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Commercial Litigation Insights: Supreme Court grapples with assumed jurisdiction in Italian water taxi accident

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In a combative 5-4 decision, the Supreme Court of Canada attempts to clarify when a contract made in Ontario creates a real and substantial connection for the purpose of assuming jurisdiction over an out-of-province defendant. In *Sinclair v. Venezia Turismo*[1] two strong opinions review the legal framework that guides the application of the fourth presumptive connecting factor for the assumption of jurisdiction established in the seminal case of *Van Breda*.[2]

Background: Venetian vacation results in injury

Duncan and Michelle Sinclair, and their son, all Ontario residents, were injured in a water taxi accident while on vacation in Italy. The water taxi had been arranged through Centurion Travel Service, a concierge and travel agent service to which Mr. Sinclair had access through his American Express Centurion credit card. The service carries on business in Canada on behalf of Amex Canada Inc ("**Amex Canada**"). The water taxi was owned and operated by various Italian defendants.

Upon returning to Ontario, the Sinclairs commenced an action against Amex and the Italian defendants seeking damages arising out of the accident. The Italian defendants moved to stay the action against them for lack of jurisdiction.

Lower Courts Split on Jurisdiction

The motion judge assumed jurisdiction based on the fourth presumptive connecting factor listed in *Van Breda*, namely that a contract connected with the dispute was made in Ontario.[3]

The motion judge concluded that two relevant contracts grounded jurisdiction *simpliciter*: (1) the Centurion Cardmember Agreement between the Sinclairs and Amex Canada, and (2) a contract between Amex Canada and third-party supplier Carey International which facilitated the Sinclairs' transportation.[4]

The Italian defendants appealed.

The Court of Appeal for Ontario ("**COA**") unanimously[5] allowed the appeal and stayed the action against the Italian defendants. The majority found that the motion judge failed to apply *Van Breda*, emphasizing that a presumptive connecting factor must attach to each individual defendant in a multi-party action. The majority concluded that contractual relationships that the Sinclairs had with Amex Canada did not require the involvement of the Italian defendants and could not ground a real and substantial connection to Ontario sufficient to establish jurisdiction.

A majority of the Supreme Court of Canada dismisses the appeal

A majority of the SCC dismissed the appeal and held that Ontario did not have jurisdiction over the Italian defendants.

The majority and minority both undertook the two-stage analysis that requires determining (1) whether a contract connected to the dispute was made in Ontario, and (2) whether this presumptive connection has been rebutted.

At the first stage, Côté J, writing for the majority, reviewed three potential contracts that could ground jurisdiction: (1) the Cardmember Agreement, (2) the Sinclairs' travel booking with Amex Canada, and (3) a contract between Amex Canada and Carey International.[6]

Côté J analyzed each contract against "the basic tenets of contract formation", and emphasized that establishing the existence of a contract is a precondition to invoking the fourth *Van Breda* factor.[7] She explained that a "failure to plead with sufficient particularity the existence of a contract will necessarily foreclose a finding of a real and substantial connection on the basis of that contract."[8] Côté J determined that only one contract – the Cardmember Agreement – was an actual contract made in Ontario and connected to the dispute. The fourth presumptive connecting factor was therefore satisfied.

Moving to the second stage, Côté J concluded that the Italian defendants successfully rebutted the presumption because the Cardmember Agreement did not "demonstrate a real and substantial connection between Ontario and the water taxi accident"[9]. Côté J noted that the dispute arose from a tort that occurred in Italy, on a water taxi owned by an Italian company, dispatched by a different Italian company, operated by an Italian national, and procured by Mr Sinclair while on Italian soil. She noted that "the only connection between the Centurion Cardmember Agreement and the dispute is that Mr Sinclair made a non-binding reservation through Carey International by way of an Amex Canada agent".[10]

Côté J found that if the Cardmember Agreement were sufficient to establish a connection with Ontario, this would create a "a picture of unfairness, unpredictability and jurisdictional overreach" that the SCC sought to circumvent in *Van Breda*.

The majority dismissed the appeal, holding that Ontario did not have jurisdiction over the Italian defendants.

A strong dissenting opinion

Jamal J authored a strong dissenting opinion for the four-judge minority, disagreeing with many points raised by the majority.

The minority's approach to a case involving the fourth presumptive connecting factor requires a court to proceed in two steps. First, the dispute must be identified by examining the "nucleus of the claims pleaded", and second, a determination must be made as to whether a contract connected with the dispute was made in the province.

Jamal J was critical of Côté J's approach to the *Van Breda* test, describing it as a "narrow"[11] and absent an express analysis of the "nucleus of the claim". In the minority's opinion, this narrow approach arguably recast Côté J's solo dissent in *Lapointe v. Cassels Brock & Blackwell LLP*, 2016 SCC 30, another decision about the fourth presumptive connecting factor.

In the result, Jamal J found that the Cardmember Agreement and the contract between Amex Canada and Carey International satisfied the fourth presumptive connecting factor, and that the Italian defendants failed to rebut the presumption of jurisdiction. The minority would have allowed the appeal.

Key Takeaways

The lengthy decision is peppered with disagreement between the majority and the minority. The two opinions arguably make the application of the *Van Breda* test as it relates to the fourth presumptive connecting factor murkier than it already was. However,

there are a number of important takeaways, including some on which both sides agreed.

1. Properly particularized pleadings are essential. Failing to plead the existence of a contract with sufficient particularity will necessarily foreclose a finding of a real and substantial connection on the basis of that contract.[12]

2. Each relevant contract must be considered individually. A court should not broadly consider the combined effect of a "constellation of contracts".[13] Multiple contracts that are each, on their own, insufficient to establish jurisdiction cannot be taken together to ground jurisdiction. Courts will assess the pleadings with a view to ascertaining what contracts truly existed, what their underlying purpose was, and where they were formed.[14]

3. A presumptive connecting factor must attach to each individual defendant. The SCC confirms that in a multi-party action, jurisdiction must be established with respect to each individual defendant, even if co-defendants have attorned to the court's jurisdiction. The reason for examining jurisdiction from the perspective of each defendant is to ensure the legitimacy of the Court's exercise of power.[15]

Issues related to assumed jurisdiction and the *Van Breda* test evidently persist. This will undoubtedly not be the last we see of *Van Breda's* presumptive connecting factors at the SCC. We are all staying tuned.

The information and comments herein are for the general information of the reader and are not intended as advice or opinion to be relied upon in relation to any particular circumstances. For particular application of the law to specific situations, the reader should seek professional advice.

[1] *Sinclair v. Venezia Turismo*, 2025 SCC 27 ["***Sinclair***"]

[2] *Club Resorts Ltd. v. Van Breda*, 2012 SCC 17 ["***Van Breda***"]

[3] *Sinclair* at paras 20-22

[4] *Sinclair* at para 21

[5] *Sinclair v. Amex Canada Inc.*, 2023 ONCA 142 (Majority Reasons authored by Nordheimer J.A. and Tulloch J.A. (as he then was) with Harvison-Young J.A. concurring in the result)

[6] *Sinclair* at paras 94, 97

[7] *Sinclair* at para 54

[8] *Sinclair* at para 54

[9] *Sinclair* at para 131

[10] *Sinclair* at para 135

[11] *Sinclair* at paras 250 and 256

[12] *Sinclair* at para 54

[13] *Sinclair* at para 83

[14] *Sinclair* at para 84

[15] *Sinclair* at para 63

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