IN THE SUPREME COURT OF BRITISH COLUMBIA

Re: Section 29 of the ***Court Order Enforcement Act*** and the Registration of a Foreign Judgment Against John Tolman, Mrs. John Tolman, Bob Alpen and Mrs. Bob Alpen

Citation: ***Walters et al v. Tolman et al,*** 2005 BCSC 838

Date: 20050608
Docket: L033156
Registry: Vancouver

Between:

Stanley C. Walters and Helen L. Walters

Plaintiffs
Judgment Creditors

And:

John Tolman also known as John B. Tolman, Mrs. John Tolman, Bob Alpen also known as Robert Alpen and Mrs. Bob Alpen

Defendants
Judgment Debtors

Before: The Honourable Mr. Justice Melnick

Reasons for Judgment

Counsel for the Plaintiffs:	M. Ferbers
Counsel for the Defendant, Donnette Heinrich, also known as Mrs. John Tolman:	T.J. Delaney
Counsel for the Defendants, Mr. and Mrs. Alpen:	A. Sweezey
Date and Place of Hearing:	May 5, 2005 Vancouver, B.C.

[1] Donnette Heinrich (“Ms. Heinrich”) and Freda Alpen (“Ms. Alpen”) apply to set aside an order of this court registering in British Columbia a Washington State judgment against them. Ms. Heinrich also seeks to set aside the registration of the judgment in the Land Title Office against certain real property owned by her.

[2] Robert Alpen (“Mr. Alpen”) and Ms. Alpen also seek to set aside the registration of the Washington judgment on the basis that the assignment of the cause of action by the original judgment holders to the present plaintiffs was inequitable and thus unenforceable.

I. BACKGROUND

[3] On November 24, 2004, an order was entered in this court pursuant to section 29 of the ***Court Order Enforcement Act***, R.S.B.C. 1996, c. 78 (the "***Act***"), made on an application without notice, registering in British Columbia a joint and several judgment of the Superior Court of the State of Washington dated January 17, 2003 for $40,000 USD plus pre-judgment interest against the judgment debtors in the amount of $65,618.11 CDN. The Washington judgment was made following a trial that took place on December 2-3, 2003 before Superior Court Judge Susan K. Cook.

[4] The debt giving rise to the Washington judgment arose from a $40,000 USD business loan entered into by the borrowers, John Tolman ("Mr. Tolman") and Mr. Alpen, on September 11, 2000, with a Dr. Bob Erickson of Bawg Holdings as lender, to be utilized as earnest money to complete purchase of commercial real estate in Washington State from Mr. Stanley Walters (one of the present plaintiffs and judgment creditors). The property was to be registered in the name of G.D. Trading, a Washington corporation doing business in Skagit County, a company controlled jointly by Mr. Tolman and Mr. Alpen. The funds were advanced by Dr. Erickson to an escrow agent, First American Title Company, on behalf of Mr. Tolman and Mr. Alpen. Under the agreement made between Mr. Tolman and Mr. Alpen with Mr. Walters, the $40,000 was to be paid to Mr. Walters as a non-refundable deposit. In late October, without Dr. Erickson's approval, the escrow agent released the funds as a non-refundable deposit to the vendor of the property under the purchase contract negotiated and signed by Mr. Tolman and Mr. Alpen for G.D. Trading. The funds were forfeited to the vendor when the purchase failed to complete. Mr. Tolman and Mr. Alpen defaulted in the debt repayment to Dr. Erickson.

[5] Dr. Erickson and his company, Bawg Holdings, claimed the funds should not have been released without his approval. Dr. Erickson and Bawg Holdings commenced an action against First American Title Company of Skagit County, Inc., John Tolman and Mrs. John Tolman, and their marital community, Bob Alpen and Mrs. Bob Alpen, and their marital community, Lakeview Development Inc. (a company owned by Mr. Tolman and Mr. Alpen), and G.D. Trading Company Inc. "Mrs. John Tolman" is Ms. Heinrich and "Mrs. Bob Alpen" is Ms. Alpen.

[6] Mr. Tolman was personally served with the summons on October 27, 2001 and Mr. Alpen was personally served with the summons on November 29, 2001. Neither of their spouses were personally served apparently because, under Washington State law, a debt incurred by either spouse during marriage, with a few exceptions, is presumed to be a community debt. When a community debt is being sued upon in Washington State, only one spouse needs to be served. I note that by way of explanation of how the judgment was obtained in Washington State against Ms. Heinrich and Ms. Alpen. In fact, during the course of these applications, I ruled that counsel for the judgment creditors had not proved Washington State law and thus the law of British Columbia applies.

[7] At the time the debt to Dr. Erickson was incurred on September 11, 2000, Ms. Heinrich and Ms. Alpen were married to Mr. Tolman and Mr. Alpen, respectively. At the present date, Mr. and Ms. Alpen remain married; however, Ms. Heinrich is now married to another man. In November 2000, Ms. Heinrich and Mr. Tolman ceased living together. On July 8, 2002, Ms. Heinrich and Mr. Tolman divorced. The trial took place in Washington State on December 2-3, 2002, and the Washington judgment was filed with the Washington State Court on January 17, 2003.

[8] On March 14, 2003, Dr. Erickson and Bawg Holdings assigned the judgment to the plaintiffs in the present case, Mr. and Ms. Walters.

[9] On November 24, 2003, the Washington State judgment was registered in British Columbia by an order of the British Columbia Supreme Court pursuant to an *ex parte* application.

[10] On December 5, 2003, Ms. Heinrich married Manfred Heinrich.

[11] On January 19, 2004, Ms. Heinrich was served with the order of this court, the judgment from Washington State, and an Appointment to attend an Examination in Aid of Execution, which was the first time that she heard of the proceedings.

[12] On February 17, 2004, Ms. Heinrich attended at an Examination in Aid of Execution, but left when Mr. Alpen told her to do so.

[13] On February 18, 2004, Mr. and Ms. Walters registered the order of this court against real property owned by Mr. and Ms. Heinrich.

II. ISSUES

[14] The issues arising from these applications are as follows:

1. Should this court set aside the registration of the foreign judgment as it applies to Ms. Heinrich and Ms. Alpen?

   (a) Where both the plaintiffs and the defendants have failed to provide adequate notice of registration of the foreign judgment, should extensions of time be given by the court?

   (b) Should the foreign judgment against Ms. Heinrich and Ms. Alpen have been registered?

   (c) Should the registration of the foreign judgment against Ms. Heinrich and Ms. Alpen be set aside?

      (i) Did Ms. Alpen or Ms. Heinrich voluntarily submit to the jurisdiction of the Washington State Court?

      (ii) Are the proceedings of the Washington State Court contrary to natural justice?

      (iii) Are the proceedings of the Washington State Court contrary to public policy?

2. Should this court make an order that the assignment which took place on March 14, 2003, when Dr. Erickson and Bawg Holdings assigned the judgment to Mr. Walters and Mrs. Walters, was inequitable and thus unenforceable?

III. ANALYSIS AND DISCUSSION

1. Should this court set aside the registration of the foreign judgment as it applies to Ms. Heinrich and Ms. Alpen?

(a) Extension of time to serve notice of registration of the foreign judgment

[15] The first issue that must be addressed involves the timing of the service of the notice of registration of the foreign judgment. Section 34 of the ***Act*** reads:

> 34(1) If a judgment is registered under an order made without notice to any person
>
> (a) within one month after the registration or within a further period as the registering court may at any time order, notice of the registration must be served on the judgment debtor in the same manner as a writ of summons is required to be served, and
>
> (b) the judgment debtor, within one month after he or she has had notice of the registration, may apply to the registering court to have the registration set aside.

[16] Both parties failed to serve the other within the given time period. Where both parties have failed to provide adequate notice, extensions of time may be given by the court (***Hoopman Estate v. Imrie*** (1991), 57 B.C.L.R. (2d) 310 (S.C.); ***Auger v. Hume***, [1999] B.C.J. No. 118 (S.C.) (QL)). In ***Auger***, Mr. Justice McEwan held that the defendant's failure to respond within one month (due to the plaintiff's delay in serving the order) could not tell against her until the defect was first cured by the plaintiff. Moreover, according to Rule 3(2) of the ***Rules of Court***, B.C. Reg. 221/90, "the court may extend or shorten any period of time provided for in these rules or in an order of the court, notwithstanding that the application for the extension or the order granting the extension is made after the period of time has expired". Therefore, I would extend the notice periods and allow the application to continue.

(b) Should the foreign judgment against Ms. Heinrich and Ms. Alpen have been registered?

[17] The relevant sections of the ***Act*** are:

> 29(1) If a judgment has been given in a court in a reciprocating state, the judgment creditor may apply to the Supreme Court within 6 years after the date of the judgment to have the judgment registered in that court, and on application the court may order the judgment to be registered.
>
> (2) An order for registration under this Part may be made without notice to any person in any case in which

(a) the judgment debtor

(i) was personally served with process in the original action, or

(ii) although not personally served, appeared or defended, or attorned or otherwise submitted to the jurisdiction of the original court, and

(b) under the law in force in the state where the judgment was made,

(i) the time in which an appeal may be made against the judgment has expired and no appeal is pending, or

(ii) an appeal has been made and has been disposed of.

(5) In a case to which subsection (2) does not apply, notice of the application for the order as is required by the rules or as the judge considers sufficient must be given to the judgment debtor.

(6) An order for registration must not be made if the court to which the application for registration is made is satisfied that

(a) the original court acted either

(i) without jurisdiction under the conflict of laws rules of the court to which application is made, or

(ii) without authority, under the law in force in the state where the judgment was made, to adjudicate concerning the cause of action or subject matter that resulted in the judgment or concerning the person of the judgment debtor,

(b) the judgment debtor, being a person who was neither carrying on business nor ordinarily resident in the state of the original court, did not voluntarily appear or otherwise submit during the proceedings to the jurisdiction of that court,

(c) the judgment debtor, being the defendant in the proceedings, was not duly served with the process of the original court and did not appear, even though he or she was ordinarily resident or was carrying on business in the state of that court or had agreed to submit to the jurisdiction of that court,

(d) the judgment was obtained by fraud,

(e) an appeal is pending or the time in which an appeal may be taken has not expired,

(f) the judgment was for a cause of action that for reasons of public policy or for some similar reason would not have been entertained by the registering court, or

(g) the judgment debtor would have a good defence if an action were brought on the judgment.

[Emphasis added]

[18] Section 29(2) is applicable to the present case because the registration order was made *ex parte* and without notice. An order for registration may only be made without notice if the judgment debtor was either (i) personally served with process in the original action, or (ii) although not personally served, appeared or defended, or attorned or otherwise submitted to the jurisdiction of the original court.

[19] Furthermore, s. 29(6)(b) states that an order for registration must not be made if "the judgment debtor, being a person who was neither carrying on business nor ordinarily resident in the state of the original court, did not voluntarily appear or otherwise submit during the proceedings to the jurisdiction of that court". Neither Ms. Heinrich nor Ms. Alpen were carrying on business in Washington State, nor were they ordinarily resident in Washington State, nor were they personally served, nor did they appear or submit to the jurisdiction of the Washington State Court. As such, the order for registration against Ms. Heinrich and Ms. Alpen was not made in accordance with ss. 29(2) or 29(6) and thus should not have been registered.

(c) Should the registration of the foreign judgment against Ms. Heinrich and Ms.

Alpen be set aside?

[20] Even if a judgment meets the basic requirements for recognition and enforcement (i.e. it was issued by a court of competent jurisdiction and it was final and conclusive and for a definite sum of money), it may still be impeached and, thereby, denied recognition and enforcement (See Castel & Walker, *Canadian Conflict of Laws*, 5th ed. (Markham, Ontario: Butterworths, 2002) at p. 14-24). Although every presumption is made in favour of the validity of a foreign judgment and the court will not re-litigate the merits of the claim, and the burden of proof lies on the party who seeks to impeach it, the judgment may be impeached on the ground that it was obtained by fraud, or that the foreign proceedings were conducted in a manner contrary to natural justice, or that its recognition or enforcement would be contrary to public policy (See Castel & Walker at p. 14-24).

[21] The ***Act*** sets out the grounds for setting aside an order for registration made without notice (See ss. 29(6) and 34(2)). Section 34 reads:

> 34(1) If a judgment is registered under an order made without notice to any person
>
> (a) within one month after the registration or within a further period as the registering court may at any time order, notice of the registration must be served on the judgment debtor in the same manner as a writ of summons is required to be served, and
>
> (b) the judgment debtor, within one month after he or she has had notice of the registration, may apply to the registering court to have the registration set aside.
>
> (2) On an application under subsection (1)(b), the court may set aside the registration on any grounds mentioned in section 29(6) and on terms the court thinks fit.
>
> [Emphasis added]

Thus, in accordance with s. 34(2), the court may set aside the registration on any grounds mentioned in s. 29(6).

[22] In addition to the grounds mentioned in s. 29(6) of the ***Act***, the defendants also have access to the common law defences which may be raised to an action upon a foreign judgment *in personam*. These common law defences are those referred to in s. 29(6)(g) of the ***Act***. The common law defences are as follows (***Marcotte v. Megson*** (1987), 19 B.C.L.R. (2d) 300 at 310 (B.C. Co. Ct.) [***Marcotte***]):

> (1) The original court had no jurisdiction;
>
> (2) The defendant in the original action was not duly served and did not appear or submit to the jurisdiction;
>
> (3) The judgment was obtained by fraud;
>
> (4) The judgment was not a final judgment;
>
> (5) The judgment is not for a sum certain in money;
>
> (6) The judgment is for the payment of a penalty or money due under the revenue laws of the foreign country;
>
> (7) The judgment has been satisfied or for any other reason is not a subsisting judgment;
>
> (8) The judgment is in respect of a cause of action that for reasons of public policy would not be enforced in British Columbia.
>
> (9) The proceedings in which the judgment was obtained were contrary to natural justice;
>
> (10) The judgment was manifestly in error.
>
> [Emphasis added]

(i) Neither Ms. Alpen nor Ms. Heinrich voluntarily submitted to the jurisdiction of the Washington State Court.

[23] In accordance with s. 29(6)(b) and the common law defence pursuant to s. 29(6)(g), the defendants must have been served in the original action (See ***Silverstar Properties Ltd. v. Veinotte***, [1998] B.C.J. No. 2385 (S.C.)

(QL)). Section 29(6)(b) states that an order for registration must not be made if the court to which application for registration is made is satisfied that "the judgment debtor, being a person who was neither carrying on business nor ordinarily resident in the state of the original court, did not voluntarily appear or otherwise submit during the proceedings to the jurisdiction of that court". A defence under common law is that the defendant in the original action was not duly served and did not appear or submit to the jurisdiction. It is clear that s. 29(6)(b) and the common law defence pursuant to s. 29(6)(g) apply to Ms. Heinrich and Ms. Alpen as they were not served with the original action and they did not submit to the jurisdiction of the Washington court.

[24] The plaintiffs have argued that Ms. Heinrich and Ms. Alpen, by virtue of their marriages to Mr. Tolman and Mr. Alpen, have submitted to the jurisdiction of the foreign court. Such a proposition is foreign to the law in Canada and contrary to Canadian public policy and natural justice as it is a bar to due process.

(ii) The proceedings of the Washington State Court were contrary to natural justice

[25] A foreign judgment can be impeached if the proceedings in which the judgment was obtained were contrary to natural justice (***Leaton Leather & Trading Co. v. Kona*** (1997), 147 D.L.R. (4th) 377 (B.C.S.C.)). It has been held that failure to provide personal service to a party to the action is deemed to be contrary to natural justice. In ***Wanderers Hockey Club v. Johnson*** (1913), 14 D.L.R. 42 (B.C.S.C.), an action was brought by the Wanderers Hockey Club in Montreal against Johnson for damages for having broken his contract to play with them during the winter season. The plaintiffs obtained judgment against the defendant in the Montreal court after having served him substitutionally with the writ issued there. The plaintiffs then took the action to the British Columbia Supreme Court based on the foreign judgment. The court held at p. 43 that:

> In so far as this action is based on the foreign judgment, it was proven before me that the defendant was not served with any process of the foreign court nor had he any knowledge that proceedings had been taken against him. It is a fair inference, I think, from the evidence that the plaintiffs knew where the defendant could have been found and, presumably, they could have obtained leave to serve him personally out of the jurisdiction. At any rate, they could have sued him in British Columbia. Under these circumstances I am of the opinion that the judgment should not be acted on in our court. It is laid down in Halsbury's Laws of England, vol. 6, para. 423, that such judgment will not be acted upon when obtained without personal service even though under the procedure of the foreign court substitutional service is permitted, thus making the judgment effective in such foreign jurisdiction. In my opinion, therefore, the defendant can go behind the Montreal judgment.
>
> [Emphasis added]

[26] Therefore it is a principle of the law in both England and Canada that a foreign judgment will not be enforced even though the procedure of the foreign court for substitutional service is acceptable in that foreign jurisdiction. Thus, even though service upon Mr. Tolman and Mr. Alpen may be considered proper service upon Ms. Heinrich and Ms. Alpen in Washington State, that means of "service" is not acceptable in British Columbia.

[27] In the case of ***Roman v. Maggiora***, [1937] 1 W.W.R. 490 (B.C.S.C.), the British Columbia Supreme Court cited with approval the English case of ***Pemberton v. Hughes***:

> [25] Vaughan William, L.J. said at p. 796, in *Pemberton v. Hughes*, [1899] 1 Ch. 781, 68 L.J. Ch. 281:
>
> > Here it is alleged that was no proper service. The true principle seems to me to be that a judgment, whether in personam or in rem, of a superior court having jurisdiction over the person, must be treated as valid till set aside either by the Court itself or by some proceeding in the nature of a writ or error, unless there has been some defect in the initiation of the proceedings, or in the course of proceedings, which would make it contrary to natural justice to treat the foreign judgment as valid, as, for instance, a case where there had been not only no service of process, but no knowledge of it. The allegation of no service alone would not in such a case avail the defendant.

[28] Considering the case of ***Pemberton v. Hughes***, it is clear that Ms. Heinrich cannot be considered served in the present case as she did not have knowledge of the Washington State proceedings; it is difficult to say whether Ms. Alpen had such knowledge. In any event, there is no evidence to suggest that Ms. Alpen had any knowledge of

the proceedings. However, it is clear that neither Ms. Heinrich nor Ms. Alpen were resident in the foreign jurisdiction, nor personally served. As such, I would set aside the Washington judgment on the basis that the lack of personal service upon Ms. Tolman and Ms. Alpen is contrary to natural justice.

(iii) The proceedings of the Washington State Court are contrary to public policy

[29] In accordance with s. 29(6)(f) and the common law defence pursuant to s. 29(6)(g), a foreign judgment will not be enforced if, for reasons of public policy, the cause of action would not have been entertained by the registering court. Section 29(6)(f) states that an order for registration must not be made if the court to which application for registration is made is satisfied that "the judgment was for a cause of action that for reasons of public policy or for some similar reason would not have been entertained by the registering court". The common law defence is that "the judgment is in respect of a cause of action that for reasons of public policy would not be enforced in British Columbia". (***Marcotte*** at p. 310).

[30] Canadian courts will not recognize or enforce a foreign law or judgment that is contrary to its fundamental public policies, its essential public or moral interest, or its conception of essential justice and morality (***Block Bros. Realty Ltd. v. Mollard*** (1981), 122 D.L.R. (3d) 323 (B.C.C.A.)). If foreign law is to be denied effect on public policy grounds, it must violate some fundamental principles of justice or some deep-rooted tradition of the forum (***Tolofson v. Jensen***, [1994] 3 S.C.R. 1022). To do so amounts to denying the plaintiff or the defendant access to the local courts leaving the plaintiff to seek relief in another forum or removing a defendant's defence possibly resulting in an adverse judgment subjecting his or her local assets to seizure (See Castel & Walker at p. 8.11). Evidence of public policy can be found in the total body of the constitutional and statute law as well as the case law of the forum, since it will reflect the local sense of justice and public welfare (Castel & Walker at p. 8.11).

[31] Following the comment made in Castel & Walker at p. 8.11, Ms. Heinrich and Ms. Alpen were in fact denied access to the Washington State court which has resulted in an adverse judgment subjecting their assets to possible seizure. This has raised a public policy concern regarding notice and due process. It is codified in the ***Act*** and the ***Rules of Court*** that service is a necessity in any legal proceeding. Without notice, a party cannot have knowledge of the proceedings and thus cannot properly defend. Justice cannot be achieved in a legal system with proper notice. As such, the registration of the foreign judgment against Ms. Heinrich and Ms. Alpen must be set aside for policy reasons.

2. Is the Assignment Inequitable and thus Unenforceable?

[32] Mr. and Ms. Alpen are arguing that the assignment which occurred on March 14, 2003, when Dr. Erickson and Bawg Holdings assigned the judgment to Mr. and Ms. Walters, was inequitable and thus unenforceable. They base this argument on the fact that the plaintiffs, Mr. and Ms. Walters, are principals of First American Title Company, which improperly released funds leading to the claim of the original plaintiff and Ms. Walters was one of the vendors of the subject property. As such, they argue, equity forbids First American Title Company or its principals from indirectly setting up their own obligation as a claim against the other defendants. This argument raises jurisdictional issues as to whether this court or the Washington State court is the more appropriate forum to hear such an argument.

[33] In ***Cook v. Parcel, Mauro, Hultin & Spaanstra, P.C.*** (1997), 31 B.C.L.R. (3d) 24 (C.A.), the British Columbia Court of Appeal held at pp. 30 to 31:

> It is common ground that the test to be applied in determining whether the B.C. Supreme Court has jurisdiction over these proceedings is whether there is a real and substantial connection between the court and either the defendant (respondent firm) or the subject-matter of the litigation (occasionally referred to in the authorities as the "transaction" or the "cause of action"). Jurisdiction founded on this basis is referred to as "jurisdiction simpliciter".
>
> Similarly, it is not disputed that, even if the court has a real and substantial connection with either the defendant or the subject-matter of the litigation, it is open to the court to decline jurisdiction if there is clearly a more convenient or appropriate forum elsewhere to which the defendant will attorn. In exercising its discretion to decline jurisdiction, the court is giving effect to the doctrine of forum non conveniens.

Thus, the courts have formulated specific organizing principles in the law of conflicts for determining if a court has jurisdiction, and when it may decline to assert such jurisdiction. Those principles are referred to by Mr. Justice La Forest, speaking for the Court, in Tolofson v. Jensen, [1994] 3 S.C.R. 1022 at p. 1049 of that decision:

> To prevent overreaching, however, courts have developed rules governing and restricting the exercise of jurisdiction over extraterritorial and transnational transactions. In Canada, a court may exercise jurisdiction only if it has a "real and substantial connection" (a term not yet fully defined) with the subject matter of the litigation; see Moran v. Pyle National (Canada) Ltd., [1975] 1 S.C.R. 393, [[1974] 2 W.W.R. 586]; Morguard, [[1990] 3 S.C.R. 1077, 52 B.C.L.R. (2d) 160]; and Hunt, [[1993] 4 S.C.R. 289, 85 B.C.L.R. (2d) 1]. This test has the effect of preventing a court from unduly entering into matters in which the jurisdiction in which it is located has little interest. In addition, through the doctrine of forum non conveniens a court may refuse to exercise jurisdiction where, under the rule elaborated in Amchem, [[1993] 1 S.C.R. 897] (see esp. at pp. 921, 922, 923), there is a more convenient or appropriate forum elsewhere.
>
> [Emphasis added]

[34] The relevant factors for deciding jurisdiction are set out by Associate Chief Justice Campbell in ***Jan Poulsen & Co. v. Seaboard Shipping Co.*** (1994), 100 B.C.L.R. (2d) 175 at paras. 28-29 (S.C.):

> From a careful reading of the Amchem case, [1993] 1 S.C.R. 897, and the other cases cited by counsel, I conclude that on an application under Rule 14(6)(c) the court should consider the following factors:
>
> (1) Where each party resides.
>
> (2) Where each party carries on business.
>
> (3) Where the cause of action arose.
>
> (4) Where the loss or damage occurred.
>
> (5) Any juridical advantage to the plaintiff in this jurisdiction.
>
> (6) Any juridical disadvantage to the defendant in this jurisdiction.
>
> (7) Convenience or inconvenience to potential witness.
>
> (8) Cost of conducting the litigation in this jurisdiction.
>
> (9) Applicable substantive law.
>
> (10) Difficulty ... in proving foreign law, if necessary.
>
> (11) Whether there are parallel proceedings in any other jurisdiction. ("Forum shopping" is to be discouraged.)
>
> I do not intend the list to be exhaustive. Other factors might arise in a particular case and be determinative in that case. As in any area of discretion, certain factors [are] more important than others from case to case.

[35] Taking these factors into consideration, the present case involves the following:

(1) The parties reside in Canada;

(2) Dr. Erickson’s company, Bawg Holdings, is a Canadian incorporated company;

(3) G.D. Trading Company Inc., First American Title Company of Skagit County, Inc., and Lakeview Developments Inc. are Washington incorporated companies;

(4) The property at issue is situated in Washington State; and

(5) The transactions took place in Washington State.

[36] In deciding the interplay between these factors, it is useful to look at a similar case which was heard before

the British Columbia Court of Appeal. In ***Roth v. Interlock Services, Inc.***, 2004 BCCA 407 at para. 25, the Court of Appeal applied the factors listed above in upholding the chambers judge's conclusions:

> The chambers judge stated his conclusion that jurisdiction should be declined as follows:
>
> > [32] To summarize, even if I am in error in determining that the court has no jurisdiction, the court ought to decline jurisdiction. The defendants are residents of the United States. Interlock is a Nevada Corporation, while the defendants Weisberg, McDonnell, Wong and Austin are all residents of the State of New York. The defendant Pierce is a resident of North Carolina. As well, the defendant law firm Jenkens & Gilchrist is also resident in New York. The plaintiff incorporated his first company, IIAC in Nevada. He took part in the merger of that company with Interlock, another Nevada company. Moreover, he must have considered the juridical advantages in agreeing to adopt Nevada law as the applicable law for the merger agreement. It was obviously the intent of all the parties that any dispute arising from out of the agreement be governed by Nevada law. Finally, the meeting that gives rise to the action took place in Nevada. In the circumstances, the appropriate jurisdiction based on all the factors is either Nevada or New York. New York may be appropriate insofar as it appears from the evidence that the company purports to operate in that jurisdiction and the majority of the defendants reside there. For these reasons, this court ought to decline jurisdiction in this cause of action.
>
> [Emphasis added]

[37] Similarly, it appears from the evidence in the present case that the parties intended to carry on business in Washington State so that any business agreement or transaction would be governed by Washington State law. Although the parties reside in Canada, they conduct their business in Washington State through companies incorporated in Washington State. Thus, the evidence indicates a real and substantial connection existing between the parties' transactions and Washington State. Even if I was to find that there is also a real and substantial connection to this jurisdiction, and I do not, I conclude that I should decline jurisdiction based on the doctrine of *forum non conveniens* because Washington State is the more appropriate forum to determine the issue of the property of the assignment.

IV. SUMMARY OF CONCLUSIONS:

[38] 1. The registration of the judgment as against Ms. Heinrich and Ms. Alpen is set aside;

2. The registration of the judgment in the Land Title Office against any real property owned by Ms. Heinrich is set aside;

3. If the judgment was registered in the Land Title Office against any real property of Ms. Alpen, registration is also set aside;

4. The Court declines jurisdiction to decide the allegations of Mr. and Ms. Alpen that the assignment of the judgment to Mr. and Ms. Walters was inequitable and thus enforceable;

5. Ms. Heinrich and Ms. Alpen are entitled to their costs of their successful application, on Scale 3; and

6. Mr. and Ms. Walters are entitled to their costs of Mr. and Ms. Alpen's application with respect to the assignment, on Scale 3.

"T.J. Melnick, J."
The Honourable Mr. Justice T.J. Melnick