

**CITATION:** Acteon v. Verona Medical Group 2023 ONSC 5140  
**COURT FILE NO.:** CV-21-00664821-0000  
**DATE:** 20230912

**ONTARIO SUPERIOR COURT OF JUSTICE**

**RE:** ACTEON INC., Plaintiff

**-and-**

VERONA MEDICAL GROUP INC. DENT-X CANADA, VERONA DENTAL  
and VERONA MEDICAL GROUP, Defendants

**BEFORE:** Shin Doi J.

**COUNSEL:** *Michael Citak*, for the Plaintiff

*Neil Colville-Reeves*, for the Defendants

**HEARD:** June 13, 2023

**ENDORSEMENT**

- [1] The Plaintiff seeks an order enforcing a judgment dated April 20, 2021 issued by the Commercial Court of Bordeaux, France (the “Bordeaux Commercial Court”) against the Defendants and a stay of the Defendants’ counterclaim.
- [2] The case arises from an unpaid balance for medical and dental equipment purchased by the defendant Dent-X Canada (“Dent-X”) from the Plaintiff.
- [3] For the reasons below, I grant the Plaintiff’s motion for recognition and enforcement of the judgment and a stay of the Defendants’ counterclaim pending the appeal of the Merits Proceeding. I stay the execution of the order granting recognition and enforcement of the judgment until the earlier of the date when a decision in the appeal of the Merits Proceeding is released and January 15, 2024 when counsel may return with additional evidence and argument on the stay.

**Background Facts**

- [4] The Plaintiff is a New Jersey corporation that sells dental imaging and other equipment to distributors and dealers in North America. The defendant Verona Medical Group Inc. is an Ontario corporation that acts primarily as a dealer of dental imaging equipment in Ontario.

Verona Medical Group Inc. carries on business in Ontario under the names of Dent-X Canada, Verona Dental, and Verona Medical Group.

- [5] The parties entered into a dealer agreement in May 2019 and a distribution agreement dated June 10, 2019. The Plaintiff provided the defendant Dent-X with equipment and rendered invoices in the sum of US\$2,399,540.97. The defendant Dent-X made partial payment in the amount of US\$649,959.69. The Defendants argue that much of the equipment invoiced by the Plaintiff was subject to late delivery that in many cases was after the start of the pandemic which resulted in significant losses. The Defendants explain that regulations by the Royal College of Dental Surgeons of Ontario restrict equipment installation after one year from date of manufacture.
- [6] The Plaintiff sued the defendant Dent-X for the amount of US\$1, 749, 581.01 owed from the purchase of the equipment. In accordance with the governing law provision in the dealer agreement between the parties, the Plaintiff commenced two proceedings before the Bordeaux Commercial Court:
- a. a proceeding on the merits which commenced on December 1, 2020 seeking payment of the outstanding invoices (the “Merits Proceeding”); and
  - b. a summary proceeding which commenced on January 13, 2021 seeking provisional payment of the outstanding invoices (the “Summary Proceeding”).
- [7] The Bordeaux Commercial Court granted a provisional award in the Summary Proceeding rendering judgment requiring the defendant Dent-X to pay US\$1,700,000 to the Plaintiff.
- [8] The defendant Dent-X appealed the Summary Proceeding judgment including the monetary award and the determination with respect to jurisdiction but the appeal was dismissed by the Court of Appeal of Bordeaux on November 29, 2021. The defendant Dent-X did not pursue a further appeal to the Supreme Court and the time to do so has expired.
- [9] In the Merits Proceeding, the Bordeaux Commercial Court initially found that it lacked jurisdiction but the determination was reversed by the Court of Appeal of Bordeaux on July 4, 2022. On February 23, 2023, the Bordeaux Commercial Court rendered its decision on the Merits Proceeding and found in favour of the Plaintiff.
- [10] The defendant Dent-X filed a Declaration of Appeal and the appeal of the Merits Proceeding is currently outstanding at the Supreme Court. The defendant Dent-X did not move for a stay of enforcement of the judgment in the Merits Proceeding.
- [11] The Plaintiff commenced a claim against the Defendants in Ontario on June 29, 2021, seeking an order enforcing the Summary Proceeding judgment. The Defendants in its counterclaim against the Plaintiff claims damages in the sum of \$10,000,000.00 for loss of profits, loss of opportunity, loss of reputation, and “wasted” legal fees, special damages, punitive damages, and pre and post judgment interest. The Defendants allege that as a result of the Plaintiff’s delays, the Defendants have been unable to fulfill their own customer

orders. The Defendants further allege that the Plaintiff made misrepresentations as to its sufficient stock.

### **Finality**

- [12] The Plaintiff argues that the judgment in the Summary Proceeding is final, enforceable and ought to be recognized in Ontario. The Defendants argue that the judgment in the Summary Proceeding is not final because there is an appeal in the Merits Proceeding.
- [13] The Plaintiff's legal expert, Philippe Hameau in his Affidavit sworn on November 24, 2022, states at para. 12, that the Summary Proceeding judgment is a "provisional award" and "executory". Mr. Hameau states at para. 24 that it is his opinion that the judgment is "final, valid, binding and fully enforceable."
- [14] The Defendants' legal expert, Matthieu Ollivry in his Affidavit sworn April 17, 2023, disagrees. He states at paras. 11 and 12 that the Summary Proceeding judgment is an interim decision that can be reversed by a decision rendered on the merits. He further states at para. 32 that it is his opinion that the Summary Proceeding judgment lacks *res judicata* on the merits of the case; and the Merits Proceeding judgment is provisionally enforceable but is not final as the Court of Appeal of Bordeaux is entitled to confirm totally or partially, reverse, or contradict the judgment.
- [15] The caselaw establishes that a decision is final regardless of an appeal (*Continental Casualty Company v. Symons Estate* 127 O.R. (3d) 758 at para 20). Henry J. held in *Four Embarcadero Center Venture v. Mr. Greenjeans Corp.* (1998), 1988 CanLII 4610 (ON SC), 64 O.R. (2d) 746, [1988] O.J. No. 210 (H.C.J.) at para 72:

A judgment that, under the laws of jurisdiction where it was made, is final between the parties in the sense that under the foreign law the court that made it has no jurisdiction or residual power to abrogate or vary it or to retry the issue that it has decided. The fact that an appeal is pending which may result in its being rescinded or varied does not deprive the judgment of its finality in the sense mentioned.

- [16] In this case, the Plaintiff has two judgments in its favour: one in the Summary Proceeding and one in the Merits Proceeding but is seeking to enforce just the one in the Summary Proceeding. Both parties agree that the judgment in the Summary Proceeding is executable in France and there is no outstanding appeal in the Summary Proceeding. Given the caselaw on the enforcement of foreign judgments and the finality of a foreign judgment despite an appeal, it is proper to enforce the judgment as against the Defendants in the Summary Proceeding. Moreover, it would also be proper to enforce the judgment in the Merits Proceeding but that was not sought by the Plaintiff. I order recognition and enforcement of the judgment in the Summary Proceeding sought by the Plaintiff.
- [17] However, there is a concern that the outstanding appeal of the Merits Proceeding may lead to a judgment in an amount less than the amount of the judgment in the Summary Proceeding. The Plaintiff submitted that the Plaintiff would undertake to return any difference in the

monies if that should happen. Given the uncertainty, I stay the execution of the order recognizing and enforcing the judgment in the Summary Proceeding until the earlier of the date when a decision in the appeal of the Merits Proceeding is released; and January 15, 2024 when counsel may return with additional evidence and argument on the interim stay.

- [18] I note that there is no evidence submitted as to the financial position of either party and therefore, I am not inclined to make any order for monies to be paid into court to secure judgment.

### **One Legal Entity**

- [19] I reject the Defendants' argument that the judgment in the Summary Proceeding was rendered against only the defendant Dent-X and not the other named defendants, Verona Medical Group Inc., Verona Medical Group or Verona Dental, and therefore, should not be enforced against those. There is only one legal entity, Verona Medical Group Inc. and that corporation carries on business under all those business names, as evidenced by the business names registration submitted by the Plaintiff. Accordingly, the defendant Verona Medical Group Inc. is liable for the judgment rendered against the defendant Dent-X.

### **Jurisdiction**

- [20] The Defendants argue that there is still an outstanding dispute over jurisdiction. The Defendants state that there is no real and substantial connection between these parties, the dispute, and the French courts. The issue of jurisdiction is a procedural issue for the court in Bordeaux. In *Beals v. Saldanha* 2003 SCC 72 and cited in *Pro-Swing Inc. v. Elta Golf Inc.*, 2006 SCC 52 at para 12, the court held, "absent evidence of fraud or of a violation of natural justice or of public policy, the enforcing court is not interested in the substantive or procedural law of the foreign jurisdiction in which the judgment sought to be enforced domestically was rendered." That procedural issue has been and is currently before the courts in France. I agree with the Plaintiff that the Defendants primary grievance with the process of the Bordeaux Commercial Court relates to the rules regarding documentary disclosure.
- [21] I further note that the Distribution Agreement, which was entered into by sophisticated parties, provides in section 12 that the Distribution Agreement shall be governed by and construed in accordance with French law and the Business Court of Bordeaux would have jurisdiction over disputes. The Distribution Agreement also contains a priority clause in section 2, stipulating that the body of the agreement which includes section 12 takes priority over the Plaintiff's other terms and conditions. In addition, the Court of Appeal of Bordeaux found that the Distribution Agreement superseded the Dealer Agreement.
- [22] Lastly, I agree with the Plaintiff that it is necessary to stay the counterclaim until a decision in the Merits Proceeding because there is a risk of inconsistent results with a multiplicity of proceedings. I rely on the *Courts of Justice Act*, s. 106 which provides that a court may stay any proceeding on such terms as are considered just.
- [23] For these reasons, I grant the Plaintiff's motion for recognition and enforcement of the judgment and a stay of the Defendants' counterclaim pending the appeal of the Merits

Proceeding. I stay the execution of the order for recognition and enforcement of the judgment until the earlier of the date when a decision in the appeal of the Merits Proceeding is released and January 15, 2024 when counsel may return with additional evidence and argument on the stay.

[24] I order costs for this motion payable to the Plaintiff in the sum of \$30,000.00.

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Shin Doi J.

**Date:** September 12, 2023