

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Hancock v. MEG Energy Corp.*,
2024 BCSC 1793

Date: 20240927
Docket: S15991
Registry: Rossland

Between:

Travis Hancock

Plaintiff

And

Meg Energy Corp

Defendant

Before: The Honourable Madam Justice Lyster

Reasons for Judgment

Counsel for the Plaintiff:

J. Kitchen

Counsel for the Defendant:

E. Jackes

Place and Date of Hearing:

Rossland, B.C.
September 23, 2024

Place and Date of Judgment:

Rossland, B.C.
September 27, 2024

Introduction

[1] The plaintiff, Trevor Hancock, filed a notice of civil claim in this court on June 14, 2024, alleging that he was wrongfully dismissed by the defendant, MEG Energy Corp. (“MEG”). Mr. Hancock’s employment was terminated on June 30, 2022. There is no dispute that the limitation period for filing the action was two years from that date. The action was filed in British Columbia within the limitation period. No action has been filed in Alberta to date, and an action would be statute-barred in Alberta were it to be filed now.

[2] The defendant is an Alberta company, which operates predominantly in Alberta, and does not operate in British Columbia. Mr. Hancock’s employment with MEG was performed entirely in Alberta. MEG filed a jurisdictional response in this court on July 10, 2024, disputing that this court has jurisdiction over it.

[3] Before the court are two competing applications. MEG filed an application on August 9, 2024, applying for an order striking out, or in the alternative, staying the action against it pursuant to Rule 21-8(1) of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009 [*Rules*] and the *Court Jurisdiction and Proceedings Transfer Act*, S.B.C. 2003, c. 28 [*CJPTA*], on the basis that this court lacks territorial competence over the defendant. On August 15, 2024, Mr. Hancock filed his application, seeking an order pursuant to s. 14(2) of the *CJPTA* requesting that the Court of King’s Bench in Alberta accept a transfer of the action.

[4] There is no dispute between the parties, and indeed it is obvious on the face of the notice of civil claim, that this court lacks territorial competence over this action. The real issue in dispute between the parties is whether the action should therefore be struck or dismissed, as requested by the defendant, or transferred to Alberta, as requested by the plaintiff.

[5] For the reasons that follow, I have concluded that the appropriate order is that sought by the plaintiff, namely a request from this court that the Alberta Court of King’s Bench accept a transfer of this proceeding.

Analysis

[6] Section 3 of the *CJPTA* provides the circumstances in which the court has territorial competence in a proceeding brought against a named person. None of the circumstances set out in (a)-(e) apply to this action. Accordingly, this court lacks territorial competence over this proceeding.

[7] The question is whether the proceeding should be struck or dismissed, or a request made to the Alberta Court of King’s Bench to accept a transfer. Rule 21-8(1)(a) of the *Rules* permits a party to apply to strike out or dismiss a proceeding where the court lacks jurisdiction. This is the Rule relied upon by the defendant. Section 14(2) of the *CJPTA* permits the court to request that a court outside of British Columbia accept a transfer of a proceeding in which this court lacks territorial or subject matter competence if this court is satisfied that the receiving court has both territorial and subject matter competence. This is the provision relied upon by the plaintiff.

[8] In support of his position that this court should exercise its discretion to request a transfer of the proceeding, Mr. Hancock relies on the decision of Mr. Justice Grauer, as he then was, in *AECOM Canada Ltd. v. Fisher*, 2011 BCSC 860 [AECOM]. By way of context, as stated by the court at para. 3, there were two questions to be decided in that case: first, whether the court had territorial competence, and second, if it did, whether it should decline to exercise its competence in favour of the Saskatchewan Court of Queen’s Bench. There were three claims in issue, and the court determined it had territorial competence over two of them, but not over the third. The court concluded at para. 47 that it should not assume jurisdiction over the entire action. This meant that the two claims over which the court had territorial competence could only continue in this court if the other claim was severed. At para. 50, the court decided that given the real and substantial connection between every aspect of the case and Saskatchewan, the court should decline to exercise its territorial competence over the two claims on the ground that Saskatchewan was the more appropriate forum.

[9] Turning to the aspect of the *AECOM* directly relevant to the present applications, the court then needed to decide what to do with respect to the proceeding in light of those conclusions. At para. 44, the court noted that the defendants, as here, had requested an order dismissing or staying the proceeding on the basis that the plaintiffs had already commenced an equivalent proceeding in Saskatoon. At para. 56, the court noted that the plaintiffs requested a transfer of the British Columbia proceeding to Saskatchewan “in order to preserve any timing advantage”. The court does not explicitly state what that “timing advantage” may have been. At para. 57, the court reasoned:

[57] This procedure is now statutory. As I read the *Act*, it contemplates transfer, not dismissal. I can think of no basis for dismissing the plaintiffs' claim. Once it is transferred to Saskatchewan, I have no doubt that the plaintiffs will discontinue the other action. If they do not, I am sure the defendants will know what to do.

[10] In the result, the court in *AECOM* requested that the Saskatchewan Court of Queen’s Bench accept the transfer of the proceeding. Mr. Hancock submits that the same should happen here.

[11] Mr. Hancock also relies on *Yegre EB Ltd. v. Seguin*, 2023 BCSC 1481 [*Yegre*], in which Justice McDonald relied on *AECOM* in deciding to request that the Alberta Court of King’s Bench accept a transfer of the proceeding. The court determined that there was an enforceable exclusive jurisdiction clause in favour of Alberta in the parties’ agreement for purchase and sale. As in the present case, there was a limitation period issue, which the court noted at para. 51. The plaintiff requested a transfer to Alberta, submitting that such a transfer would preserve its rights and avoid giving an unfair advantage to the defendants. At para. 56, Justice McDonald stated that she inferred the “unfair advantage issue relates to the potential limitation defence that is anticipated by the plaintiff”.

[12] At para. 57 the court referred to *AECOM*, and at para. 58 concluded:

[58] The power to transfer a proceeding is found in s. 13 and the grounds for an order requesting a transfer of a proceeding are set out in s. 14 of the *CJPTA*. In my view, the present circumstances are similar to those faced by the plaintiff in *AECOM*, because the plaintiff here also faces the prospect of

losing a timing advantage associated with having commenced its action in British Columbia on July 22, 2022.

[13] Mr. Hancock also relies on two Nova Scotia decisions which have applied *AECOM*. In *Hurley v. Zutz*, 2017 NSSC 46 [*Hurley*], at para. 9, the court noted that Alberta has not enacted legislation similar to the *CJPTA*, but held that this is not a bar to transfer. In *Hurley*, the claim had been brought in time, but a parallel proceeding in Alberta was filed after the applicable limitation period. The court declined to dismiss the proceeding and granted the order requesting a transfer to Alberta. In *Khalifa v. MacDonald*, 2022 NSSC 157, the defendant conceded that a transfer to Alberta was appropriate. At paras. 32–33, the court, relying on *Hurley*, held that judicial comity allowed the Nova Scotia court to request transfer to Alberta so long as the court was satisfied the Alberta court had territorial and subject matter competence.

[14] The defendant submits that the action should be dismissed, and no transfer requested, because the action is statute-barred in Alberta. No proceeding was filed in Alberta within the two-year period prescribed under s. 3 of the *Limitations Act*, R.S.A. 2000, c. L-12. The defendant submits that to request a transfer in these circumstances would amount to asking the Alberta Court of King’s Bench to override its own limitation legislation, and that the court should not exercise its discretion to request a transfer.

[15] In support of this position, the defendant relies on *McCooeye v. Hankook Tire Canada Corp.*, 2020 ABQB 496. [*McCooeye*]. The facts in *McCooeye* were unusual. In that case, the defendant applied to strike the plaintiff’s statement of claim in Alberta because it was statute-barred. The plaintiff had filed his claim originally in Saskatchewan. At para. 5, the Alberta court noted that counsel for the defendant advised him that the defendant had successfully applied in Saskatchewan for an order that the action be transferred to Alberta and the action refiled in that province. The plaintiff then filed in Alberta, whereupon the defendant applied to have it struck on the basis that it was statute-barred. The court was clearly concerned about the defendant’s conduct, noting at para. 8 that it asked defendant’s counsel many

questions, and at para. 9 that the plaintiff was self-represented throughout. The court reserved and conducted its own research, including ordering the entire court file. On review of the court file, the court discovered the reasons of the Saskatchewan court on the transfer application, which had not been mentioned by counsel for the defendant. At para. 19, the court ventured to speculate that counsel for the defendant in Saskatchewan did not advise the court there that he would be pleading Alberta's *Limitation Act*, and applying to strike.

[16] The court in *McCooeye* noted that Alberta lacks an equivalent to the *CJPTA*, but stated at para. 26 that as s. 8 of its *Judicature Act* gave it the authority to request that the Saskatchewan court accept a transfer, the same section gave it the authority to accept or refuse a request to a transfer from the Saskatchewan court. The court referred at some length to the Saskatchewan legislation, which mirrors the legislation in this province. At paras. 22–23, the court stated that:

[22] In this case, a request from a Saskatchewan court to an Alberta court requesting that it accept an action that would be limitation barred if the Defendant asserted that defense, would contravene subsection 10(2) of Saskatchewan's *The Court Jurisdiction and Proceedings Transfer Act* as Alberta would not be a more appropriate forum nor would it satisfy the requirement that the transfer would bring about "the fair and efficient working of the Canadian legal system as a whole". It would also contravene subsection 12(5) of that *Act* as the differences between the Alberta law and the Saskatchewan law:

- (a) impair the effectiveness of the transfer; and
- (b) inhibit the fair and proper conduct of the proceeding.

[23] What is often done in such circumstances is for the requesting court to impose appropriate conditions on the transfer, such as requiring the defendant to undertake to not raise a limitation defense. Subsection 14(2) of the Saskatchewan *Act* specifically authorizes the Saskatchewan Court of Queen's Bench to impose a condition precedent on the transfer of the proceeding. But Mr. Justice Allbright's Reasons for Decision do not impose any conditions on the transfer of the action. Counsel for the Defendant has advised me that no formal order was taken out.

[17] The court in *McCooeye* denied the application to strike, stating:

[24] Granting the Defendant's application to strike the Plaintiff's Statement of Claim would be manifestly unjust. That would surely be in direct contradiction to what Justice Allbright intended and what Saskatchewan's *The Court Jurisdiction and Proceedings Transfer Act* allows.

[18] In the unique circumstances of that case, the court held at para. 27 that the appropriate order to grant was that the court refused the request to transfer the Saskatchewan proceeding. I infer that the court considered that order appropriate because it had denied the defendant's application to strike. The plaintiff was left free to pursue his claim in Alberta.

[19] Returning to the application to request that Alberta accept a transfer of Mr. Hancock's claim, s. 14(2) of the *CJPTA* is discretionary. This court may make a request if it lacks territorial or subject matter competence and if it is satisfied that the receiving court has both territorial and subject matter competence. Here, there is no question the Alberta court has both territorial and subject matter competence, and that this court lacks territorial competence.

[20] The authorities relied upon by the plaintiff, in particular *Yegre* and *Hurley*, establish that the court may request a transfer despite the fact that the claim, if initiated afresh in the receiving province, would be statute-barred. I agree with counsel for the plaintiff that the language of s. 14 of the *CJPTA*, which refers to the "transfer of a proceeding" means that the proceeding continues in the receiving province; it is not dismissed. This is consistent with the reasoning of Grauer J. in *AECOM* that the statute contemplates transfer, not dismissal.

[21] The decision is a discretionary one. In the present case, the plaintiff did not engage in egregious delay prior to requesting the transfer. This claim was filed only on June 14, 2024. This stands in contrast to a case relied upon by the defendant, *Conor Pacific Group Inc. v. Canada (Attorney General)*, 2010 BCSC 751 at paras. 5–6, in which Associate Chief Justice Mackenzie, as she then was, declined to exercise her discretion to request a transfer because the claims were too old to merit such an order, and the plaintiff had let them lie dormant for six years, such that she was not prepared to ask the Ontario court to override its own limitation legislation to accept them. The defendant does not point to any prejudice it will suffer as a result of the claim being transferred at this stage, nor can any prejudice be inferred given the short period in question in this case.

[22] I have no evidence as to why the claim was filed in British Columbia, when it should have been filed in Alberta, except that counsel says that it was his error, and that when he received the defendant's materials he realized his mistake. He properly concedes before this court that it lacks territorial competence over the action and, therefore, seeks to have it transferred to the proper jurisdiction.

[23] The defendant accepts that this court has discretion to request the transfer, but submits that it ought not do so because it lacks jurisdiction over the claim, saying that the court ought to be more judicious in considering the exercise of its discretion in this circumstance. I do not consider this to be a relevant factor. Section 14(2) of the *CJPTA* is designed to address this very situation where this court lacks jurisdiction.

[24] The defendant submits that the plaintiff has failed to establish that Alberta has jurisdiction over this claim. With respect, this submission has no merit. Alberta obviously has territorial and subject matter competence over a wrongful dismissal claim arising out of an Alberta employment relationship. Further, the basis for the defendant's own application to strike is that it is an Alberta corporation whose business is conducted in Alberta and employed the plaintiff in Alberta.

[25] Finally, the defendant submits that this court ought not to exercise its discretion to request a transfer because it would set a poor precedent, as anyone could file in British Columbia and then apply for a transfer later. It submits this would be contrary to the administration of justice and would result in unnecessary transfer proceedings. I do not find this argument persuasive. There is no evidence that the plaintiff has acted in bad faith. To the contrary, counsel's submission is that this situation arose due to counsel error. It seems most unlikely that the gates will open to floods of unnecessary transfer applications, and the costs attendant on them, should the court exercise its discretion in the present case.

[26] In my view, it would be inequitable for this court not to request the Alberta Court of King's Bench to accept a transfer of this proceeding.

[27] For these reasons, I dismiss the defendant's application and grant the plaintiff's application. I respectfully request that the Court of King's Bench of Alberta accept the transfer of this proceeding. The plaintiff is entitled to his costs of both applications.

"L.M. Lyster J."

LYSTER J.