing v. Hehe Fengye Investment Co. Ltd. v. Fasken Martineau Dumoulin LLP* 2020 ONSC 934, 149 O.R. (3d) 466 at para. 53; *Club Resorts Ltd. v. Van Breda*, 2012 SCC 17, [2012] 1 SCR 572, at para. 79.

[5] The parties agree that the defendants do not have a presence in Ontario – they neither reside nor carry on business here. Nor is there any suggestion that the defendants have attorned to this jurisdiction. It is the third factor that will determine if Ontario has jurisdiction *simpliciter* – is there a real and substantial connection between Ontario and the dispute?

[6] In *Van Breda*, the Supreme Court of Canada has established connecting factors that are presumed to establish jurisdiction. These include the *situs* of a tort and the making of a contract connected with the dispute in a province: *Van Breda* at paras. 88 and 90. The presence of the plaintiff is not on its own a sufficient connecting factor to presume jurisdiction: *Van Breda* at para. 86.

[7] The Court in *Van Breda* allowed that the list of presumptive connecting factors might be reviewed over time and updated by adding new presumptive connecting factors. Relevant considerations in identifying new connecting factors include the similarity of the proposed connecting factors with the recognized presumptive factors, and treatment of the proposed connecting factor in case law, legislation, and private international law of other jurisdictions with a shared commitment to order, fairness, and comity: *Van Breda* at paras. 80 and 91.

[8] New presumptive connecting factors should demonstrate a relationship between the dispute and the jurisdiction such that the defendant would reasonably expect to be called to answer legal proceedings in the jurisdiction: *Van Breda* at para. 92.

[9] If no listed or new presumptive connective factor exists, the court should not assume jurisdiction: *Van Breda* at para. 93.

[10] The burden is on Grand HVAC to show there is a presumptive connecting factor. Grand HVAC does not need to demonstrate the strongest connection possible, nor must the connections all point in the same direction: *Van Breda* at para. 34. Grand HVAC must demonstrate a "good arguable case" for an assumption of jurisdiction: *Beijing* at para. 61. That does not represent a high

threshold; it is akin to "a serious issue to be tried": *Tucows.com Co. v. Lojas Renner S.A.*, 2011 ONCA 548, 106 O.R. (3d) 561 at para. 36. If a presumptive connecting factor is established, the defendants bear the burden of rebutting the presumption: *Van Breda* at para. 81.

Where was the contract formed?

The facts

[11] The court may take facts from the pleadings if unchallenged but should not accept facts asserted in the pleadings that are contradicted by the evidence adduced on the motion: *Beijing* at para. 63.

[12] The facts are largely not in dispute.

[13] Grand HVAC is headquartered in Ontario. It offers lease, installation, and maintenance services for heating, cooling, and water heating equipment throughout Canada.

[14] In December 2019 and March 2020, Grand HVAC entered into leases with Boaz, a cannabis company operating in Alberta. The equipment that Boaz leased from Grand HVAC was transported directly to Boaz from the United States.

[15] All four defendants live and work in Alberta. This was true at the time of the transactions at issue in the litigation and remains true today. The defendants all owned shares in Boaz indirectly through Alberta corporations. The defendants other than Mr. Wood were directors of Boaz.

[16] One of the defendants, David Isaak, signed the leases on Boaz's behalf. The leases provide that they "will be governed by the laws of the Province of Ontario."

[17] All four defendants provided personal guarantees in the form provided by Grand HVAC. Three defendants signed their guarantees on the same day Mr. Isaak signed the first lease on behalf of Boaz. The fourth defendant, Mr. Goerz, signed his guarantee four days later.

[18] The guarantees were created by and sent to the defendants by Ms. Abraham, a Grand HVAC employee who lived and worked in British Columbia. Mr. Hines, Grand HVAC's Chief Financial Officer and affiant on the motion, deposed as follows:

> 23 …[E]ach guarantee was created by Tauryce Abraham of Grand HVAC, emailed to the respective guarantor, and then emailed back to Ms. Abraham.
>
> 24. Ms. Abraham is a former Grand HVAC employee who was hired to do business development and sales work in British Columbia. She acted as a liaison between clients in western Canada and Ontario. She facilitated and serviced clients in the western region but the decision-making of Grand HVAC occurred in Burlington, Ontario. Ms. Abraham reported to the CEO

> and President of Grand HVAC in Burlington, Ontario. Ms. Abraham did not have signing authority for Grand HVAC.

[19] The guarantees unconditionally guaranteed Boaz's obligations under the lease. The guarantee contained waivers, one of which contained language referring to "Grand HVAC Leasing USA, LLC". The guarantees also contained the following clause:

> This guarantee shall be valid only upon acceptance by Grand HVAC Leasing Ltd. This guarantee and the rights and obligations of the parties shall be governed and construed in accordance with State Law. In the event an action is brought to enforce performance of this agreement, the prevailing party shall recover reasonable attorney's fees and court costs.

[20] Each defendant executed the guarantee in Alberta and sent the signed guarantees by email back to Ms. Abraham who was in British Columbia.

Position of the parties

[21] Grand HVAC argues that the guarantees were formed in Ontario. The guarantees were only valid upon acceptance and could only be accepted by Grand HVAC in Ontario because that is where the corporation's decision-making authority lay. While there is no evidence of transmission of the guarantees from Ms. Abraham to anyone else, Grand HVAC asks me to infer that it was Grand HVAC's head office in Ontario that accepted the contract because Ms. Abraham had no decision-making authority.

[22] Grand HVAC also argues that the guarantees are inextricably intertwined with the leases. The leases have an Ontario choice of law provision. The guarantees should be read as calling for the same choice of law.

[23] Further, under Alberta legislation that governs guarantees, the guarantees may not be enforceable if Alberta law is applied. Grand HVAC argues that common sense business practice and commercial efficacy dictate that parties to agreements expect them to be valid and enforceable. Therefore, Ontario law must apply to the guarantees.

[24] The defendants argue the guarantees were made in British Columbia, the place the offeror received notification of the offeree's acceptance. In the alternative, the contracts were made in Alberta, the place of acceptance. In neither case were they made in Ontario. Therefore, there is no presumptive connecting factor to Ontario.

[25] Further, the defendants argue that the choice of law argument put forth by Grand HVAC has several fundamental flaws. First, it is contested that there is binding authority holding that because the leases have an Ontario choice of law clause, the guarantees will be found to be governed by the laws of Ontario. Indeed, the construction rule of *contra proferentem* suggests otherwise. Further, choice of law is not relevant to forum – it is not a presumptive connecting factor. The decision on choice of law is premature and ought not be made at this time.

Analysis

[26] Where contracting parties are located in different places, the contract may be formed in the jurisdiction in which the last essential act, such as acceptance, occurred: *Lapointe Rosenstein Marchand Melançon LLP v. Cassels Brock & Blackwell LLP*, 2016 SCC 30, [2016] 1 SCR 851 at para. 40. Where acceptance is transmitted electronically and instantaneously, the contract is generally found to be made in the jurisdiction in which acceptance was received: *Trillium Motor World Ltd. v. General Motors of Canada Limited*, 2014 ONCA 497, 120 O.R. (3d) 598 at para. 66.

[27] Here, the contract specified that it was valid once accepted by Grand HVAC. Grand HVAC relies on *TFS RT Inc. v Kenneth Dyck*, 2017 ONSC 2780 at paras. 30-32 for the proposition that the agreements were made in Ontario. However, in that case, the agreements were sent by email to Ontario. Here, the agreements were sent by email to British Columbia.

[28] There is no evidence before the court as to where the leases were made, other than that they were signed by Boaz in Alberta. Boaz and the guarantors were at all times in Alberta. While Grand HVAC is headquartered in Ontario, and while its affiant deposes that most of its employees are in Ontario and that decisions are made here, there is no evidence about where the lease was signed or accepted by Grand HVAC.

[29] For Grand HVAC to argue that it did not accept the guarantees when its employee, who had created the guarantees, sent them to the defendants, and received them back from the defendants by return email, has two significant problems. First, the employee who received them certainly had ostensible authority to act on behalf of Grand HVAC. There would be no way for the guarantors to know that Grand HVAC did not consider that it had received the documents when Ms. Abraham received them. Indeed, it is hard to imagine that Grand HVAC would have given much credence to the argument had it been raised by the guarantors, namely that the guarantees were not effective because they had not been received by Grand HVAC when the guarantors emailed them back to Ms. Abraham.

[30] Second, I do not accept Grand HVAC's argument that relying on Ms. Abraham's physical presence in British Columbia arbitrarily emphasizes an employee's location. Ms. Abraham was based in British Columbia, on Grand HVAC's own evidence, for the purpose of doing business development work for Grand HVAC in British Columbia, and to service Grand HVAC's clients in the western region. That is, Ms. Abraham's location was strategically important to Grand HVAC. The reason she was based in British Columbia was to conduct Grand HVAC's regional work in the western provinces. This she did when she prepared, sent, and received the guarantees in this case. There was nothing arbitrary about her presence in British Columbia.

[31] Whether the guarantees are found to be made where the contract was accepted by the guarantors or accepted by Grand HVAC, they were not made in Ontario. In the former instance the contracts will have been made in Alberta, in the latter British Columbia.

[32] Grand HVAC's claim that Ontario has jurisdiction *simpliciter* rests on the following chain of reasoning:

a. The leases between Boaz and Grand HVAC contain an Ontario choice of law clause;

b. The guarantees are related to those leases;

c. At least one of the defendants was a direct signatory to the lease; the other defendants had indirect ownership of Boaz, the party that entered into the lease;

d. There is appellate authority for the proposition that choice of law for a guarantee will be the same as the choice of law for the main contract [parenthetically, I note that the appellate authority for this proposition comes from British Columbia, not Ontario];

e. Parties are expected to enter into commercial arrangements intending that they be effective; and

f. The parties in all of these circumstances must be taken to have intended that Ontario law applies, because if Alberta law applies, there is a real risk that the guarantees will not be effective, and the parties could not have intended such an outcome.

[33] The problems with this chain of reasoning is the following. The argument hinges on choice of law, not jurisdiction or forum clauses. While the leases contain an Ontario choice of law clause, they contain no choice of forum clause.

[34] Under rule 17.02(f)(ii), service *ex juris* is permitted when the contract provides that it is to be governed by or interpreted in accordance with the law of Ontario. However, that rule is procedural in nature and does not by itself establish jurisdiction in a case; it is not adopted as a conflicts rule: *Van Breda* at paras. 43 and 83.

[35] Further, the guarantee itself does not contain an Ontario choice of law clause. It refers to "State law". Neither party has sought a declaration as to whether Ontario or Alberta law governs this dispute. As in *Avanti v. Argex*, 2012 ONSC 4395, I find that it would be premature for the court to determine that issue in this proceeding. That is a decision that should be made at trial. For purposes of the jurisdiction *simpliciter* analysis, I note only that the choice of law in this case is a contentious issue that will have to be determined by the court that has jurisdiction over the matter. I do not agree with Grand HVAC that the situation is like that in *Lapointe Rosenstein.* In that case, there was an unambiguous choice of law clause in addition to other connecting factors: *Lapointe Rosenstein* at para. 48.

[36] A good, arguable case that the choice of law issue favours Ontario does not equate to a good, arguable case that Ontario has jurisdiction *simplicter*. I find there is no connecting factor

between the guarantees and Ontario. The contract was not made in Ontario, the defendants are not in Ontario, the forum was never agreed to in either the leases or the guarantees.

The conversion claim

[37] Grand HVAC alleges in its claim that the defendants "have unlawfully maintained possession of the Equipment and converted the Equipment to their own use." Further, it alleges that the defendants purported to sell some of the equipment to a third party. This constituted both a breach of contract and conversion.

[38] Grand HVAC does not contest that the tort of conversion is complete with the act of the taking of property: *Galaxy Dragon Limited v. Topwater Exclusive Fund IV LLC,* 2011 ONSC 6818 at para. 20.

[39] There is no allegation and no suggestion that the assets alleged to have been converted were ever in Ontario or that they had any connection to Ontario. On either of its allegations, that the defendants took the equipment themselves or sold it to another company in Alberta, the property is alleged to have been taken in, and remain in, Alberta.

[40] Grand HVAC acknowledges that it focused the case and its arguments on the contract claim.

[41] I agree that if Ontario had jurisdiction over the dispute on the guarantees, it could also exercise jurisdiction over the conversion claim. However, it does not have jurisdiction *simpliciter* over the conversion claim. The conversion claim has no connection to Ontario, other than that Grand HVAC is the party alleging it and Grand HVAC is headquartered in Ontario. The assets did not originate in Ontario, were never in Ontario, and were not alleged to have been converted here. There is no connection between the conversion claim and this jurisdiction.

Conclusion on jurisdiction *simpliciter*

[42] For the reasons above, I find that Ontario does not have jurisdiction *simpliciter* over the claim. There is no good arguable case that Ontario has a real and substantial connection with the subject matter of the dispute. The only connections are that Grand HVAC is headquartered here, and that the leases, which would have to be dealt with in the bankruptcy proceedings underway in Alberta, contain an Ontario choice of law clause. These are insufficient to establish jurisdiction, even applying the low threshold of a "good arguable case."

[43] As set out at paragraph 100 of *Van Breda*, when a court concludes that it lacks jurisdiction because none of the presumptive connecting factors exist, it must dismiss or stay the action. If jurisdiction is established, the claim may proceed, subject to the court's discretion to stay the proceedings on the basis of the doctrine of *forum non conveniens.*

[44] My finding on jurisdiction *simpliciter* is therefore sufficient to dispose of the matter in the defendants' favour. However, in the event I am incorrect, I will consider the defendants' alternative argument that the court should stay the proceedings on the basis of *forum non conveniens*.

Issue two: Should the court stay the proceedings on the basis of *forum non conveniens*?

[45] If a court finds it has jurisdiction *simpliciter*, it may still stay proceedings if another forum has jurisdiction and is a more appropriate forum to dispose of the matter fairly and efficiently: *Muscutt v. Courcelles*, [2002] O.J. No. 2128, 60 O.R. (3d) 20 at para. 40.

[46] A non-exhaustive list of the factors the court considers is referred to in *Van Breda* at paras. 110-111. For purposes of this motion, the relevant factors are the location of the witnesses and the parties, the desire to avoid multiplicity of proceedings, the relative strengths of the connections of the two parties, and loss of juridical advantage which in this case centers on choice of law.

[47] The defendants bear the burden of establishing that the court should decline jurisdiction and displace the forum the plaintiffs chose: *Van Breda* at para. 103.

Location of witnesses and the parties

[48] All the defendants are located in Alberta. Grand HVAC is headquartered in Ontario. However, its CFO and affiant on this motion is in Nova Scotia. Its former employee who managed the guarantees with the defendants appears to be in British Columbia. There is no evidence that any witnesses are in Ontario. This factor favours Alberta.

Multiplicity of proceedings

[49] If Grand HVAC is successful in proceedings in Ontario it will have to begin an application in Alberta seeking to register and enforce its judgment in Alberta, the location of the defendants' assets and the assets alleged to have been converted. This factor favours Alberta: *Churchill Cellars Ltd. v. Haider*, 2018 ONSC 2013, at para 44, affirmed 2019 ONSC 1143 (Div. Ct.).

The relative strength of the connections of the parties

[50] The defendants and the contracts at issue are connected to Alberta. Grand HVAC is headquartered in Ontario, but its connections to these defendants and the guarantees are not Ontario-based. It used guarantees that appear to emanate from its American affiliated company. The defendants' connection to Alberta, for purposes of this dispute, is stronger than that of Grand HVAC's connection to Ontario. I find this factor favours Alberta.

Juridical advantage / Choice of law

[51] Grand HVAC argues that starting a new claim in Alberta would cause further delay and the expenditure of further resources. Applying this logic would mean that whoever chose a forum first would stand to lose juridical advantage. I do not read juridical advantage as applying this way.

Nor do I believe that this motion was brought as a delay tactic. It is not the defendants' fault that its motion was only able to be scheduled 19 months after they sought a schedule at Civil Practice Court.

[52] The real issue of juridical advantage in this case is whether Ontario or Alberta law will be applied. It may be possible that the same substantive law may apply wherever the case is heard: *Van Breda* at para. 111.

[53] There is real advantage to Grand HVAC to have Ontario law applied. Ontario law, unlike that of Alberta, does not require guarantors to have obtained independent legal advice prior to signing guarantees. The guarantors in this case did not receive independent advice.

[54] I agree, however, that this factor should not weigh too heavily in the analysis.

[55] I say this because the principles of comity and respect for other legal systems require the juridical advantage factor to be applied with caution: *Van Breda* at para. 112, *Prince v. ACE Aviation Holdings Inc*., 2014 ONCA 285 at para. 64. The court should not be swayed by whether Grand HVAC or the defendants are more likely to succeed. I am not, at this stage, deciding which law is to be applied or what the merits of the case are. I find this to be a neutral factor.

Conclusion on *forum non conveniens*

[56] The factors above favour Alberta or are neutral. No factor favours Ontario. Therefore, if I am incorrect about Ontario not having jurisdiction *simpliciter*, I would exercise my discretion to decline jurisdiction and stay the claim in favour of the Alberta courts based on *forum non conveniens*.

Disposition

[57] I order the claim to be stayed.

Costs

[58] Fixing costs is a discretionary exercise under s. 131 of the *Courts of Justice Act*, R.S.O. 1990 c. C. 43. Rule 57 outlines, in a non-comprehensive list, factors that guide the exercise of this discretion. Relevant factors include the results of the proceeding, the principle of indemnity, the amount an unsuccessful party could reasonably expect to pay, the complexity of the proceeding and the importance of the issues.

[59] Ultimately, I must fix an amount of costs that is proportionate, and that is fair and reasonable for the unsuccessful party to pay: *Boucher v. Public Accountants Council for the Province of Ontario*, 2004 CanLII 14579 (ONCA) at para. 26. A costs award should "reflect what is reasonably predictable and warranted for the type of activity undertaken in the circumstances of the case, rather than the amount of time that a party's lawyer is willing or permitted to expend": *Apotex Inc. v. Eli Lilly Canada Inc.*, 2022 ONCA 587 at para. 65.

[60] The defendants seek costs on a partial indemnity scale in the amount of $24,233.53 (Mr. Dupuis) and $64,166.81 (Mr. Goerz, Mr. Isaak, and Mr. Wood). They argue that the interpretive issues raised in the case were somewhat novel and required a nuanced approach. Although it is an interlocutory motion, its importance is fundamental, and the claim may rise or fall on its decision. The co-operation among the defendants' separate counsel decreased costs.

[61] Grand HVAC argues those costs are disproportionate for a preliminary jurisdiction motion with a straightforward, relatively brief factual record and no cross-examinations. While the issue was important, it was not complex. The four defendants filed a joint factum. The joint representation of three defendants should have decreased, not increased, costs.

[62] Grand HVAC's costs outline shows its partial indemnity costs as $26,679.93.

[63] The case was of fundamental importance to the parties. All counsel prepared comprehensive and helpful written materials that were of assistance to the court. No party delayed or complicated the proceeding A significant portion of the difference in bills of costs relates to hourly rates of counsel for the Goerz, Isaak and Wood defendants, rather than to the time spent by counsel. The hourly rates charged by counsel for Goerz, Isaak, and Wood are within the range of hourly rates generally charged for this kind of litigation in Toronto: *Infor v Centrilogic*, 2023 ONSC 3375.

[64] Bearing in mind the overarching principle that costs awards should be proportionate and within the contemplation of the losing party and fair and reasonable for it to pay, I fix costs payable to Mr. Dupuis at $18,000 all-inclusive and costs to the remaining three defendants at $50,000 all-inclusive.

L. Brownstone J.

Released: June 30, 2025

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