

CITATION: Wielgomas v. Anglocom Inc., 2011 ONCA 490
DATE: 20110704
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COURT OF APPEAL FOR ONTARIO

MacPherson, Juriansz and Karakatsanis JJ.A.

BETWEEN

Wieslaw Wielgomas

Plaintiff (Appellant)

and

Anglocom Inc. and Caisse Populaire Desjardins De Quebec

Defendant (Respondent)

Monika A. Liberek, for the appellant

Mary Delli Quadri, for the respondent

Heard and released orally: June 29, 2011

On appeal from the judgment of Justice Andra Pollak of the Superior Court of Justice,
dated December 2, 2010.

ENDORSEMENT

[1] This is an appeal from an order of the Honourable Justice A. Pollak rendered on December 2, 2010, staying the action because the court lacked jurisdiction *simpliciter*. In the action, the appellant, a resident of Ontario, alleged he had been injured by ice that fell from the premises owned and occupied by the respondent Caisse Populaire Desjardins de Québec.

[2] He was first hospitalized in Quebec, and has been attended to by a number of physicians in Ontario after his return home.

[3] The motion judge found that the appellant had not met his burden of establishing that his action had a real and substantial connection with Ontario. We agree.

[4] The evidence the appellant tendered that the respondent was a member of a group of companies, some members of which operate and advertise in Ontario and all of whom may have the same treasurer, was insufficient proof that the respondent itself operates in Ontario.

[5] Though the appellant's financial position was not pressed in oral argument here, the motion judge did consider, in effect, whether Ontario was the "forum of last resort" given his financial position. The motion judge considered that the appellant has no assets, and very little money, but concluded that he could commence proceedings in Quebec, though it might be difficult for him to do so. She observed that there was no evidence that proceeding in Quebec would be more expensive than in Ontario.

[6] The motion judge correctly concluded that the appellant's financial position, and the damages that he did continue to suffer in Ontario, would not on their own establish a real and substantial connection. She observed that it would be unfair to force an entity that had absolutely no connection whatsoever to the Province of Ontario to mount a defence in Ontario instead of Quebec.

[7] The motion judge applied the legal principles that apply in Ontario, weighed the evidence appropriately and arrived at the correct decision.

[8] The appellant contends that the motion judge's costs award of \$25,547.28 was not proportionate to the nature of the motion.

[9] We agree. The motion judge recorded the costs of the two parties which reflect, roughly, a 4:1 proportion of moving party/responding party effort. She did not then consider this large discrepancy and instead simply ratified every penny of the moving party's request. We cannot see any basis for such a large discrepancy in the costs sought by the two parties.

[10] Moreover, although the motion judge recognized and considered the responding party's precarious financial position in her reasons on the motion, she did not mention this as a factor in her costs analysis.

[11] Accordingly, we grant leave to appeal on the issue of costs, allow the appeal on that issue, and reduce the costs award by half, to \$12,750.

[12] In all other respects, the appeal is dismissed.

[13] The respondent is entitled to its costs of the appeal fixed at \$5,000 inclusive of disbursements and HST.

“J.C. MacPherson J.A.”

“R.G. Juriansz J.A.”

“Karakatsanis J.A.”