

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Armstrong v. AirCFO, LLC*,
2026 BCSC 1142

Date: 20260619
Docket: S257350
Registry: New Westminster

Between:

Matthew Armstrong

Plaintiff

And

AirCFO, LLC

Defendant

Before: The Honourable Justice L. Bennett

Reasons for Judgment

Counsel for the Plaintiff: S.K. Chen

Counsel for the Respondent: D.R. Shouldice

Place and Date of Hearing: Vancouver, B.C.
May 6, 2026

Place and Date of Judgment: New Westminster, B.C.
June 19, 2026

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Introduction

[1] In a notice of civil claim filed April 3, 2025, the plaintiff, Matthew Armstrong, alleges that he was an employee of AirCFO, the United States-based defendant company, and that he was dismissed without reasonable notice or payment in lieu of notice.

[2] At this preliminary stage of the proceeding, the defendant applicant applies for an order striking out the plaintiff's notice of civil claim, or in the alternative, for an order staying this action as against the defendant pursuant to Rule 21-8 of the *Supreme Court Civil Rules*, B.C. Reg 168/2009 [*Rules*] on the basis that this court lacks jurisdiction to hear the matter. In the alternative, the defendant seeks an order staying this action on the grounds of *forum non conveniens*.

[3] The plaintiff respondent opposes the application. He asserts that this court has territorial competence, and that the choice of law clause leaves it open that any disputes between the parties may be litigated in British Columbia. Further, he asserts that the defendant has not met its burden of proof in the *forum non conveniens* analysis.

Relevant Factual Background

[4] The defendant is a United States-based company incorporated pursuant to the laws of the state of Ohio. It is in the business of providing fractional accounting, finance, people operations and tax professional services to venture-backed startup companies that operate solely in the United States.

[5] The defendant has a client base across all 50 states. It does not, nor has it ever, provided services directly to Canadian companies. It does, however, provide services indirectly for a few companies that have Canadian subsidiaries.

[6] The defendant has employees located in the United States. The defendant also contracts with other companies and/or contractors who are located in several countries, including in the United States, Philippines, Canada, and Honduras. Through this business model, the defendant provides its services to companies that do not wish to have their own full-time in-house services.

[7] Justin McLaughlin is the president of the defendant. He filed two affidavits in support of this application both of which explain the defendant's operations and structure.

[8] The plaintiff is a certified professional accountant who resides in and is licensed to practice in British Columbia. He is also the principal of a numbered Canadian consulting company (the "Numbered Company") with whom the defendant contracted between 2021 and 2024.

[9] On January 25, 2021, the defendant contracted with the Numbered Company to provide accounting services for the defendant's United States-based customers.

[10] The consulting agreement consists of four pages and 11 paragraphs (the "Contract"). It includes terms which address, among other things, the consulting relationship, fees, expenses, the term of the Contract and termination. For the purpose of this application, the relevant sections of the Contract are ss. 5, 11(b) and 11(d). They read as follows:

5. **Independent Contractor.** Consultant's relationship with the Company will be that of an independent contractor and not that of an employee.

[...]

11. **Miscellaneous**

[...]

(b) **Sole Agreement.** This Agreement constitutes the sole agreement of the parties and supersedes all oral negotiations and prior writings with respect to the subject matter hereof.

[...]

(d) **Choice of Law.** The validity, interpretation, construction and performance of this Agreement shall be governed by the laws of the State of Ohio, without giving effect to the principles of conflict of laws.

[11] Clause 11(d) is particularly germane to this matter as it is a choice of law clause (the "Choice of Law Clause")

[12] The business relationship ended abruptly on May 31, 2024, and the plaintiff commenced this action for wrongful dismissal on April 3, 2025.

[13] As the notice of civil claim required service outside of British Columbia, the plaintiff attached an endorsement as required by Rule 4-5 of the *Rules*. That endorsement reads:

**ENDORSEMENT ON ORIGINATING PLEADING OR PETITION FOR
SERVICE OUTSIDE OF BRITISH COLUMBIA**

The plaintiff, Matthew Armstrong, claims the right to serve this pleading on the defendant, AIRCFO, LLC, outside British Columbia on the ground that this pleading arises from contractual obligations, and the contractual obligations, to a substantial extent, were to be performed in British Columbia, and by its express terms, the contract is governed by the law of British Columbia, both enumerated in section 10 of the *Court Jurisdiction and Proceedings Transfer Act*, on which the plaintiff relies.

[14] Upon being served, the defendant filed a form 108 jurisdictional response on June 30, 2025, in which it disputes that this court has jurisdiction. In the alternative, it submits that this court ought not to exercise its jurisdiction over this defendant.

Governing Rules, Legislation and Authorities

[15] Rule 21-8 governs jurisdictional disputes where a party who has been served with an originating pleading disputes jurisdiction and has filed a jurisdictional response in form 108. The relevant sections of this rule read:

Rule 21-8 — Jurisdictional Disputes**Disputed jurisdiction**

(1) A party who has been served with an originating pleading or petition in a proceeding, whether that service was effected in or outside British Columbia, may, after filing a jurisdictional response in Form 108,

(a) apply to strike out the notice of civil claim, counterclaim, third party notice or petition or to dismiss or stay the proceeding on the ground that the notice of civil claim, counterclaim, third party notice or petition does not allege facts that, if true, would establish that the court has jurisdiction over that party in respect of the claim made against that party in the proceeding,

(b) apply to dismiss or stay the proceeding on the ground that the court does not have jurisdiction over that party in respect of the claim made against that party in the proceeding, or

(c) allege in a pleading or in a response to petition that the court does not have jurisdiction over that party in respect of the claim made against that party in the proceeding.

[...]

Disputed pleading or service

(3) If a party who has been served with an originating pleading or petition in a proceeding, whether served in or outside British Columbia, alleges that the notice of civil claim, counterclaim, third party notice or petition is invalid or has expired or that the purported service of the notice of civil claim, counterclaim, third party notice or petition was invalid, the party may, after filing a jurisdictional response in Form 108, apply for one or both of the following:

(a) an order setting aside the notice of civil claim, counterclaim, third party notice or petition;

(b) an order setting aside service of the notice of civil claim, counterclaim, third party notice or petition.

[...]

Party does not submit to jurisdiction

(5) If, within 30 days after filing a jurisdictional response in a proceeding, the filing party serves a notice of application under subrule (1) (a) or (b) or (3) on the parties of record or files a pleading or a response to petition referred to in subrule (1) (c),

(a) the party does not submit to the jurisdiction of the court in relation to the proceeding merely by filing or serving any or all of the following:

- (i) the jurisdictional response;
- (ii) a pleading or a response to petition under subrule (1) (c);
- (iii) a notice of application and supporting affidavits under subrule (1) (a) or (b), and

(b) until the court has decided the application or the issue raised by the pleading, petition or response to petition, the party may, without submitting to the jurisdiction of the court,

- (i) apply for, enforce or obey an order of the court, and
- (ii) defend the proceeding on its merits.

[16] Alongside the *Rules* is the *Court Jurisdiction and Proceedings Transfer Act*, S.B.C. 2003, c. 28 [CJPTA] that governs the territorial jurisdiction for all levels of court in British Columbia. The relevant sections for the purpose of this application are ss. 3, 10, and 11 which read as follows:

Proceedings against a person

3 A court has territorial competence in a proceeding that is brought against a person only if

- (a) that person is the plaintiff in another proceeding in the court to which the proceeding in question is a counterclaim,
- (b) during the course of the proceeding that person submits to the court's jurisdiction,
- (c) there is an agreement between the plaintiff and that person to the effect that the court has jurisdiction in the proceeding,
- (d) that person is ordinarily resident in British Columbia at the time of the commencement of the proceeding, or
- (e) there is a real and substantial connection between British Columbia and the facts on which the proceeding against that person is based.

[...]

Real and substantial connection

10 Without limiting the right of the plaintiff to prove other circumstances that constitute a real and substantial connection between British Columbia and the facts on which a proceeding is based, a real and substantial connection between British Columbia and those facts is presumed to exist if the proceeding

- (a) is brought to enforce, assert, declare or determine proprietary or possessory rights or a security interest in property in British Columbia that is immovable or movable property,

(b) concerns the administration of the estate of a deceased person in relation to

- (i) immovable property in British Columbia of the deceased person, or
- (ii) movable property anywhere of the deceased person if at the time of death the person was ordinarily resident in British Columbia,

(c) is brought to interpret, rectify, set aside or enforce any deed, will, contract or other instrument in relation to

- (i) property in British Columbia that is immovable or movable property, or
- (ii) movable property anywhere of a deceased person who at the time of death was ordinarily resident in British Columbia,

(d) is brought against a trustee in relation to the carrying out of a trust in any of the following circumstances:

- (i) the trust assets include property in British Columbia that is immovable or movable property and the relief claimed is only as to that property;
- (ii) that trustee is ordinarily resident in British Columbia;
- (iii) the administration of the trust is principally carried on in British Columbia;
- (iv) by the express terms of a trust document, the trust is governed by the law of British Columbia,

(e) concerns contractual obligations, and

- (i) the contractual obligations, to a substantial extent, were to be performed in British Columbia,
- (ii) by its express terms, the contract is governed by the law of British Columbia, or
- (iii) the contract
 - (A) is for the purchase of property, services or both, for use other than in the course of the purchaser's trade or profession, and
 - (B) resulted from a solicitation of business in British Columbia by or on behalf of the seller,

(f) concerns restitutionary obligations that, to a substantial extent, arose in British Columbia,

(g) concerns a tort committed in British Columbia,

(h) concerns a business carried on in British Columbia,

(i) is a claim for an injunction ordering a party to do or refrain from doing anything

- (i) in British Columbia, or

- (ii) in relation to property in British Columbia that is immovable or movable property,
- (j) is for a determination of the personal status or capacity of a person who is ordinarily resident in British Columbia,
- (k) is for enforcement of a judgment of a court made in or outside British Columbia or an arbitral award made in or outside British Columbia, or
- (l) is for the recovery of taxes or other indebtedness and is brought by the government of British Columbia or by a local authority in British Columbia.

Discretion as to the exercise of territorial competence

11 (1) 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.

(2) A court, in deciding the question of whether it or a court outside British Columbia is the more appropriate forum in which to hear a proceeding, must consider the circumstances relevant to the proceeding, including

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,

- (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,
- (b) the law to be applied to issues in the proceeding,
- (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.

[17] As the aforementioned sections suggest, the *CJPTA* uses the term “territorial competence” to describe the aspect of the court’s jurisdiction that depends on a connection between the territory or legal system of the state in which the court is established and a party to a proceeding in the court or the facts on which the proceeding is based. The *CJPTA* provides that territorial competence of the court is to be determined solely by reference to the *CJPTA* itself in the absence of another conflicting enactment.

[18] Territorial competence is determined with reference either to the residence of the defendant, or to the submission or consent of the defendant, or otherwise to a real and substantial connection between British Columbia and the facts on which the proceeding is based.

[19] Section 10 of the *CJPTA* provides a non-exhaustive list of factors that guide the determination of whether a real and substantial connection exists.

[20] Counsel have directed me to several cases which have summarized these principles, but none of those are as recent as the Supreme Court of Canada's summary in *Sinclair v Venezia Turismo*, 2025 SCC 27 at paras. 43–51. That case concerns the common law articulation of the real and substantial connection test but the principles laid down by the court are relevant to the analysis set out in ss. 3 and 10 of the *CJPTA*.

[21] A plaintiff's assertion of one or more of the prescribed s. 10 factors automatically and presumptively establishes a real and substantial connection between British Columbia and the facts on which the proceeding is based. The threshold to presumptively establish this connection is low, however, the defendant may rebut the presumption of jurisdiction that arises as a result of the operation of s. 10 by establishing facts that demonstrate there is only an insubstantial or weak relationship between the subject matter of the litigation and British Columbia. If the defendant fails to rebut the presumption, the court must accept jurisdiction over the dispute.

[22] Even if the court establishes territorial competence, the next step in the analysis requires the court to consider whether to exercise its jurisdiction to decline to hear the matter as outlined in s. 11 of the *CJPTA*. This step is sometimes referred to as the *forum non conveniens* analysis. At this stage, the party seeking a stay must show that the alternative forum is clearly more appropriate. Relevant common law factors for assessing the comparative convenience of the jurisdictions may include consideration of where each party carries on business, and the convenience or inconvenience of producing witnesses and the costs of conducting litigation in the

jurisdiction. Relevant common law factors regarding which law should be applied may include where the cause of action arose, where the loss or damage occurred, the applicable substantive law, and the difficulty of proving foreign law, if necessary.

[23] The Supreme Court of Canada discussed how forum selection and choice of law clauses should be recognized in different contexts in *Douez v. Facebook, Inc.*, 2017 SCC 33, at para. 31:

[31] That said, the strong cause factors have been interpreted and applied restrictively in the commercial context. In commercial interactions, it will usually be desirable for parties to determine at the outset of a business relationship where disputes will be settled. Sophisticated parties are justifiably “deemed to have informed themselves about the risks of foreign legal systems and are deemed to have accepted those risks in agreeing to a forum selection clause” (*Aldo Group Inc. v. Moneris Solutions Corp.*, 2013 ONCA 725, 118 O.R. (3d) 81, at para. 47). In this setting, our Court recognized that forum selection clauses are generally enforced and to be encouraged “because they provide international commercial relations with the stability and foreseeability required for purposes of the critical components of private international law, namely order and fairness” (*GreCon Dimter inc. v. J.R. Normand inc.*, 2005 SCC 46, [2005] 2 S.C.R. 401, at para. 22).

Parties’ Positions

[24] In this application, the defendant submits (1) that the Choice of Law Clause clearly favours Ohio and governs the forum, (2) in any event, the court lacks territorial competence, and (3) even if the court decides it has territorial competence, then the court should decline to hear the matter based on the *forum non conveniens* analysis.

[25] The plaintiff approaches the issues somewhat differently. He submits that the starting point of the analysis is whether the court has territorial competence. If the court accepts that it does, then it should consider if there is a forum selection clause at issue. If not, then the court should exercise its discretion to hear the matter based on the *forum non conveniens* analysis which, he says, favours British Columbia.

[26] In this case, the defendant has neither submitted nor consented to the jurisdiction.

[27] Further, the plaintiff acknowledges that

1. the defendant does not have a registered office in British Columbia, it is not extra-provincially registered, and its registered office is in Ohio;
2. the defendant does not hold itself out as being a British Columbia company or as having a British Columbia presence;
3. the defendant conducts its business within the United States, and does not have any place of business within British Columbia; and
4. the defendant's central management is exercised in the United States. Its key management personnel operate in Ohio, Illinois and Texas, and no aspect of its management is exercised in British Columbia.

[28] Consequently, the plaintiff concedes that the defendant cannot be said to be "ordinarily resident" in British Columbia, and that the only section under which the plaintiff could potentially establish territorial competence is s. 3(e) of the *CJPTA*.

[29] For its part, the defendant concedes that clause 11(d) in the Contract is not a "forum selection clause" and recognizes that it is instead a "choice of law clause."

Issues

[30] Given the positions of each of the parties, the issues central to this application are:

1. Is the Choice of Law Clause determinative of the forum? If yes, that ends the matter. If no, carry on.
2. Does the court have territorial competence? If not, that ends the matter. If yes, carry on.
3. If the court has territorial competence, should it exercise discretion to decline jurisdiction on the grounds of *forum non conveniens*?

Issue #1 – Choice of Law Clause

[31] Under the Contract, per the Choice of Law Clause the parties agreed that all disputes would be governed by the law of Ohio. The defendant argues that in the face of this provision, the plaintiff must therefore establish territorial competence based not only on the principles of *CJPTA*, but also in accordance with the two-part test set out by the Supreme Court of Canada in *Z. I. Pompey Industrie v. ECU-Line N.V.*, 2003 SCC 27 [*Pompey*]. That two-part test can be summarized as follows:

1. At the first stage, the party relying on the forum selection clause must establish that clause is valid, clear, and enforceable, and that it applies to the cause of action; and
2. The burden then switches to the other party to show “strong cause” why the court should not give effect to the forum selection clause. If the other party does not show strong cause, the action should be transferred to the jurisdiction chosen by the parties under the agreed contractual terms.

[32] In response, the plaintiff submits that defendant has incorrectly construed the Choice of Law Clause as a forum selection clause and, therefore, submits the two-part test from *Pompey* does not apply here. Accordingly, the plaintiff says there is no onus on him to show “strong cause”.

[33] Moreover, the plaintiff submits that the governing law provision is unenforceable firstly because it runs afoul of the *Employment Standards Act*, R.S.B.C. 1996, c. 113 [*ESA*], and secondly because the substratum of the Contract has disappeared given the fundamental expansion and change in the plaintiff’s position, duties, and responsibilities over the course of the Contract.

[34] As I alluded to already, the defendant concedes that the Contract lacks a specific forum selection clause but points to the fact that the parties clearly agreed on Ohio law, without giving effect to conflict of law principles, such that regardless of the forum where the dispute is brought, the law of the State of Ohio shall apply. The defendant further argues that the Choice of Law Clause nonetheless engages the

two-part test, and that the parties should be held to their agreement in keeping with the principle of international comity discussed in *Pompey*.

[35] The defendant submits as well that the Choice of Law Clause is broad enough to cover all claims brought by the plaintiff (such as whether a person providing services under the Contract is an employee or independent contractor), and that the courts in Ohio can make these determinations. Accordingly, it submits the plaintiff must still establish a strong cause why the court should exercise its jurisdiction or apply the law of British Columbia to a dispute in the face of a clear and unambiguous choice of law provision in favour of Ohio.

[36] In considering the evidence and submissions on this issue, I find the Choice of Law Clause is clear and unambiguous, valid and enforceable. Further, and regardless of whether the plaintiff was an employee or independent contractor, at all material times he was a professional and presumably one with significant business experience and academic expertise. It was his Numbered Company that contracted with the defendant. Given the plaintiff's background, it is therefore reasonable to assume that he knew and understood the terms of the Contract, as well as the practical consequences of entering into the Contract containing the Choice of Law Clause. He could not have misconstrued that the law that applies is the law of Ohio.

[37] In response to the plaintiff's concerns regarding the unenforceability of the Choice of Law Clause because it does not meet the minimums prescribed by the *ESA*, that appears to be premised on the assumption that he is an employee who was governed by the *ESA*, something that would need to be established at trial. It is currently unclear whether or not the *ESA* would apply in this matter.

[38] As the plaintiff correctly identified, however, foreign law applying does not end the matter, especially in the absence of a forum selection clause, and a British Columbia court can apply foreign law: *Vanderpol v. Aspen Trailer Company Ltd.* 2002 BCSC 518 at para. 44. Still the Choice of Law Clause is a factor in assessing real and substantial connection and *forum non conveniens* below.

Issue #2 – Real and Substantial Connection

[39] In *Beals v Saldanha*, 2003 SCC 72, Justice Major, writing for the Supreme Court of Canada stated, at para. 32 that:

[32] The “real and substantial connection” test requires that a significant connection exist between the cause of action and the foreign court. Furthermore, a defendant can reasonably be brought within the embrace of a foreign jurisdiction’s law where he or she has participated in something of significance or was actively involved in that foreign jurisdiction. A fleeting or relatively unimportant connection will not be enough to give a foreign court jurisdiction. The connection to the foreign jurisdiction must be a substantial one.

[40] This court has provided further guidance on the issue. In *England v Research Capital Corp*, 2008 BCSC 580 [*England*], the court considered a situation involving an alleged breach of contract over mismanaged investment accounts with the defendant corporation. The plaintiffs lived in British Columbia and opened accounts in Calgary with the defendants who operated out of the Calgary office. The original account records were kept and maintained in the Toronto office and overall supervision of the accounts was governed by the Toronto office. The plaintiffs commenced the lawsuit in British Columbia since the defendant company had branches in British Columbia. The defendant company conceded territorial competence pursuant to s. 3(d) because it was “ordinarily resident” in British Columbia. It was the position of the two other individual defendants, however, that since they were not “ordinarily resident” in British Columbia the plaintiffs must establish a “real and substantial connection” between British Columbia and the facts on which the proceeding against them was based. In finding for the defendants, the court stated that it is to look at the main substance of the contract and the activity to which the alleged breach of contract relates. Incidental obligations performed in British Columbia are not sufficient.

[41] The plaintiff attempts to distinguish himself from the situation in *England* by submitting that his obligations were not incidental to British Columbia. He argues that regardless of whether he was an employee or independent contractor, the core of his obligation was to perform work for the defendants, and those contractual

obligations were performed from his home in British Columbia. He submits that it would not make sense to suggest otherwise and, therefore, submits that a real and substantial connection is clearly made out under s. 10(e)(i).

[42] Moreover, the plaintiff submits that a real and substantial connection is made out because:

1. the plaintiff has lived in British Columbia since 2011, and he is professionally registered as a certified professional accountant in British Columbia;
2. regardless of whether he was hired as an employee or independent contractor, it was understood and agreed that he could perform all of his contractual obligations remotely from his home office in British Columbia;
3. other than three trips to the United States, none of which were to Ohio, all of his services were performed in British Columbia;
4. the parties had email correspondence regarding the plaintiff's "home office set up" and a "home office stipend" which supports the intention to have the plaintiff work from home;
5. the Contract did not specify that the plaintiff was to work from elsewhere;
6. the plaintiff did, in fact, perform all of his contractual obligations from British Columbia over the approximate three and a half years of his engagement, and notwithstanding any changes to his role and responsibilities; and
7. even if the court were to find that the plaintiff is an independent contractor, then under s. 10(h) of the *CJPTA* the real and substantial connection can be made out through the fact that the plaintiff's business carried on in British Columbia.

[43] In response to these arguments, the defendant relies on *AECOM Canada Ltd v. Fisher*, 2011 BCSC 860 [*Fisher*]. That action involves a complicated set of background facts that began with claims for negligence and breach of contract

against a Saskatchewan lawyer, Mr. Fisher. Mr. Fisher communicated with certain insured individuals in British Columbia by way of conference calls. The trial of the claims commenced in Saskatchewan and several months into the trial the claims settled. Claims for recovery were later commenced in British Columbia. In deciding the issue of territorial competence in favour of Saskatchewan for one of the claims, and with respect to subsection 10(e)(i), the court recognized that the giving of advice took place in Vancouver, but found the body of the of the contract and the obligations were primarily to be performed in Saskatchewan.

[44] Having reviewed the evidence and submissions on this point, I find that although the plaintiff has established the existence of a connection to British Columbia, the defendant has satisfactorily rebutted the presumption of a real and substantial connection by satisfying me on the whole of the evidence that the plaintiff's connection to British Columbia was, at best, incidental to the plaintiff's obligations. I reach this decision in light of my earlier finding with respect to the Choice of Law Clause, and also as a result of other evidence, much of which is undisputed, and which on the whole satisfies me that:

1. the main substance of the plaintiff's services was to provide financial and tax-related advice to United States-based companies and customers. The remote aspect of the work was therefore incidental to the plaintiff's obligations. At the end of the day, all of the plaintiff's services were provided through the Numbered Company to a United States-based company for United States-based customers;
2. the defendant company is owned and operated solely in the United States;
3. the defendant provides services to clients that operate solely within the United States, or solely in respect of their operations in the United States;
4. the defendant has never provided services to companies in respect of any Canadian entities or operations;

5. the two operations (Focal Systems and Gloss Genius) described by the plaintiff as “Canadian operations” of the defendant that he allegedly completed work for are not, in fact, Canadian companies, but United States companies based in New York and California;
6. although the defendant may have had Canadian subsidiaries at one point in 2022, it did not authorize the plaintiff, or for that matter any other independent contractor or employee of the defendant, to provide services or advice in respect of any Canadian operations;
7. notwithstanding the plaintiff’s allegation that he is an employee of the defendant, the evidence supports that the defendant does not have any, or any other, Canadian employees;
8. the defendant paid the Numbered Company in American dollars;
9. the defendant paid the Numbered Company through its vendor accounts payable system to a United States bank account that the plaintiff, as principal of the Numbered Company, had set up in New York. The defendant did not pay any compensation to the plaintiff personally; and
10. the Numbered Company had, at the time of the Contract, set up a Canadian corporation and registered it with the United States Internal Revenue Service (“IRS”) to get an employer identification number. The defendant was therefore not required to and did not deduct any Canadian taxes or statutory withholding fees from the fees charged to it by the Numbered Company.

[45] Consequently, and on the totality of the evidence, I find the plaintiff’s residence and physical connection in British Columbia, combined with his remote work, was incidental to his work obligations and a tenuous connection, at best, especially when considering the Choice of Law Clause and the nature of the Contract as a whole. As per the court’s conclusion in *Fisher*, a tenuous connection is insufficient to give the court territorial competence over the claim pursuant to s. 3(e) of the *CJPTA*.

[46] Notwithstanding my conclusion on this point, I recognize that in this post-COVID era, remote attendances from different jurisdictions, international consultations and cross-border meetings are increasingly common. Individuals from all over the world now have expanded opportunities to earn significant incomes absent any requirement to physically attend with their client, employer, or contractor. For many businesses and business-related contracts, remote work is the new norm. For this reason, it is increasingly important for contracting parties to turn their minds, at the outset, to where any contract dispute will be heard and which jurisdiction's law will govern. Parties should consider the need to be clearer than ever in their contracts, communications and/or expectations involving forum selection and choice of law, and should not simply assume that the applicable forum or governing law will be obvious if a dispute later arises. Failure to turn their minds to these potential issues at the outset will undoubtedly add financial, legal and other challenges to parties' attempts to assert, or alternatively dislodge, legal arguments of this nature.

Issue #3 – Forum Non Conveniens

[47] In the event that I am incorrect in finding a lack of real and substantial connection, I will lastly consider the parties' arguments on *forum non conveniens*.

[48] *Forum non conveniens* plays a critical role in ensuring that claims are litigated in the appropriate jurisdiction for the interests of the parties and the ends of justice. Further, both the common law and the *CJPTA* support the court's residual power to decline jurisdiction to ensure fairness to the parties and efficiently resolve disputes.

[49] The codified *forum non conveniens* analysis is set out in s. 11(2) of the *CJPTA* which provides a non-exhaustive list of factors for the court to consider. In considering those factors, I note that, other than himself, the plaintiff intends to call only one other witness (Jason Saunders, the defendant's former account advisory manager). Mr. Saunders resides in Vancouver. In his affidavit, the plaintiff makes brief reference to a third individual (Samira Shetty), also from Vancouver, but he does not indicate that he intends to call Ms. Shetty as a witness. His reference

instead seems to be based on his expectation that the defendant will be calling Ms. Shetty.

[50] The defendant says it anticipates calling three witnesses, none of whom include Ms. Shetty, and all of whom reside in the United States.

[51] In light of the evidence on this point, I find that the balance of convenience weighs in favour of this matter proceeding in the United States. Even without considering the expert witness(es) that would likely be required for the purpose of interpreting any applicable Ohio law to a British Columbia court action, the majority of the witnesses and any further employees of the defendant who may be required to act as witnesses currently live in the United States. Regardless of any travel distance similarities that the plaintiff pointed out, international travel between the United States and Canada for court would undoubtedly involve greater considerations, including a greater investment of time, and additional planning and logistics.

[52] Further, and as I already stated above, the Choice of Law Clause is clear and speaks for itself. The law of Ohio governs disputes under the Contract regardless of where they may be litigated. If this case was litigated in British Columbia, then a British Columbia judge would likely have to interpret and apply Ohio law, something that, while certainly possible, would undoubtedly complicate the proceedings.

[53] As well, the Choice of Law Clause appears to be broad enough to cover the subject matter of this dispute. In other words, the courts in Ohio can likely make a determination on the plaintiff's allegation of wrongful dismissal. In fact, the plaintiff acknowledges this through his concerns about losing a juridical advantage if this matter goes to Ohio.

[54] I recognize the plaintiff's concerns regarding the loss of a juridical advantage. The plaintiff submitted caselaw including *Newton v. Larco Hospitality Management Inc.*, 2004 CanLII 25032; *Vanderpol v. Aspen Trailer Company Ltd.* 2002 BCSC 518; and *Hodnett v. Taylor Manufacturing Industries Inc.*, 2002 CanLII 45903, all of which

show that application judges often consider and give significant weight to the loss of a juridical advantage when American defendant employers seek to contest jurisdiction. In this case, however, there is little to no juridical advantage to be lost because it is unclear whether the plaintiff could rely on the *ESA* and the Choice of Law Clause is enforceable. Any juridical advantage is premised on a finding that the plaintiff was, in fact, an employee. As such, while I consider the loss of juridical advantage, I ascribe it neutral weight.

[55] Further, and while I nonetheless recognize the plaintiff's concerns, his submissions suggest that he is "forum shopping." It is clear that he prefers to litigate his dispute in British Columbia because there is no legislation equivalent to the *ESA* in Ohio. Therefore, even if he is found by a court to be an employee under Ohio law, the most that he will be entitled to is the 30 days notice that is set out in the Contract, whereas if he were successful with his claim for wrongful dismissal in British Columbia, he would be entitled to reasonable notice and damages determined by application of the British Columbia common law. In that regard and notwithstanding the plaintiff's residence in British Columbia, the courts comments in *Bizon v. Inland Cement Ltd*, 1992 CanLII 1623 (B.C.S.C.) at pp. 4–5 apply here:

Now, there is no real or substantial connection to British Columbia in the case at bar. The plaintiff has, in fact, engaged in forum shopping for a legitimate reason, because of the juridical advantages that he expects he could receive in proceeding in B.C.

[...]

In my view, the plaintiff is not entitled to choose his forum without some connection to the jurisdiction of the court. He should either reside there, the contract should have been made there or the defendants should carry on their principal business there, but none of those conditions prevail in the case at bar. There is no real or substantial connection to this jurisdiction. In my view, it would be against public policy to have the effect of persons taking wrongful dismissal actions in one province to another province solely for the purpose of taking advantage of a Rule 18A. [Emphasis in original.]

[56] Allowing the plaintiff to "forum shop" in these circumstances is also contrary to public policy.

[57] In summary, I conclude that even if I had found territorial competence, I would nevertheless decline to exercise jurisdiction for the reasons set out above and pursuant to factors (a), (b), and (f) of s. 11(2) of the *CJPTA*. Ohio is the more appropriate forum for this matter to proceed.

Conclusion and Orders

[58] For these reasons, I stay this action as against the applicant defendant, AirCFO, pursuant to Rule 21-8 on the basis that this court lacks jurisdiction to determine the matter and, in the alternative, on the grounds of *forum non conveniens*.

[59] With respect to costs, the defendant seeks costs of the application and of the action and is presumably entitled to costs given the outcome of my decision. If counsel wish to dispute this presumption and make submissions with respect to a different costs order, they are at liberty to make brief written submissions within ten (10) days of this order.

“L. Bennett J.”

L. BENNETT J.