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Supreme Court of Canada's Decision in Chevron – Enforcement of Ecuadorian Court Judgment Can Proceed

By Cyndee Todgham Cherniak on September 4th, 2015

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Today, the Supreme Court of Canada released its decision in Chevron Corp. v. Yaiguaje (SCC 35682), which is an important international law judgement coming from Canada's highest court. Those watching this case will be interested to know that the Supreme Court of Canada held that Ontario has jurisdiction to adjudicate a recognition and enforcement action in respect of a judgement of Ecuador's Court of Cassation for USD$9.51 billon against Chevron (due to Texaco's former operations in Ecuador). The Supreme Court of Canada also held that there is no need of a real and substantial connection. This is an interesting case that will continue to be interesting to watch what happens at the next stage of the proceedings.

Background

For over 20 years, 47 individuals, who represent approximately 30,000 indigenous Ecuadorian villagers, have been seeking legal accountability an financial and environmental reparation for harms they allegedly suffered due to Texaco' former operations in the region. Texaco has since merged with Chevron, a U.S. corporation. Ecuador's Court of Cassation issued a judgement against Chevron in the amount of USD9.51 billion. The winning plaintiffs have sought enforcement of the judgement in the US and in the Ontario Superior Court of Justice. Chevron Canada is a seventh-level indirect subsidiary of Chevron with a place of business in Ontario. Chevron Canada is a stranger to the foreign judgement. Chevron and Chevron Canada sought orders setting aside service *ex juris* declaring that the Ontario Superior Court of Justice had no jurisdiction to hear the action for the recognition and enforcement of the foreign judgement.

The motions judge ruled in the plaintiff's favour with respect to jurisdiction. The Ontario Court of Appeal held that as the foreign court had a real and substantial connection with the subject matter of the dispute, an Ontario court has jurisdiction to determine whether the foreign judgement should be recognized and enforced in Ontario against Chevron.

The motions judge exercised the court's power to stay the proceedings "on its own initiative" pursuant to section 106 of the *Courts of Justice Act*. As a result, the case has not yet proceeded to the issues of whether (1) an Ontario court may consider Chevron Canada to be a judgement debtor to the Ecuadorian judgment or (2) an Ontario court may make a ruling affecting the holding of the shares of Chevron Canada.

Statements in Decision

There are many key statements in the Supreme Court of Canada decision:

- "In a world in which businesses, assets, and people cross borders with ease, courts are increasingly called upon to recognize and enforce judgments from other jurisdictions. Sometimes, successful recognition and enforcement in another forum is the only means by which a foreign judgment creditor can obtain its due. Normally, a judgment creditor will choose to commence recognition and enforcement proceedings in a forum where the judgment debtor has assets."
- "In an action to recognize and enforce a foreign judgment where the foreign court validly assumed jurisdiction, there is no need to prove that a real and substantial connection exists between the enforcing forum and either the judgment debtor or the dispute. It makes little sense to compel such a connection when, owing to the nature of the action itself, it will frequently be lacking. Nor is it necessary, in order for the action to proceed, that the foreign debtor contemporaneously possess assets in the enforcing forum. Jurisdiction to recognize and enforce a foreign judgment within Ontario exists by virtue of the debtor being served on the basis of the outstanding debt resulting from the judgment. This is the case for Chevron. Jurisdiction also exists here with respect to Chevron Canada because it was validly served at a place of business it operates in the province. On the traditional jurisdictional grounds, this is sufficient to find jurisdiction."
- "In my view, the real and substantial connection test as a constitutional principle does not dictate that it is "illegitimate" to find jurisdiction over Chevron Canada in this case. Chevron Canada has elected to establish and continue to operate a place of business in Mississauga, Ontario, at which it was served. It should therefore have expected that it might one day be called upon to answer to an Ontario court's request that it defend against an action. If a defendant maintains a place of business in Ontario, it is reasonable to say that the Ontario courts have an interest in the defendant and the disputes in which it becomes involved. As the Ontario Court of Appeal put it in Incorporated Business Ltd., at para. 33, "[t]here is no constitutional impediment to a court asserting jurisdiction over a person having a presence in the province", at least as presence is established in this case. To accept Chevron Canada's submission to the contrary would be to endorse an unduly "narrow" view of jurisdiction, one towards which this Court has shown no prior inclination ... For Ontario courts to have jurisdiction over Chevron Canada in this case, mere presence through the carrying on of business in the province, combined with service therein, suffices to find jurisdiction on the traditional grounds. ..."
- "In the recognition and enforcement context, it would hardly make sense to require that the carrying on of business in the province relate to the subject matter of the dispute. The subject matter of recognition and enforcement proceedings is the collection of a debt. A debt is enforceable against any and all assets of a given debtor, not merely those that may have a relationship to the claim. For instance, suppose a foreign judgment is validly rendered against Corporation A in a foreign country as a result of a liability of its Division I, which operates solely in that country. If Corporation A operates a place of business for its separate and unrelated Division II in Ontario, where all its available and recoverable assets happen to be located, it could not be argued that the foreign judgment creditor cannot execute and enforce it in Ontario against Corporation A because the business activities of the latter in the province are not related to the liability created by the foreign judgment."
- "... one aspect of the plaintiffs' claim in this case is for enforcement of Chevron's obligation to pay the foreign judgment using the shares and assets of Chevron Canada to satisfy its parent corporation's debt obligation. In this respect, the subject matter of the claim is not the Ecuadorian events that led to the foreign judgment to which Chevron Canada is a stranger, but rather, at least arguably, the collection of a debt using shares and assets that are alleged to be available for enforcement purposes. In an enforcement process like this for the collection of a debt against a third party, assets in the jurisdiction through the carrying on of business activities are undoubtedly tied to the subject matter of the claim. From that standpoint, seizable assets are not merely the subject matter of the dispute, they are its core. In this regard, the third party is the direct object of the proceedings. When a plaintiff seeks enforcement against a third party to satisfy a foreign judgment debt, the existence of assets in the province may therefore well be a highly relevant connecting factor of the sort needed for such an action to proceed. Indeed, it is hard to identify who, besides the province, would have jurisdiction over a company for enforcement processes against that company's assets in the province."
- "Once past the jurisdictional stage, Chevron Canada, like Chevron, can use the available procedural tools to try to dispose of the plaintiffs' allegations. This possibility is foreign to and remote from the questions that must be resolved on this appeal."
- "...my conclusion that the Ontario courts have jurisdiction in this case should not be understood to prejudice future arguments with respect to the distinct corporate personalities of Chevron and Chevron Canada. I take no position on whether Chevron Canada can properly be considered a judgment-debtor to the Ecuadorian judgment. Similarly, should the judgment be recognized and enforced against Chevron, it does not automatically follow that Chevron Canada's shares or assets will be available to satisfy Chevron's debt. For instance, shares in a subsidiary belong to

> the shareholder, not to the subsidiary itself. Only those shares whose ownership is ultimately attributable to the judgment debtor could be the valid target of a recognition and enforcement action. It is not at the early stage of assessing jurisdiction that courts should determine whether the shares or assets of Chevron Canada are available to satisfy Chevron's debt. As such, contrary to the appellants' submissions, this is not a case in which the Court is called upon to alter the fundamental principle of corporate separateness as reiterated in *BCE Inc. v. 1976 Debentureholders*, 2008 SCC 69, [2008] 3 S.C.R. 560, at least not at this juncture. In that regard, the deference allegedly owed to the motion judge's findings concerning the separate corporate personalities of the appellants and the absence of a valid foundation for the Ontario courts' exercise of jurisdiction is misplaced. These findings were reached in the context of the s. 106 stay. As I stated above, the Court of Appeal reversed that stay, and this issue is not on appeal before us"

Tags: chevron, Chevron Canada, Ecuador, enforcement of foreign judgements, Supreme Court of Canada

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