Date: 20000117
Docket: CA 157960

NOVA SCOTIA COURT OF APPEAL

[Cite as: Crossley Carpet Mills Ltd. v. Guarantee Company of North America, 2000 NSCA 13]

Roscoe, Flinn and Cromwell, JJ.A.

BETWEEN:	)	
	)	
THE GUARANTEE COMPANY OF NORTH AMERICA (LA GARANTIE COMPAGNIE D'ASSURANCE D'AMERIQUE DU NORD), a body corporate	)	Thomas J. Singleton and Karen E. MacDonald for the Appellant
Appellant	)	
	)	
- and -	)	
	)	
CROSSLEY CARPET MILLS LIMITED, a body corporate	)	David P.S. Farrar and M. Chantal Richard for the Respondent
Respondent	)	
	)	
	)	
	)	Appeal Heard: January 17, 2000
	)	
	)	Judgment Delivered: January 17, 2000

THE COURT: Leave to appeal is denied with costs as per oral reasons for judgment of Roscoe, J.A.; Flinn and Cromwell, JJ.A., concurring.

The reasons for judgment of the Court were delivered orally by:

ROSCOE, J.A.:

[1] This is an appeal from a Chambers decision of Justice Arthur LeBlanc dismissing the appellant's application to either strike the statement of claim or stay the action on the basis that Nova Scotia is a **forum non conveniens**.

[2] In the statement of claim the respondent claims payment of the sum of $54,708.34 owing for carpet supplied during the construction of a golf club in Quebec, for which the appellant had issued a labour and materials bond. In the defence, the respondent alleges that the claim was made after the time period allowed by the terms of the bond and that the Supreme Court of Nova Scotia is without jurisdiction because the bond requires the claim be adjudicated in the Province of Quebec.

[3] Justice LeBlanc found that there was no attornment clause in the bond. The clause in question, as translated and interpreted by him, merely stated that a creditor "may commence" an action against the surety in a Quebec judicial district within a specified time period. The respondent does not take issue with that ruling on appeal. After citing this Court's decision in **679927 Ontario Ltd. v. Wall** (1997), 156 N.S.R. (2d) 360, Justice LeBlanc concluded:

> The defendant, in my opinion, has not satisfied me that the Province of Quebec is clearly a more preferable forum to adjudicate this litigation. The defendant, accordingly, has not met the heavy burden which it must meet in order for the application to be granted.

[4] The appellant submits that the Chambers judge erred in accepting and considering evidence not properly put before the court and in his interpretation and application of the law of **forum non conveniens**.

[5] While we would not necessarily accept each and every one of the Chambers judge's reasons, he reached the correct result on the material before him.

[6] The appellant has not demonstrated that there is another forum that is clearly more appropriate for the trial of this action so as to displace the forum selected by the respondent. (**Amchem Products Inc. v. British Columbia (Workers' Compensation Board)**, [1993] 1 S.C.R. 897 at p. 921; **679927 Ontario Ltd. v. Wall**, **supra**).

[7] Leave to appeal is denied with costs to the respondent in the amount of $1,000.00 including disbursements, payable forthwith.

Roscoe, J.A.

Concurred in:

Flinn, J.A.

Cromwell, J.A.