

COURT OF APPEAL FOR ONTARIO

CITATION: Roger Vanden Berghe NV v. Korhani of Canada Inc., 2025 ONCA
226

DATE: 20250320

DOCKET: COA-24-CV-0869

Nordheimer, Coroza and George JJ.A.

BETWEEN

Roger Vanden Berghe NV in liquidation by its
liquidator, Rik Crivits

Applicant (Respondent)

and

Korhani of Canada Inc.

Respondent (Appellant)

Dillon Collett, for the appellant

Darren Marr, for the respondent

Heard: March 18, 2025

On appeal from the judgment of Justice Robert Centa of the Superior Court of Justice, dated July 26, 2024, with reasons reported at 2024 ONSC 4235.

REASONS FOR DECISION

[1] Korhani of Canada Inc. appeals from the judgment of the application judge that recognized a Belgium judgment that the respondent had obtained against the appellant. At the conclusion of the hearing, we dismissed the appeal with reasons to follow. These are our reasons.

[2] The respondent sold textiles to the appellant. The respondent went into liquidation. The liquidator determined that there were unpaid invoices due by the appellant to the respondent. The liquidator commenced an action in Belgium to recover the unpaid amounts. The contract of sale between the appellant and the respondent specified Belgium and its courts as the non-exclusive jurisdiction to determine all disputes.

[3] The respondent served the Writ of Summons on the appellant by registered mail to the appellant's business address as stated on the invoices. An employee of the appellant acknowledged receipt of the material. The appellant did not respond. The respondent obtained a final judgment from the Belgium court. The respondent then made demands for payment. Again, the appellant did not respond. The respondent then commenced this application to have the Belgium judgment recognized. In response to the application, the appellant filed an affidavit from a director of the appellant which disputed that any amounts were due to the respondent.

[4] In his reasons, the application judge set out the test for recognizing a foreign judgment. He concluded that the test was met. More specifically, the application judge concluded that the Belgian judgment was rendered by a court of competent jurisdiction, that it was for a definite sum of money and that it was final.

[5] On appeal, the appellant seeks to adduce fresh evidence that addresses two specific points. One is to raise issues regarding whether the appellant was properly served with the Writ of Summons. The other is to allege that its counsel provided ineffective representation in general and, specifically, in failing to raise the issue with respect to service of the Writ of Summons.

[6] We do not accept the fresh evidence. It does not satisfy the test for fresh evidence set out in *R. v. Palmer*, [1980] 1 S.C.R. 759. In particular, it is evidence that could have, and should have, been placed before the application judge.

[7] Further, the allegation of ineffective assistance of counsel in a civil case does not afford the appellant a *de novo* hearing of the application. Issues about ineffective assistance of counsel are matters between the client and its former lawyers. Absent exceptional circumstances, they are not a ground of appeal that can be relied upon to set aside an order below: *Sabaratnam v. Yohanathan*, 2024 ONCA 845, at para. 8. The appellant's reliance on the public interest exception referred to in *OZ Merchandising Inc. v. Canadian Professional Soccer League Inc.*, 2021 ONCA 520, at para. 44, has no application to this case.

[8] The appellant has not demonstrated any error in the application judge's analysis and conclusion. The Belgium court had jurisdiction over the dispute, its order is final, and the appellant has failed to satisfy any of the established grounds that would justify a refusal to recognize the foreign judgment. In particular, the

appellant has failed to establish any basis to invoke the natural justice exception to the recognition of a foreign judgment.

[9] It is for these reasons that the appeal was dismissed as was the motion to adduce fresh evidence. The respondent is entitled to its costs of the appeal fixed in the agreed amount of \$17,787.33, inclusive of disbursements and HST.

“I.V.B. Nordheimer J.A.”

“S. Coroza J.A.”

“J. George J.A.”