**SUPREME COURT OF NOVA SCOTIA**
**Citation:** Armco Capital Inc. v. Armoyan, 2010 NSSC 102

**Date:** 20100317
**Docket:** Hfx No. 321297
**Registry:** Halifax

Between:

Armco Capital Inc. — Applicant

and

Lisa Armoyan — Respondent

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DECISION

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| **Judge:** | The Honourable Justice Gerald R. P. Moir |
| **Date of Hearing:** | February 11, 2010 |
| **Last Written Submissions:** | February 17, 2010 |
| **Counsel:** | Colin D. Piercey and Scott Campbell, counsel for the applicant<br>Mary Jane McGinty, Lynn Reierson, Katherine Salsman, and Kristen Floyd of the Florida Bar, counsel for the respondent<br>William L. Ryan, watching brief for Vrege Armoyan |

**Moir, J.**:

***Introduction***

[1] Armco Capital Inc. filed a notice of application with the prothonotary at Halifax by which it applies for a mandatory injunction requiring Lisa Armoyan to deliver to Armco devices on which she is alleged to have copied information from an Armco computer and an injunction restraining her from using or communicating the information.

[2] Ms. Armoyan lives in Florida. She moves for an order dismissing the application on the ground that this court has no jurisdiction over her or over the subject of the proceeding. She moves alternatively for a stay of the proceeding on the basis that Florida is the convenient forum.

***Copying Hard Drive***

[3] The causes alleged by Armco are connected to the breakdown of a marriage.

[4] Lisa Armoyan married Vrege Armoyan in Toronto in 1993. They have three children. They lived in Toronto, moved to Halifax in 2004, and moved to Florida in 2008 on temporary visas.

[5] Vrege Armoyan and his brother, George Armoyan, are directors of Armco, a Nova Scotia company involved in real estate developments mainly in Nova Scotia but elsewhere as well, including Florida. Mr. Vrege Armoyan was a director, but not an employee. That changed in 2008, when Mr. Armoyan became an employee to pursue business opportunities for the company in the State of Florida.

[6] The Armoyan family moved to Boca Raton. Mr. Armoyan took a laptop computer owned by Armco with him. He had used this computer as a director, and he continued to use it as an employee. He worked from home, travelled on business in Florida, and travelled to Toronto and Halifax.

[7] Mr. Robert MacPherson is the president of Armco. He works at its office in Halifax. Reporting to him are the Chief Financial Officer, the General Counsel, and the Director of Project Management. In an affidavit, Mr. MacPherson says that Armco does business in "a highly competitive and price-sensitive market".

Mr. MacPherson lists the kinds of confidential information that is on the hard drive, some of which may be privileged:

(a) monthly financial statements;

(b) quarterly financial statements;

(c) audited annual financial statements;

(d) annual business plans;

(e) documents with respect to purchase and sale of real estate;

(f) tax planning / tax returns;

(g) financial documents indicating bank balances;

(h) documentation relating to the management and oversight of Armco employees;

(i) company e-mails;

(j) proprietary trade secrets;

(k) communication for the purpose of seeking legal advice; and

(l) generally, other sensitive and strategic proprietary information to Armco.

[8] The marriage had broken down by mid-October, 2009. In that month Ms. Armoyan filed a petition for dissolution of marriage with the Fifteenth Judicial Circuit Court in and for Palm Beach County, Florida. The Armoyan brothers had

information suggesting that Ms. Armoyan may have copied the hard drive in the laptop computer used by Mr. Armoyan.

[9] Mr. George Armoyan held meetings with Ms. Armoyan concerning the marriage breakdown. In one such meeting he asked her whether she had copied the hard drive, and she refused to answer. The affidavit evidence shows the lengths to which Armco went to establish that a mirror image of the hard drive had been made around the time the petition was filed.

[10] The act of copying the hard drive is an essential fact in the causes alleged against Ms. Armoyan, which include conversion. Nevertheless, her affidavits in support of her motion provide no evidence on this question.

[11] I thought, after Ms. Armoyan was cross-examined on her affidavits, that it was clear Ms. Armoyan had taken the Armco computer to a shop and had had it mirror imaged. Her counsel in Nova Scotia did not agree.

[12] Ms. Armoyan was more forthcoming with the Florida Circuit Court. The Nova Scotia proceeding was started by notice of application filed and served last

December. Ms. Armoyan's motion for a stay was heard on February 11, 2010. Two days before that Ms. Armoyan was before Judge Stern of the Florida Circuit Court on a motion for that court to take possession of the copy to preserve it for disclosure of information that may be relevant to issues in the divorce proceeding.

[13] The first thing Ms. Armoyan's counsel said to Judge Stern was:

> My first motion deals with my client's access to the husband's and her computer and records.
>
> Now here's what occurs: My client says that she cloned the hard drive and copied from the computer financial information that she contends has the disclosure that Mr. Armoyan was supposed to provide and now is required to provide under the Court's order requiring him to do mandatory disclosure, interrogatories and requests to produce.
>
> My client's husband, through a company which claims the computer is theirs, filed a lawsuit in Canada, and the computer was returned to the company by the husband, but since my client cloned the hard drive and the – and copied the records from it, she still has possession.

The Judge decided to place the copy in the hands of a special master charged with the responsibility of determining whether it contained information relevant to issues in the divorce proceeding.

[14] Remarks made by Judge Stern during the hearing lead me to believe that relevant evidence would be disclosed but confidentiality in any of it would still be protected. (Armco was not a party and no claim of privilege had yet been made.)

[15] Counsel's remarks to Judge Stern make it clear that Ms. Armoyan copied the hard drive at issue in this proceeding. Much expense could have been saved had Ms. Armoyan been as candid with Armco and this court as she was, when it suited her interests, with the Florida Circuit Court. That goes to costs, no matter the outcome.

***Residency of Parties***

[16] As I said, Armco is a Nova Scotia company doing business primarily in this province and some business in the State of Florida. I have much evidence before me about the connections to, residency of, and plans for residency of Mr. and Ms. Armoyan.

[17] They have three children, a boy who is now fourteen and lives most of the time in Toronto, and two girls who are eleven and thirteen and live with their mother in Boca Raton.

[18] I find that Ms. Armoyan is a resident of Florida and plans to remain there. Her renewed visa expires in June and she hopes to replace it with a student visa. I am also satisfied that Ms. Armoyan and her daughters have strong ties to Nova Scotia.

***Personal Convenience***

[19] Ms. Armoyan advances reasons for concluding that it would be personally inconvenient to have Armco's cause against her determined in Nova Scotia. These include:

- disruption to her daughters if Ms. Armoyan is required to be in Nova Scotia for the hearing of Armco's application
- time she must devote to "expensive and time consuming litigation in Florida"
- unavailability of the Armoyan family home in Halifax for her and her children when the application is heard.

[20] Mr. Armoyan's affidavits provide reasons that would debunk or diminish Ms. Armoyan's concerns including:

- Ms. Armoyan is pursuing a claim to the matrimonial home in Halifax under the *Matrimonial Property Act*
- She signed a pre-nuptial agreement, the validity of which she now contests, that attorns to this court
- The family home is available
- The children could travel to Halifax after school closes on June 4, 2010
- Alternatively, the Armoyan grandparents and a great uncle are available for the girls in Florida.

I also note that the hearing is estimated for one day.

[21] In my assessment, Ms. Armoyan would not be seriously inconvenienced personally by a hearing in Halifax, rather than a trial or hearing in Florida.

***Witnesses***

[22] Ms. Armoyan suggests, in one of her affidavits, that the issue of her copying the hard drive "involves evidence of three individuals in Florida, the most important of which would appear to be our housekeeper".

[23] An application is determined on affidavits and cross-examination. Armco has already obtained sufficient evidence through the affidavits of its technicians, cross-examination on Ms. Armoyan's motion, and the representation made by Ms. Armoyan in open court to Judge Stern to establish that Ms. Armoyan copied the hard drive, and there is only one, at issue in this proceeding.

[24] The affidavits in support of the application are from Mr. Armoyan of Halifax and Toronto, who has strong ties to Florida and can travel and stay there easily, Mr. George Armoyan of Toronto, who has strong ties to both Nova Scotia and Florida, Mr. Robert MacPherson of Halifax, who has business ties to Florida, and Mr. Corey Fotheringham of Burlington.

[25] We do not yet know whether Ms. Armoyan wishes to present evidence. Nor, if she does, do we know who would present affidavits.

***Issues***

[26] The issues are:

(1) Whether this court has territorial competence over the cause pursued by Armco?

(2) If so, whether this court should decline jurisdiction on the basis that the courts of Florida offer the more convenient forum?

***Territorial Competence***

[27] The *Court Jurisdiction and Proceedings Transfer Act*, S.N.S. 2003 (2nd Sess.), c. 2 codified much of the jurisprudence on jurisdiction *simpliciter* and *forum conveniens*. Section 4 starts off, "A court has territorial competence in a proceeding that is brought against a person only if...". Then follow five paragraphs. The first three have no application to this case.

[28] Paragraph 4(d) provides for the circumstance in which the person against whom the proceeding is brought "is ordinarily resident in the Province at the time of the commencement of the proceeding". Ms. Armoyan was ordinarily resident in Florida, not Nova Scotia, in December, 2009.

[29] Paragraph 4(e) provides "there is a real and substantial connection between the Province and the facts on which the proceeding...is based." This is the basis upon which Nova Scotia has territorial competence in relation to the cause advanced by Armco. The causes, the facts in need of proof, have a real and substantial connection to this province.

[30] Firstly, the statute provides a presumption in favour of real and substantial connection in a proceeding that "concerns a business carried on in the Province": s. 11(h). On behalf of Ms. Armoyan, Ms. McGinty argues that this only applies in cases that concern a business carried on in the province by a non-resident defendant or respondent.

[31] Ms. McGinty says that s. 11(h) is illogical and redundant when it is read as being applicable to a resident, corporate plaintiff or defendant. Her argument turns

on s. 8, which provides principles for determining residency of a corporation and the common law principle that service on a defendant corporation carried out within the province does not necessarily give jurisdiction:

> A foreign corporation may be served in any of the common law provinces or territories if service of the originating process can be made upon it in accordance with the local rules of practice. Generally, this is the case when the corporation or other legal person has or is required to have a registered office or business address, or an agent for service; or where it has a place for carrying on business or where it is carrying on business. This may not be sufficient however, for the court to exercise jurisdiction, particularly where its business connections with the jurisdiction have ceased and were unrelated to the claim advanced.

Jean-Gabriel Castel and Janet Walker, *Canadian Conflict of Laws*, 6th ed. (Markham: Butterworths, 2005).

[32] Paragraph 11(h) has nothing to do with residency or with service on a corporation. It is about a business, no matter whether it is carried on by a resident or a non-resident, or a corporation or an individual.

[33] The words of a statute are to be read in their entire context according to their grammatical and ordinary meaning. I see no conflict between s. 11(h) and any other part of the *Court Jurisdiction and Proceedings Act*. The words are plain, and we cannot add restrictions.

[34] I find support from my conclusion that s. 11(h) applies to a business carried on in the province by any party in *TimberWest Forest Corp. v. United Steel, Paper and Forestry Union*, [2008] B.C.J. 552 (S.C.), to which Mr. Piercey and Mr. Campbell referred.

[35] The cause prosecuted by Armco concerns a business carried on in Nova Scotia. Therefore, this court is presumptively competent.

[36] Secondly, the common law points in the same direction as the statutory presumption.

[37] In recent times, Canada rejected a formal and categorical approach to territorial jurisdiction in favour of a more flexible approach. Justice Sharpe of the Ontario Court of Appeal discussed emerging factors of the flexible approach at para. 77 to para. 107 of *Muscutt v. Courcelles*, [2002] O.J. 2128 (C.A.). His subtitles, which were followed by Justice Saunders of our Court of Appeal in *Bouch v. Penny*, [2009] N.S.J. 339 (C.A.), nicely encapsulate the factors. They are:

(1) The connection between the forum and the plaintiff's claim

(2) The connection between the forum and the defendant

(3) Unfairness to the defendant in assuming jurisdiction

(4) Unfairness to the plaintiff in not assuming jurisdiction

(5) The involvement of other parties to the suit

(6) The court's willingness to recognize and enforce an extra-provincial judgment rendered on the same jurisdictional basis

(7) Whether the case is interprovincial or international in nature

(8) Comity and the standards of jurisdiction, recognition and enforcement prevailing elsewhere

[38] (1) The claim is connected to both the State of Florida and the Province of Nova Scotia. The tort is alleged to have been committed in Florida, and the object of the remedies sought, the copied electronic information, is stored on a computer in Florida. The information is alleged to be owned by a Nova Scotia company, and the loss of alleged confidences would cause harm primarily to business conducted in Nova Scotia and to a Nova Scotia corporation.

[39] (2) The defendant remains connected to Nova Scotia by personal ties, a claim under our *Matrimonial Property Act*, her marriage agreement, and the possibility of a return. However, she is a resident of Florida.

[40] (3) and (4) In my assessment little unfairness would be caused to either party by Nova Scotia assuming or declining jurisdiction.

[41] (5) There are no other parties. However, this factor includes considerations about multiplicity of proceedings and risk of inconsistent findings: *Muscutt*, para. 91. Armco's claim raises issues of ownership of, and confidentiality in, the electronic information. At the moment, the Circuit Court is concerned only with the relevancy of the information to matrimonial issues. It appears to be prepared to protect confidentiality.

[42] However, the Circuit Court will have to decide how to protect privilege, if Armco asserts it, and it will have to decide what to do with the copy after the special master's work is done. There is some potential for overlapping issues and conflicting findings if Nova Scotia assumes jurisdiction.

[43] (6) This court would recognize and enforce a final injunction issued on the same jurisdictional basis by a Florida Circuit Court. *Nova Scotia Civil Procedure Rule* 75.06(1) reads:

> A judge who is satisfied on all of the following may, in a proceeding started under Rule 5 - Application, grant an injunction to aid the order of a court of another jurisdiction for an injunction or a remedy similar to an injunction:
>
> (a) the order of the other court is made on a basis upon which a similar order may be made in Nova Scotia, or it is otherwise just to enforce the order;
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> (b) the injunction will aid the enforcement or effectiveness of the order of the other court;
>
> (c) the order of the other court is final, rather than interim or interlocutory.

Rule 41.10(1) contains a similar provision for interim or interlocutory injunctions made by courts in other jurisdictions.

[44] (7) and (8) This is not an interprovincial case, but the Florida Circuit Courts are the primary courts of original jurisdiction for that state. I believe they follow the same principles of comity. The contrary has not been demonstrated under Rule 54.04.

[45] The weight of the common law factors favours the conclusion that this case has a real and substantial connection with Nova Scotia.

[46] This court has territorial competence over Armco's claim.

***Should this Court Decline Jurisdiction?***

[47] The discretion to decline jurisdiction is codified in s. 12(1) of the *Court Jurisdiction and Proceedings Transfer Act*:

> After considering the interests of the parties to a proceeding and the ends of justice, a court may decline to exercise its territorial competence in the proceeding on the ground that a court of another state is a more appropriate forum in which to hear the proceeding.

The considerations are codified in s. 12(2):

> A court, in deciding the question of whether it or a court outside the Province is the more appropriate forum in which to hear a proceeding, must consider the circumstances relevant to the proceeding, including
>
> > (a) the comparative convenience and expense for the parties to the proceeding and for their witnesses, in litigating in the court or in any alternative forum;
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> > (b) the law to be applied to issues in the proceeding;
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> > (c) the desirability of avoiding multiplicity of legal proceedings;
> >
> > (d) the desirability of avoiding conflicting decisions in different courts;
> >
> > (e) the enforcement of an eventual judgment; and
> >
> > (f) the fair and efficient working of the Canadian legal system as a whole.

[48] British Columbia has legislation identical to ours. Writing for the British Columbia Court of Appeal at para. 60 of *Lombard General Insurance Co. of*

*Canada v. Cominco Ltd.*, [2007] B.C.J. 841 (C.A.), Justice Newbury said "the *CJPTA* provisions regarding *forum non conveniens* were meant to be assimilated into the existing body of common law". The court must "consider and apply the case law already in existence at the time the statute came into force" (para. 60). See also, *Mountain West Studios Ltd. v. Dalderis*, [2008] B.C.J. 1011 (S.C.).

[49] Thus, it remains true that the court must show respect for the plaintiff's, or the applicant's, choice of forum when the court is asked to decline jurisdiction. In *Bouch v. Penny*, Justice Saunders said at para. 62:

> [T]he existence of a more appropriate forum must be clearly established in order to displace the forum selected by the plaintiff. Where there is no one forum that is the most appropriate, the domestic forum chosen by the plaintiff wins out by default.

[50] The prominent factors under s. 12(1) on the facts of this case are (b), (c), (d), and (e).

[51] (b) Florida law applies. Mr. Piercey and Mr. Campbell point out that the law of a foreign state is presumed to be the same as ours, unless a party pleads otherwise: Rule 54.04. However, Ms. Armoyan has not yet pleaded and I am not

prepared to assume that Florida would take the exact same approaches as we would on ownership of information, protection of privacy, privilege, or injunctive relief against discrimination of electronic information.

[52] (c) The Circuit Court must now determine what information in the copied hard drive is relevant to the issues between the Armoyans, what of it must be disclosed, and what restrictions will apply to the uses that can be made of the disclosed information. To do this, the court has exercised a jurisdiction similar to this court's: to take control of allegedly confidential, even privileged, information, read it, and rule on it.

[53] The device employed by the Circuit Court is the appointment of a special master. That device was suggested by Judge Stern, not either of the parties who were before him. It seems to me wise to avoid duplication of efforts, and duplication of the number of judges, or court officers, looking at the same allegedly confidential information. The duplications could be avoided by Armco's intervention in the matrimonial proceeding, if that is permitted, or by a separate proceeding brought in the Circuit Court but with certain issues determined together.

[54] We did not see the transcript of the hearing before Judge Stern, until after Ms. Armoyan's motion was argued here. In the end, I requested the transcript. Mr. Piercey expressed some concerns about it, and I will respond to those now.

[55] It is said that I might take the transcript as showing that Florida has taken jurisdiction. I do not read it that way. Judge Stern decided the court should take control of the computer in order to protect against spoliation of information required to be disclosed. The causes raised by Armco, and the remedies sought by it, are distinct from disclosure in the matrimonial proceeding. Indeed, one is substantive and the other is procedural.

[56] The transcript indicates that the Circuit Court is prepared to protect confidentiality of information that is required to be disclosed. This court would not interfere with a process of this kind, by which the Circuit Court ensures disclosure of information relevant to a proceeding before it.

[57] Subject to carving the Florida disclosure process out of any order, this court would still have the ability to control Ms. Armoyan's use and possession of the

copy. I am not deciding the present issue on the basis that the Circuit Court has taken jurisdiction over the issues raised by Armco.

[58] Ms. Armoyan, through counsel, told Judge Stern that the hearing to take place before me on February 11th could result in Ms. Armoyan being required to turn over the copy, with loss of relevant information. That was untrue.

[59] When Ms. Armoyan indicated she wished to make a motion in this proceeding about jurisdiction, Armco readily agreed to an adjournment of its application without day. The motion heard on February 11th was Ms. Armoyan's, not Armco's. It was for a dismissal or stay of the Armco application. It was impossible that Ms. Armoyan could have been ordered to turn over the copy.

[60] Mr. Piercey expresses concern that Judge Stern may have proceeded on the basis that the hearing in Nova Scotia caused an urgency. I believe that is so. The judge had to make room in a busy docket to give Ms. Armoyan's motion much more time than had been allocated for it.

[61] That said, I do not read Judge Stern's decision to be premised on urgency. He made his decision to avoid spoliation and to protect disclosure, which he probably would have done had he been allowed to know the truth about our motion and the absence of any urgency.

[62] The apparent misrepresentation about the process of this court, and the possibility that the motion was made in Florida as a tactic, may be addressed by the parties in submissions about costs.

[63] Thirdly, Mr. Piercey is concerned that we have only part of the record. There were some filings on behalf of Ms. Armoyan after the hearing. The transcript became part of the record because of my request. As I said at the time, I needed to know what exactly the Florida court was doing in order to provide the deference comity demands. If more should be before us, the deficiency is the result of my default.

[64] (d) As I said when discussing territorial competence, there is the possibility of some overlap between the issues in Florida on disclosure of information in the copy of the Armco hard drive and the causes raised by Armco. The risk of

inconsistent findings could be avoided by having Armco's issues dealt with by intervention in the Florida proceeding or by a parallel proceeding to be determined with the disclosure issues.

[65] (e) Nova Scotia has no ability to directly compel Ms. Armoyan. Disobedience to our injunction could be dealt with by a contempt order attached to whatever interest she has in the family home in Halifax. Otherwise, we would be looking to the Florida Circuit Court for assistance. It has the ability to directly compel Ms. Armoyan.

[66] It has been established clearly that Florida is the convenient forum for Armco's causes.

***Conclusion***

[67] The motion for a stay is allowed on the basis that Florida is the more convenient forum. The parties may make submissions in writing about costs.

J.