

**CITATION:** Pleasance v. Fairmont Banff Springs, 2025 ONSC 4728  
**COURT FILE NO.:** CV-24-00726576-0000  
**DATE:** 20250815

**ONTARIO SUPERIOR COURT OF JUSTICE**

**RE:** Norma Anne Pleasance, Plaintiff (responding party)

-and-

Fairmont Banff Springs, Accor Management Canada Inc., Parks Bottom Co. Real Estate Holdings Inc. and OMERS Realty Corporation, ABC Corporation 1, ABC Corporation 2, John Doe 1, John Doe 2, Defendants (moving parties)

**BEFORE:** Robert Centa J.

**COUNSEL:** Julien Bonniere, for the plaintiff (responding party)

Christian Halt and Richard Kelba, for the defendants (moving parties)

**HEARD:** August 11, 2025

**ENDORSEMENT**

- [1] Norma Anne Pleasance is a resident of the United States of America. On September 2, 2022, Ms. Pleasance tripped as she walked between two connected guest rooms at the Banff Springs hotel in Banff, Alberta. She fell and hurt herself. On August 29, 2024, Ms. Pleasance commenced an action in the Ontario Superior Court of Justice seeking \$2 million in damages. Ms. Pleasance named as defendants Fairmont Banff Springs, Accor Management Canada Inc., Parks Bottom Co. Real Estate Holdings Inc. and OMERS Realty Corporation.
- [2] Each of Fairmont Banff Springs, Accor, Parks Bottom, and OMERS have brought a motion to have the action dismissed or stayed as against them for want of jurisdiction. In the alternative, they submit that the Ontario court should decline to exercise its jurisdiction because Alberta would be a clearly more convenient venue in which to try the action.
- [3] For the reasons that follow, I find that there is no real and substantial connection between Ontario and this dispute. If I am wrong, I would decline to exercise jurisdiction over this dispute because Alberta would be a far more convenient forum for this action. I order that the action be stayed against all defendants.

**1. The nature of the claim**

- [4] As noted above, Ms. Pleasance issued her claim in Ontario on August 29, 2024. She did not file an affidavit in her own name on this motion, she only filed an affidavit from one

of her lawyers, Mr. Falconeri. None of the defendants have filed a statement of defence, although they filed affidavits for use on this motion.

[5] On a motion challenging jurisdiction, I am to accept the material facts pleaded by the plaintiff as true, except for bald conclusory statements of fact, unsupported by material facts: see *Abaxx Technologies Inc. v. Pasig and Hudson Private Limited*, 2024 ONCA 164, at para. 17. However, where the pleadings are contradicted by affidavit evidence, I am entitled to consider the affidavit evidence filed on the motion: see *Sinclair v. Venezia Turismo*, 2025 SCC 27, at para. 57.

[6] In her statement of claim, Ms. Pleasance describes the defendants and their relationship to the hotel where she tripped and fell as follows:

3. The Defendant Fairmont Banff Springs carries on business as a hotel. At all material times this Defendant was an owner and/or occupier of the Premises and was responsible for ensuring the safety of patrons thereon including that of the Plaintiff.

4. The Defendant Accor Management Canada Inc. is a corporation incorporated pursuant to the laws of the Country of Canada. At all material times this Defendant was an owner and/or occupier of the Premises and was responsible for ensuring the safety of patrons thereon including that of the Plaintiff.

5. The Defendant Parks Bottom Co. Real Estate Holdings Inc. is a corporation presumed to be incorporated pursuant to the laws of the State of New York, United States of America. At all material times this Defendant was an owner and/or occupier of the Premises and was responsible for ensuring the safety of patrons thereon including that of the Plaintiff.

6. The Defendant Omers Realty Corporation is a corporation incorporated pursuant to the laws of Canada. At all material times this Defendant was an owner and/or occupier of the Premises and was responsible for ensuring the safety of patrons thereon including that of the plaintiff.

[7] Ms. Pleasance pleads that she tripped, fell, and hurt herself because the defendants breached Ontario's *Occupiers' Liability Act*, R.S.O. 1990, c. O.2., and were negligent. She pleads the following material facts in support of her claim:

10. The Plaintiff submits that this incident occurred as a direct result of the negligence and breach of the *Occupiers' Liability Act*, R.S.O., 1990, c.O.2 by the Defendants, their agents, employees, servants and/or contractors for whom the Defendants are in law responsible, the particulars of which are as follows:

- a. They failed in their duty to keep the Premises in a proper state of repair and safe for patrons and invitees, including the Plaintiff;
- b. They failed in their duty to post warning or to give adequate notice of warning of the sill on the floors between adjoining rooms within the Premises;
- c. They failed to take reasonable or any steps to implement programs or procedures for the regular inspection, cleaning and maintenance of the floors within the Premises;
- d. They failed to take reasonable or any steps to implement programs or procedures for the routine maintenance of the floors within the Premises;
- e. They failed to regularly inspect the floors within the Premises to ensure that they were kept in a safe condition;
- f. They failed to properly instruct their agents, employees and servants in the proper methods and procedure in maintaining the floors within the Premises in good and proper condition;
- g. They employed incompetent agents, employees and servants to maintain and inspect the floors within the Premises;
- h. They failed to take such care as in all the circumstances was reasonable to see that the Plaintiff was safe while on the Premises;
- i. They failed to respond adequately or at all to notices and warnings that the floors within the Premises were in immediate need of attention;
- j. They created a situation of danger for users of the Premises, including the Plaintiff, and
- k. They created a situation of danger and emergency from which the Plaintiff could not extricate herself, despite all reasonable care and diligence.

## **2. Jurisdiction**

- [8] In order for this court to assume jurisdiction over this claim, I must be satisfied that there is a real and substantial connection between the circumstances giving rise to the claim and

Ontario: see *Sinclair*, at para. 43; *Club Resorts Ltd. v. Van Breda*, 2012 SCC 17, [2012] 1 S.C.R. 572, at paras. 22-50 and 67. The real and substantial connection test mitigates jurisdictional overreach where the connection among the forum, the subject matter of the dispute, and the defendant is not sufficient for a court to assume jurisdiction: see *Sinclair*, at para. 44; *Van Breda*, at para. 99.

**A. Ms. Pleasance established the existence of a presumptive connecting factor only regarding OMERS and Accor**

- [9] Ms. Pleasance relies on the first two of four factors that presumptively allow an Ontario court to assume jurisdiction over a dispute in tort cases:
- i. The defendant is domiciled or resident in Ontario;
  - ii. The defendant carries on business in Ontario;
  - iii. The tort was committed in Ontario; and
  - iv. A contract connected to the dispute was made in Ontario: see *Sinclair*, at para. 47, citing *Van Breda*, at para. 90.
- [10] Presumptive connecting factors demonstrate an objective connection between Ontario and the dispute. There is a low bar to meet to establish a presumptive connecting factor, regardless of the precise words used to articulate the standard: compare *Sinclair*, paras. 59-62, *per* Côté J., and paras. 223-236, *per* Jamal J. (dissenting).
- [11] The onus is on Ms. Pleasance to establish that one or more of the listed factors exists for each defendant. As the Supreme Court has made clear in *Sinclair*, at para. 63, it is necessary to examine the situation of each proposed defendant because there must be a presumptive connecting factor that applies to each defendant:

In cases where there are multiple defendants, jurisdiction should be examined from the perspective of each defendant rather than in light of the factual and legal situation writ large. The reason for examining jurisdiction from the perspective of each defendant is that, when a court takes jurisdiction over a claim, it assumes the authority not only to adjudicate the claim but also to make orders against each defendant. For this power to be exercised legitimately, the court must be satisfied that the requisite connection exists in respect of each defendant who may be subject to that power. An assumption of jurisdiction without the requisite connection amounts to judicial overreach. As such, there should be no “bootstrapping”, where the legitimate establishment of jurisdiction over one defendant is taken uncritically to imply jurisdiction over all defendants. This includes cases where, as here, one defendant attorns to the court’s jurisdiction but the others resist it. There must be a presumptive connecting factor that applies to each defendant.

[12] I will consider whether Ms. Pleasance has established presumptive jurisdiction over each defendant in turn:

- i. Parks Bottom: Ms. Pleasance does not plead any facts to suggest that Parks Bottom is domiciled, resident, or carries on business in Ontario. The uncontradicted evidence is that Parks Bottom is a corporation registered in British Columbia, extra-provincially registered in Alberta, and has no registered address or place of business in Ontario. I find that Ms. Pleasance has not established that the Ontario court has presumptive jurisdiction over Parks Bottom.
- ii. Fairmont Banff Springs: Ms. Pleasance does not plead any facts to suggest that Fairmont Banff Springs is domiciled, resident, or carries on business in Ontario. Moreover, the uncontradicted evidence is that Fairmont Banff Springs is not a legal entity. It is a trade name registered in Alberta on behalf of Accor. It is not a registered trade name in Ontario. For these reasons, I find that Ms. Pleasance has not established that the Ontario court has presumptive jurisdiction over Fairmont Banff Springs.
- iii. Accor: Ms. Pleasance does not plead any facts to suggest that Accor is domiciled, resident, or carries on business in Ontario. However, the evidence establishes that Accor is a federally registered corporation with extra-provincial registrations in Alberta and Ontario. Its registered address is in Toronto, Ontario. I find that Ms. Pleasance has established that the Ontario court has presumptive jurisdiction over Accor.
- iv. OMERS: Ms. Pleasance does not plead any facts to suggest that OMERS is domiciled, resident, or carries on business in Ontario. However, the evidence establishes that OMERS is a federally registered corporation with extra-provincial registrations in Alberta and Ontario. Its registered address is in Toronto, Ontario. I find that Ms. Pleasance has established that the Ontario court has presumptive jurisdiction over OMERS.

[13] I stay the action against Parks Bottom and Fairmont Banff Springs because the Ontario Superior Court of Justice does not have jurisdiction over the claims against those entities.

[14] Accor and OMERS may rebut the presumption of jurisdiction by showing that the factor does not, in the circumstances of this case, point to a real relationship between the dispute and the forum: see *Sinclair*, at para. 49; *Van Breda*, at para. 95.

**B. *Accor and OMERS have rebutted the presumption of jurisdiction***

[15] When an Ontario court assesses whether a defendant has rebutted the presumption of jurisdiction, it assesses the strength of the connection between Ontario and the dispute and permits a holistic assessment of whether a real and substantial connection exists: see *Sinclair*, at para. 50. The burden is on Accor and OMERS to prove that the strength of the connection to Ontario, the subject matter of the dispute, and the defendant is non-existent or weak.

- [16] I agree with Ms. Pleasance that both Accor and OMERS have a meaningful connection to Ontario by virtue of their corporate registration and office. However, I do not think there is a meaningful connection among Accor and OMERS, Ontario, and the subject matter of the dispute, which is a trip and fall in an Alberta hotel. The connection is weak at best.
- [17] The uncontradicted evidence on this motion is that OMERS owns a partial leasehold interest in the Fairmont Banff Springs Hotel. It is not an operator. It has never been involved in the day-to-day operations, maintenance, repair, inspection, management, or supervision of any activities at the hotel. There are no OMERS employees based in Ontario with any knowledge regarding any aspect of the dispute set out in Ms. Pleasance's statement of claim. The dispute in this case arose from a tort that occurred in Alberta. Ms. Pleasance has not pleaded any facts to suggest that OMERS employees performed any acts in Ontario that contributed in any way to her fall. Based on this uncontradicted evidence, I find that OMERS has rebutted the presumption of jurisdiction. I am satisfied that there is no real and substantial connection among OMERS, the subject matter of this dispute, and Ontario.
- [18] Accor is the exclusive operator and manager of the Fairmont Banff Springs Hotel. The uncontradicted evidence is that the day-to-day maintenance and repair of hotel rooms is performed and managed by individuals employed by its subsidiary, FHR Banff Operations Corporation. FHR is not a party to this action. The uncontradicted evidence is that all of the FHR employees with relevant information worked on-site at the hotel. Conversely, no such work is performed by any individuals at Accor's office in Ontario. Individuals in the Ontario office did not perform or supervise any repair or maintenance of the threshold that Ms. Pleasance tripped over. They also did not make any decisions or issue any policies that addressed that threshold.
- [19] All of the individuals who assisted or spoke to Ms. Pleasance after she tripped worked at the hotel in Alberta. None of those employees worked or lived in Ontario.
- [20] I accept that individuals working in Ontario may have written certain standard operating procedures to be followed by the staff located in Alberta. Having reviewed the operating procedures, they are very generic and have only a passing relevance to any of the matters pleaded in the statement of claim.
- [21] Based on this uncontradicted evidence before me, I find that Accor has rebutted the presumption of jurisdiction. The connection of this dispute to Ontario is very weak. I am satisfied that there is no real and substantial connection among Accor, the subject matter of this dispute, and Ontario: see e.g. *Matiko John v. Barrick Gold Corporation*, 2024 ONSC 6240, at para. 147.
- [22] I stay the action against OMERS and Accor because the Ontario Superior Court of Justice does not have jurisdiction over the claims against those entities.

### **3. Forum non conveniens**

- [23] If I am wrong, and Ontario has jurisdiction over this dispute, I would decline to exercise that jurisdiction because Alberta is a far more convenient forum for this action.
- [24] *Forum non conveniens* is a common law doctrine that allows a court to stay a civil action when the court has jurisdiction over the case and the parties. It is a discretionary remedy that allows a court properly seized with jurisdiction to decline to exercise it. This remedy is adopted where an alternative appropriate forum would be a more convenient venue in which to try the action: see *Sinclair*, at para. 78. The doctrine of *forum non conveniens* recognizes the residual discretion of courts to decline to exercise their jurisdiction where fairness to the parties and the efficient resolution of the dispute so require: see *Van Breda*, at para. 104.
- [25] Factors that a court may consider in deciding whether to apply *forum non conveniens* may vary depending on the context, but generally include the following:
- i. the relative strengths of the parties' connections to each forum;
  - ii. the interests of both parties: the comparative convenience and expense for the parties to the proceeding and for their witnesses in litigating in the court or in any alternative forum, including the domicile of the parties, and the locations of witnesses and of pieces of evidence;
  - iii. the law to be applied to issues in the proceeding;
  - iv. the desirability of avoiding a multiplicity of legal proceedings, and of avoiding conflicting decisions in different courts;
  - v. the enforcement of an eventual judgment;
  - vi. juridical advantage or disadvantage; and
  - vii. the interests of justice, including the fair and efficient working of the Canadian legal system as a whole: see 778938 *Ontario Limited v. EllisDon Corporation*, 2023 ONCA 182, 479 D.L.R. (4th) 653, at para. 19; *Van Breda*, at paras. 105, 107, 110 and 111.
- [26] In my view, Alberta is a much more appropriate venue than Ontario for this action.
- [27] First and foremost, this case is about a trip and fall that happened in a hotel in Banff, Alberta. The law governing that tort will be that of the place where the tort occurred: see *Tolofson v. Jensen*, [1994] 3 S.C.R. 1022, at para. 43; *Van Breda*, at para. 37. Although Ms. Pleasance has pleaded that she relies on the Ontario *Occupiers' Liability Act*, I have grave doubts that the Ontario Act would apply to premises located in Alberta. It seems much more likely that Alberta's *Occupiers' Liability Act*, R.S.A. 2000, c. O-4, will apply to premises located in that province.

- [28] Because the trip and fall happened in Alberta, most of the witnesses are located in Alberta and none of the witnesses are found in Ontario. The defendants have indicated that they intend to call four witnesses at trial: Balou Hartelo, Emma Cossaboom, Mohammed Kenneh, and Imran Ali. They all either work in Banff or live in Alberta. Other potential witnesses, including the staff Ms. Pleasance spoke to after her fall, the hotel’s maintenance and repair employees, and the treating doctors at the local hospital probably still live in Alberta (and there is no reason to believe any of them live in Ontario).
- [29] It seems likely that both Ms. Pleasance and her husband will testify, but they neither live in Alberta nor Ontario, so that factor is neutral. In his affidavit, Mr. Falconeri states that “It is my expectation that the plaintiff will be calling medical witnesses from the province of Ontario.” I note that Mr. Falconeri does not say that Ms. Pleasance has treating physicians in Ontario or that he has already retained Ontario-based experts to provide opinion evidence at trial. There is no evidence to suggest that Ms. Pleasance will not be able to retain qualified practitioners in Alberta to provide opinion evidence if the trial is moved.
- [30] I accept that virtual hearings in Ontario could ameliorate some of the problems posed by the witnesses living in Alberta and I do not give too much weight to this factor: see *Black & McDonald Limited v. Eiffage Innovative Canada Inc.*, 2023 ONCA 91, 34 C.L.R. (5th) 62, at para. 22. However, all judge-alone civil trials in Ontario are to be held in person unless all parties consent to a virtual trial and the court approves. All civil trials with a jury must be held in person. While the court may consider the option of a hybrid proceeding and whether a witness may be permitted to testify virtually by videoconference, there is no guarantee the court would permit most, if not all, fact witnesses to testify by videoconference: see “Consolidated Civil Provincial Practice Direction” (June 1, 2023, amended February 1, 2024).
- [31] The relative strengths of the parties’ connections to each forum also supports Alberta as the more convenient forum. There is no evidence that Ms. Pleasance has any connection to either forum, other than having visited Banff at the time of her fall. However, Accor, in particular, runs the hotel in Banff using employees from Alberta. In connection to this dispute, it has a much stronger connection to Alberta than to Ontario. Accor’s connection to Alberta is much stronger than Ms. Pleasance’s connection to Ontario.
- [32] There is no evidence before me to suggest that there is a risk of conflicting judgments, problems relating to the recognition or enforcement of a judgment, that the cost of transferring the case is anything other than negligible, or that there is any loss of juridical advantage or imposition of juridical disadvantage by staying this proceeding.
- [33] In my view, taking the factors described above and considering the interests of justice, including the fair and efficient working of the Canadian legal system as a whole, I have no doubt that Alberta is clearly a more appropriate venue for this action.
- [34] If the court has jurisdiction over this claim, I would exercise my discretion to decline that jurisdiction and enter a stay of proceedings on the basis of *forum non conveniens*.

**4. Conclusion and costs**

- [35] For the reasons set out above, I order that the action be stayed against all defendants.
- [36] If the parties are not able to resolve costs of this action, the defendants may email their costs submission of no more than three double-spaced pages to my judicial assistant on or before August 22, 2025. Ms. Pleasance may deliver her responding submission of no more than three double-spaced pages on or before August 29, 2025. No reply submissions are to be delivered without leave.

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Robert Centa J.

Date: August 15, 2025