CITATION: Best International Cargo Inc. v. MC Mines Inc. et al, 2025 ONSC 1279
COURT FILE NO.: CV-24-00004925-00A1
DATE: 2025 02 26

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:	
BA DINH, Nguyen Plaintiff	No one present, for the Plaintiff
- and -	
BEST INTERNATIONAL CARGO INC. Defendant	SAVERINO, Domenic for the Defendant Email: Domenic@westonlaw.ca
- and -	
MC MINES INC. Third Party	DI GENOVA, L., for the Third Party Email: ldigenova@blaney.com
	HEARD: February 20, 2025

REASONS FOR JUDGMENT

LEMAY J

[1] The Plaintiff, BN Trading, had a contract to sell some mining equipment to a purchaser in Vietnam. The Plaintiff contracted with the Defendant, Best International Cargo Inc., to transport this equipment from the manufacturing facility to the Port of Montreal. The mining equipment was sourced in Quebec by the

third-party MC Mines. The other third party, GT Intermodal, is also based in Quebec.

[2] The equipment was picked up from the MC Mines facility on October 26th, 2022 by a truck belonging to GT Intermodal. The truck was involved in a motor vehicle accident in Quebec on the way to the Port of Montreal. The equipment was significantly damaged.

[3] BN Trading brought an action against Best Cargo. Best Cargo defended this action and brought third-party claims against both GT Intermodal and MC Mines. MC Mines has brought this motion seeking to set aside the service of the claim on it as improper. MC Mines also seeks to have the third-party claim dismissed and/or stayed as it is more properly brought in Quebec.

[4] For the reasons that follow, I am dismissing MC Mines' request to have the service of the Statement of Claim in the third party action set aside. I am also dismissing their motion to have the third party action stayed. That action will continue in Ontario.

Background

[5] The Plaintiff, Ba Dinh Nguyen, doing business as BN Trading- Import and Export, is an importer and exporter of aggregate construction equipment. It is a Canadian-registered company and is based in Brampton.

[6] The Defendant, Best International Cargo Inc., is a broker who arranges international shipments for clients. It is also a Canadian-registered company and is also based in Brampton.

[7] The third-party MC Mines is a Quebec-registered company, carrying on business in Quebec. It manufactures warehouses and sells various mining equipment.

[8] The third party, G.T. Intermodal, is a Quebec-registered company that is in the business of transporting goods, particularly by road.

[9] In May of 2022, the Plaintiff contracted with Best International to ship some aggregate mining equipment (crushers) to a purchaser in Vietnam. The contract required Best International to arrange for transport from the MC Mines warehouse in Quebec to the Port of Montreal, and then on to Vietnam through a number of other ports.

[10] The equipment had been purchased by the Plaintiff from MC Mines. Part of the contract between MC Mines and the Plaintiff required MC Mines to pack the equipment into containers. Best International was not responsible for the packing portion of the operation.

[11] The equipment was large and required a number of shipments to move it from the MC Mines site to the Port of Montreal. On the second day of shipment, there was a motor vehicle accident and some of the equipment was damaged. BN Trading claims significant losses from Best International as a result of the damage to the equipment and the delay in shipping that resulted.

[12] Best International argues that it was not responsible for any of these losses. Best International also claims that, if it was responsible for these losses, then the third parties are negligent and should provide contribution and indemnity. Best International has commenced litigation against both MC Mines and GT Intermodal by way of a third party claim in Ontario flowing from the original statement of claim brought by BN Trading.

[13] Best International served its claim on MC Mines on December 9th, 2024. MC Mines brought a motion challenging both the service of the claim and the jurisdiction of this Court to consider the claims made against it. MC Mines argues that the claim was improperly served outside of Ontario without leave because it

was a tort, and not a contract, claim. In the alternative, MC Mines argues that there is no jurisdiction for the Ontario court to consider this claim. In advancing these arguments, MC Mines relies on Rules 17 and 21.01(3)(a) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.

Issues

[14] There are two issues to resolve, as follows:

a) Whether the service of the claim on MC Mines was improper.

b) Should this action be in Ontario or Quebec?

[15] I will deal with each issue in turn.

Issue #1- Service of the Claim

[16] Rule 17 of the *Rules* sets out a number of rules in respect of service. Those rules include provisions under Rule 17.02 listing the circumstances when a party to a proceeding may be served outside of Ontario without a Court Order. Those provisions include:

> **Contracts**
>
> (f) in respect of a contract where,
>
> (i) the contract was made in Ontario,
>
> (ii) the contract provides that it is to be governed by or interpreted in accordance with the law of Ontario,
>
> (iii) the parties to the contract have agreed that the courts of Ontario are to have jurisdiction over legal proceedings in respect of the contract, or
>
> (iv) a breach of the contract has been committed in Ontario, even though the breach was preceded or accompanied by a breach outside Ontario that rendered impossible the performance of the part of the contract that ought to have been performed in Ontario;
>
> **Tort Committed in Ontario**

(g) in respect of a tort committed in Ontario;

Person Resident or Carrying on Business in Ontario

(p) against a person ordinarily resident or carrying on business in Ontario.

[17] Rule 17.04 requires that the party serving an originating process outside of Ontario shall disclose the facts and specifically refer to the provisions of Rule 17.02 that support service without leave. Rule 17.06 permits a party who has been served with an originating process to move, before delivering a defence, for an order setting aside the service or staying the proceedings.

[18] In this case, the Statement of Claim does not specifically set out the provision of Rule 17.02 that the claim is being served under. However, a review of the claim makes it clear that the bases for the lawsuit are the contractual provisions and the possibility that MC Mines is either ordinarily resident in Ontario or carrying on business in Ontario.

[19] During argument, counsel for MC Mines confirmed that, even if the claim had been improperly served, it was an irregularity, and I would have the jurisdiction to cure that irregularity under Rule 2.01. I also note that the case-law supports the view that these matters should not be addressed in an overly formalistic matter. As noted by Master Dash in *Latner. v. Latner*, [2009] O.J. No. 4344 (S.C.J. Master):

> **13** Rule 17.04(1) requires that the statement of claim disclose "the facts and specifically refer to the provision of rule 17.02 relied on in support of" service outside Ontario. The plaintiff has failed to strictly comply with the rule since there is no reference in the body of the statement of claim to those provisions of rule 17.02 upon which he relies. However this is "not to be rigidly applied by the courts so as to promote form over substance" and "as long as at least one of the claims in the statement of claim actually falls within the causes of action enumerated in rule 17.02, service outside the jurisdiction should not be set aside, even if the specific clause is not referred to in the originating process". If necessary the court could give the plaintiff an opportunity to amend and effect proper service. The question is whether the language of the statement of claim is "adequate to convey to the defendants" the fact that the plaintiff was relying on a cause of action as enumerated in one of the subparagraphs of rule 17.02.

[20] See also *Goldmart Farms Inc. v. Fasig-Tipton Co.,* [2010] O.J. No. 1683 at para. 25 and *Ramnarian v. Saunders*, 2021 ONSC 3951. The failure to formally mention the specific provision of Rule 17.02 that Best International is relying on is not a basis for granting MC Mines motion under Rule 17.06.

[21] In addition, the test for granting a motion under Rule 17.06 is much higher than the test for a jurisdictional motion under Rule 21.01(3)(a). In *Ontario (Attorney General) v. Rothmans Inc.*, 2013 ONCA 353, (2013) 115 O.R. (3d) 561, the Court noted (at para. 106):

> [106] In our opinion, on a jurisdiction motion, the motion judge is not required to subject the pleadings to the scrutiny applicable on a Rule 21 motion. So long as a statement of claim advances the core elements of a cause of action known to law and appears capable of being amended to cure any pleadings deficiencies such that the claim will have at least some prospect of success, the issue for the motion judge is whether the claimant has established a good arguable case that the cause of action is sufficiently connected to Ontario to permit an Ontario court to assume jurisdiction. If an Ontario court can assume jurisdiction, the issue of the adequacy of the pleadings is properly dealt with on a motion brought under rule 21.01(1)(b).

[22] In other words, on a Rule 17 motion it is only necessary for the Court to determine whether there is a real and substantial connection between Ontario and the claims, when considered as a whole. *Vahle v. Global Work and Travel Co. Inc.*, 2020 ONCA 224 at para. 13.

[23] Given that there is a complete record before the Court and given that MC Mines is also seeking relief under Rule 21.01(3)(a), it is preferable to address the issue of whether the Court has jurisdiction over this dispute under that Rule. This is especially true since I am not persuaded that MC Mines would succeed on having the claim stayed if I applied the test under Rule 17.06. I now turn to the Rule 21 issue.

Issue #2- The Jurisdiction

[24] The governing authority on determining whether an action can be brought in a particular jurisdiction is *Club Resorts Ltd. v. Van Breda*, 2012 SCC 17. In that decision, the Court notes that there is a difference between determining whether the Court has jurisdiction and whether the Court should exercise that jurisdiction. I will address each issue separately.

Jurisdiction Simpliciter

[25] At paragraph 90, the Court sets out four factors that must be considered in determining jurisdiction over a tort claim. Courts have used these factors for many other types of claims. *Soma Ray-Ellis v. Goodtrack et. al.*, 2020 ONSC 6847 at para. 10. If any of the four factors applies, then a Court would have *prima facie* jurisdiction over the matter. The four factors are:

a) The defendant is domiciled or resident in the province;

b) The Defendant carries on business in the province;

c) The tort was committed in the province; or

d) A contract connected with the dispute was entered into in the province.

[26] Counsel for Best International conceded that points a and c were not applicable to this case. I am left to consider the other two points. In conducting my analysis, I must remember that the test that Best International has to meet in this case is not high. All that they must demonstrate is that the case has some connection to Ontario and that they have some chance of success. *Goodtrack, supra*, *Intercap Equity Inc. v Aescape Inc*., 2023 ONSC 3148 at para 9.

[27] On the question of whether MC Mines carries on business in Ontario, the only evidence I have that supports that claim is the contract between BN Trading and MC Mines. That contract was a two-page purchase order that was exchanged

electronically and that does not speak to the jurisdiction of the contract. It is difficult to infer from this alone that MC Mines carries on business in Ontario. This is especially true when it is remembered that this equipment was going to be transferred from MC Mines' operations in Quebec to the Port of Montreal (also in Quebec) and shipped overseas. None of the work that MC Mines performed in fulfillment of the contract was in Ontario. There is no evidence before me that MC Mines did any other work in Ontario. Therefore, I conclude that MC Mines was not carrying on business in Ontario.

[28] This brings me to the other factor, which is the question of whether a contract connected with the dispute was made in Ontario. This fourth factor has been the subject of further consideration by the Supreme Court of Canada in *Lapointe Rosenstein Marchand Melancon LLP v. Cassels Brock and Blackwell LLP.*, 2016 SCC 30, [2016] 1 S.C.R. 851. In that decision, the Court stated (at paras. 32 and 44):

> [32] The fourth factor also promotes flexibility and commercial efficiency. As seen in *Van Breda*, all that is required is a connection between the claim and a contract that was made in the province where jurisdiction is sought to be assumed. A "connection" does not necessarily require that an alleged tortfeasor be a party to the contract. To so narrow the fourth presumptive factor would unduly narrow the scope of *Van Breda*, and undermines the flexibility required in private international law.
>
> [44] It is worth noting that nothing in *Van Breda* suggests that the fourth factor is unavailable when more than one contract is involved, or that a different inquiry applies in these circumstances. Nor does *Van Breda* limit this factor to situations where the defendant's liability flows immediately from his or her contractual obligations, or require that the defendant be a *party* to the contract: *Pixiu Solutions Inc. v. Canadian General-Tower Ltd.*, 2016 ONSC 906, at para. 28 (CanLII). It is sufficient that the dispute be "connected" to a contract made in the province or territory where jurisdiction is proposed to be assumed: *Van Breda*, at para. 117. This merely requires that a defendant's conduct brings him or her within the scope of the contractual relationship and that the events that give rise to the claim flow from the relationship created by the contract: paras. 116-17.

[29] In this case, it is clear that the main contract between BN Trading and Best International, was formed in Ontario. That contract was entered into by two parties

who were carrying on business in Ontario. In addition, the litigation over this contract has been begun by BN Trading and responded to by Best International in Ontario. The language in *Lapointe* suggests that the connections that exist here are sufficient for Best International to meet the fourth of the *Van Breda* factors.

[30] However, MC Mines relies on the decisions in *Export Packers Company Ltd. v. SPI International* Transportation, 2011 ONSC 5907, aff'd 2012 ONCA 481. To understand why MC Mines' relies on this case, the facts should be explained. Export Packers was a company that sold food products. It purchased 1,320 cartons of frozen pork spareribs from a Quebec company, A. Trahan Transformation. The product was stored at a warehouse owned by EDN. The cargo was sold by Export to a buyer in Florida and Export contracted with SPI, a brokerage company to arrange transportation from the warehouse to Florida.

[31] SPI contracted with a transportation company, Transvision, to transport the cargo to Florida. A rogue party claiming to represent Transvision picked up the spareribs and absconded with them. Export sued SPI. SPI defended and commenced third-party claims against Transvision and EDN. The claim as against EDN was stayed by the motions judge because of a lack of a real and substantial connection between EDN and the claim against it on the one hand, and Ontario on the other hand. The Court of Appeal upheld this decision.

[32] In upholding the decision, the Court of Appeal stated (at paras. 12 to 14):

> [12] SPI relies primarily on the fourth factor, "a contract connected with the dispute was made in the province". SPI argues that there are three contracts made in Ontario that are connected with the dispute – Export's contract with SPI to arrange for transportation of the cargo; SPI's contract with Transvision to transport the cargo; and a common carrier contract covering the shipping arrangements.
>
> [13] We do not accept that these contracts are connected with the dispute in the third party claim against EDN so as to raise a presumption of a real and substantial connection between that claim and Ontario.

> [14] The three contracts relied upon by the appellant relate to arrangements between the owner, the broker and the proposed carrier of the cargo. They have no connection to EDN other than they anticipate that the cargo would be picked up at EDN's warehouse in Quebec. The dispute in issue between SPI and EDN relates solely to the alleged negligence of EDN in releasing the cargo. The contracts relied upon do not address the issue of release of the cargo by EDN as storer. That dispute will be resolved according to the laws of Quebec.

[33] In considering these passages, I am mindful that *Export Development* was decided before Lapointe. One of the key points that flows from *Export Development*, however, is the fact that the mere existence of a third-party claim flowing from an Ontario contract will not be sufficient to satisfy the *Van Breda* factors.

[34] In this case, however, there is more than just the existence of a third-party claim. The claim that BN Trading has brought sounds in both contract and negligence. This claim includes claims that the equipment was improperly packed for shipping. As noted in paragraph 29(d) of the Statement of Claim, reasonable care was required to ensure "that the cargo was adequately secured for and during transportation". MC Mines had the responsibility for loading, bracing and securing the equipment into the containers that were provided. Therefore, it is quite possible that BN Trading's claim of negligence against Best International is going to require a consideration of the role of MC Mines.

[35] In other words, the third party claim in this case is not just one that can be left in a silo to be addressed at the conclusion of the action. There is going to be at least some overlap in the issues to be determined at the trial of BN Trading's claims against Best International. It is the type of case, in short, that brings MC Mines "within the scope of the contractual relationship". As a result, the fourth *Van Breda* factor applies to this case and there is a presumption of jurisdiction.

Forum Non Conveniens

[36] Having found that there is a presumption of jurisdiction, I must then consider MC Mines' *forum non conveniens* argument. My decision is an exercise of judicial discretion, and I must consider a series of factors. In doing so, I must also remember that the standard to displace the plaintiff's chosen jurisdiction is high, that balancing the relevant factors should aim to achieve the twin goals of efficiency and justice and that I should be prudent in my fact-finding. *Young v. Tyco International Canada Ltd.*, 2008 ONCA 709, (2008) 92 O.R. (3d) 161.

[37] In *Gebien v.* Apotex *Inc.*, 2023 ONSC 6792, the Court set out (at para. 201) a list of factors that have developed for the Courts to consider:

> [201] In addition to the overarching concern about comity, courts have developed a list of factors that may be considered in determining the most appropriate forum for an action; including: (a) the location of the majority of the parties; (b) the location of the key witnesses and evidence; (c) contractual provisions that specify applicable law or accord jurisdiction; (d) the avoidance of multiplicity of proceedings; (e) the applicable law and its weight in comparison to the factual questions to be decided; (f) geographical factors suggesting the natural forum; (g) juridical advantage; *i.e.*, whether declining jurisdiction would deprive the plaintiff of a legitimate juridical advantage in the domestic court; and
> (h) the existence of a default judgment in the competing forum

[38] In the case before me, the majority of the parties is a neutral factor as there are parties in both Ontario and Quebec. The location of the key witnesses and evidence is a factor that favours Quebec, as most of the individuals involved in actually packing the equipment will be Quebec based employees of MC Mines and GT Intermodal.

[39] There are no contractual provisions that accord jurisdiction. As a result, this factor is neutral.

[40] There is a desire to avoid a multiplicity of proceedings. There is no motion before me to move BN Trading's action to Quebec. As a result, if I transfer the third party action to Quebec, there will be a multiplicity of proceedings in different provinces and, as I have identified at paragraph 34, the claims will require some

of the same facts to be considered. Therefore, there is a real risk that more than one Court will end up making findings about the same part of the factual matrix in this case. That is a factor that favours the action remaining in Ontario.

[41] Then, there is the issue of the applicable law versus the factual questions to be decided. Although I recognize that the *Quebec Civil Code* contains unique provisions in respect of negligence that may govern this action, the issues are factual ones. This is a factor that favours transferring the action to Quebec, but it is a relatively weak factor.

[42] In respect of the geographical factors, the accident took place in Quebec and most of the witnesses will be in Quebec. This is a factor that supports a transfer of this action to Quebec, and is quite a strong factor.

[43] In respect of the juridical advantage, Best International's counsel makes the point that transferring this action to Quebec will create significant issues for his client. MC Mines counsel makes the same point about keeping the action in Ontario. Therefore, I view this factor as being relatively neutral.

[44] Finally, there is no default judgment in place in this case. As a result, this is a neutral factor.

[45] As can be seen from the analysis I have set out above, the factors favouring finding Ontario as the convenient forum are similar in weight to the factors that favour finding Quebec as the convenient forum. However, as noted in *Van Breda* (at para. 108), the party seeking to advance a claim of *forum non conveniens* must demonstrate that the other forum (in this case Quebec) is "clearly more appropriate." MC Mines has not met that test.

[46] Put another way, the problem with MC Mines claim of *forum non conveniens* is that Best International must defend a claim in Ontario. It would

create significant difficulties to force them to prosecute another claim arising out of the same facts in Quebec.

[47] For these reasons, the claim of *forum non conveniens* is dismissed.

Conclusion

[48] For the foregoing reasons, I am dismissing MC Mines' motion in its entirety. The third-party claim will remain in Ontario, and MC Mines now has thirty (30) calendar days from the release of these reasons to deliver its Statement of Defence in that action.

[49] The parties are encouraged to agree on the costs of this motion. Failing agreement, each party may serve, file and upload written submissions of no more than two (2) single-spaced pages, exclusive of bills of costs, offers to settle and case-law, within fourteen (14) calendar days of today's date.

[50] The parties may then serve, file and upload written reply submissions of no more than one (1) single-spaced page, exclusive of case-law, within seven (7) calendar days thereafter.

[51] Costs submissions are also to be copied to my judicial assistant, who sent the parties this decision by e-mail. That requirement is **in addition** to the requirement to serve, file and upload the costs submissions. There are to be no extensions to these deadlines, even on consent, without my leave. If costs submissions are not provided in that time period, then there shall be no order as to costs.

LEMAY J

Released: February 26, 2025

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