CITATION: Moore v. Kemgni, 2022 ONSC 2141
COURT FILE NO.: CV-21-86202
DATE: 20220407

SUPERIOR COURT OF JUSTICE – ONTARIO

BETWEEN: DEIRDRE MOORE, Plaintiff

-and-

PAULE KEMGNI and JONATHAN KISKA, Defendants

BEFORE: Madam Justice Heather J. Williams

COUNSEL: Plaintiff, Self-Represented

Anne Tardif and Francois Guay-Racine, for the Defendant Dr. Kemgni

Charlotte S. Watson, for the Defendant Mr. Kiska

HEARD: January 18, 2022

REASONS

(FURTHER TO ENDORSEMENT OF APRIL 1, 2022)

[1] On April 1, 2022, I released a short endorsement staying Deirdre Moore's action against Paule Kemgni. In my endorsement I said that reasons would follow. These are my reasons.

Overview

[2] Dr. Kemgni, a physician, sought a stay of Ms. Moore's action against her on the basis that Ontario lacks jurisdiction or, if Ontario has jurisdiction, Ontario is not the proper forum for the proceeding, Quebec being the more appropriate forum.

[3] Rule 17.06 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 provides that a party may bring a motion to set aside service outside Ontario and seek a stay of the proceeding. Section 106 of the *Courts of Justice Act*, R.S.O. 1990, c.C.43, as am, provides that the court, on its own initiative, or on a motion, may stay any proceeding in the court on such terms as are just.

Background

[4] The defendants to the action are Dr. Kemgni and Ms. Moore's estranged husband, Jonathan Kiska.

Dr. Kemgni

[5] In 2019, Dr. Kemgni conducted a court-ordered psychiatric assessment of Ms. Moore at a Quebec hospital, after Ms. Moore was arrested for failing to comply with the order of a peace officer.

[6] In an affidavit filed in support of her motion, Dr. Kemgni said she is a francophone psychiatrist who practises medicine only in Quebec. She said she is licensed to practise medicine in Quebec and has never been licensed to do so in Ontario.

[7] Dr. Kemgni said she has worked as an independent psychiatrist at a hospital in Valleyfield, Quebec since 2018.

[8] Dr. Kemgni said she assessed Ms. Moore at the Valleyfield hospital. She said she did so to prepare an opinion about whether Ms. Moore was criminally responsible in relation to a charge of failing to comply when asked by a peace officer to stop her vehicle.

[9] Dr. Kemgni said she met with Ms. Moore several times, the first time on March 22, 2019.

[10] Dr. Kemgni said she had a telephone conversation with Mr. Kiska and with Ms. Moore's former sister-in-law.

[11] Dr. Kemgni said Ms. Moore gave her a court document relating to a divorce proceeding.

[12] Dr. Kemgni said she also had access to a psychiatric consultation report from Laval, Quebec and to police reports.

[13] Dr. Kemgni said she did not have access to Ms. Moore's Ontario medical records because Ms. Moore did not consent to their release.

[14] Dr. Kemgni said she completed her assessment report on April 8, 2019. She provided the report to a legal secretary at a Valleyfield clinic, who was responsible for forwarding medical-legal reports to the court.

[15] Dr. Kemgni said she did not know how her report was subsequently used.

Mr. Kiska

[16] In her statement of claim, Ms. Moore pleaded that she and Mr. Kiska are separated and have been involved in acrimonious family court and child protection proceedings for some time. The couple has two children.

[17] Mr. Kiska did not file materials or make submissions in response to Dr. Kemgni's motion.

The statement of claim

[18] In her statement of claim, Ms. Moore claims damages from Dr. Kemgni of $250,000 for "negligence, defamation, intentional infliction of emotional suffering and/or malice" and $250,000, less the amount awarded for the previously mentioned torts, for "negligent infliction of emotional suffering."

[19] Ms. Moore claims damage from Mr. Kiska of $250,000 for "breach of fiduciary duty, defamation, intentional infliction of emotional suffering and/or malice" and $250,000, less the amount awarded for the previously mentioned torts, for "negligent infliction of emotional suffering."

[20] I am mindful that Ms. Moore is self-represented. I have read her statement of claim generously. Briefly and in general terms, Ms. Moore's claims against Dr. Kemgni and Mr. Kiska can be summarized as follows:

- Ms. Moore pleads that Dr. Kemgni was negligent when she assessed Ms. Moore, in several respects but in part because she relied on information provided by Mr. Kiska and his sister, when she knew that Ms. Moore and Mr. Kiska were involved in an acrimonious divorce proceeding.

- Ms. Moore pleads that Mr. Kiska made statements to Dr. Kemgni that were "extreme, right flagrant and/or outrageous" and that he likely did so intentionally because he had much to gain if Ms. Moore were deemed to be suffering from a chronic mental illness.

- Ms. Moore pleads that Mr. Kiska and others used Dr. Kemgni's report to Ms. Moore's detriment and that Mr. Kiska used the report to his benefit.

[21] In her oral submissions, Ms. Moore was adamant that she was alleging "negligence" against Dr. Kemgni and not "medical negligence." She said that this was the main point in her argument. Ms. Moore pleaded that Dr. Kemgni, as a physician, owed Ms. Moore a duty of care, which included an obligation not to harm her and that Dr. Kemgni harmed her. I am satisfied that the negligence Ms. Moore alleges against Dr. Kemgni is properly characterized as "medical" negligence, but I am not sure that anything turns on the distinction.

The issues

[22] There are two issues:

1. Does Ontario have jurisdiction over Ms. Moore's action?

2. If Ontario has jurisdiction, is Ontario the proper forum for Ms. Moore's action?

Issue #1: Does Ontario have jurisdiction?

[23] In *Club Resorts Ltd. v. Van Breda*, 2012 SCC 17, the Supreme Court of Canada set out a two-part test for determining whether an action should be stayed for lack of jurisdiction. The court must first decide whether it has jurisdiction and then whether to exercise it.

[24] To decide whether it has jurisdiction, the court must consider whether there is a real and substantial connection between the legal situation or subject matter of the litigation and the forum.

[25] The Supreme Court identified four presumptively connecting factors in tort cases: (a) the defendant is domiciled or resident in the province; (b) the defendant carries on business in the province; (c) the tort was committed in the province; and (d) a contract connected with the dispute was made in the province. (*Van Breda*, para. 90.)

[26] The Supreme Court also identified certain factors that are not presumptively connecting. The presence of the plaintiff in the jurisdiction is not, on its own, a sufficient connecting factor (*Van Breda*, para. 86), nor is the fact that damages were sustained in a jurisdiction (*Van Breda*, para. 89.) Further, a court should not assume jurisdiction based on the combined effect of a number of non-presumptive connecting factors, because this would allow for the discretionary assumption of jurisdiction on a case-by-case basis, which would undermine the objectives of order, certainty and predictability "that lie at the heart of a fair and principled private international law system" (*Van Breda*, para. 94.)

[27] The list of presumptive connecting factors is not closed. When a court considers whether a new connecting factor should be given presumptive effect, the values of order, fairness and comity can serve as useful analytical tools for assessing the strength of the relationship with a forum to which the factor points. All presumptive connecting factors generally point to a relationship between the subject matter of the litigation and the forum such that it would be reasonable to expect that the defendant would be called to answer legal proceedings in that forum (*Van Breda*, paras. 91 and 92.)

[28] The party arguing that the court should assume jurisdiction has the burden of identifying a presumptive factor that links the subject matter of the litigation to the forum. The presumption of jurisdiction that arises where a recognized presumptive connecting factor—one of the four identified in *Van Breda* or a new one—exists is not irrebuttable. The burden of rebutting the presumption rests on the party challenging the assumption of jurisdiction; the presumption may be rebutted either by showing the presumptive connecting factor does not point to any real relationship between the subject matter of the litigation and the forum or points to only a weak relationship between them. (*Van Breda*, at paras. 95 and 100.)

[29] It is possible for a case to sound both in contract and in tort or to invoke more than one tort. The purpose of the conflicts rule is to establish whether a real and substantial connection exists between the forum, the subject matter of the litigation and the defendant. If such a connection exists in respect of a factual and legal situation, the court must assume jurisdiction over all aspects of the case. The plaintiff should not be obliged to litigate a tort claim in Manitoba and a related

claim for restitution in Nova Scotia. That would be incompatible with any notion of fairness and efficiency. (*Van Breda*, para. 99.)

Ms. Moore's position

[30] As I have already noted, Ms. Moore said her main argument is that she is not alleging "medical" negligence against Dr. Kemgni, only negligence. She said she is asserting the same claims against Dr. Kemgni and Mr. Kiska, except that, instead of negligence, she is claiming breach of fiduciary duty against Mr. Kiska.

[31] Ms. Moore said Dr. Kemgni did not actually conduct a psychiatric assessment of her, that Dr. Kemgni did "zero" and that Dr. Kemgni is a criminal.

[32] Ms. Moore said she lives in Ontario and was defamed in Ontario. Ms. Moore said that Dr. Kemgni's report caused her no harm in Quebec but "a ton of harm" in Ontario. She said all of the damages she has suffered were suffered in Ontario.

[33] Ms. Moore said Dr. Kemgni's report was designed to send her to a mental institution for treatment for a condition she does not have, and that nothing ties that to Quebec.

[34] Ms. Moore said she may want to amend her statement of claim to allege collusion between Dr. Kemgni and Mr. Kiska.

Dr. Kemgni's position

[35] Dr. Kemgni argued that none of the four presumptive connecting factors identified in *Van Breda* is present in this case. Dr. Kemgni argued that:

> (a) She is neither domiciled nor resident in Ontario;
> (b) She does not carry on business in Ontario;
> (c) Her interactions with Ms. Moore all took place in the province of Quebec; as such, if she committed any torts, she did not commit them in Ontario; and
> (d) there was no contract connected with the dispute.

Analysis of Issue #1

[36] I agree with Dr. Kemgni that presumptive connecting factors (b), (c) and (d) identified in *Van Breda* clearly do not apply.

[37] Factor (a), however, "the defendant is domiciled or resident in the province" requires some further consideration.

[38] In *Cesario v. Gondek*, 2012 ONSC 4563 (S.C.J.), M. L. Edwards J. decided that in a case with multiple defendants, if *any* of the defendants is or are domiciled or resident in a province, factor (a) in *Van Breda* applies, and a sufficient real and substantial connection exists to give the province jurisdiction over all aspects of the case.

[39] The plaintiffs in *Cesario,* a husband and wife, were involved in a car accident in New York and another one in Ontario about four weeks later. Both times, the husband was driving, and the wife was a passenger.

[40] The plaintiffs started actions in Ontario. They named as defendants two New York residents, their (the plaintiffs') automobile insurer and the other driver involved in the Ontario accident. The wife's action also named the husband as a defendant.

[41] M. L. Edwards J. said that if "the defendant" in factor (a) is interpreted as not applying to all defendants in a case involving multiple defendants, the issue of jurisdiction could turn on which of the defendants brought the motion. He used as an example, a motor vehicle accident in the state of New York, involving a plaintiff who resides in Ontario, a defendant who resides in Ontario and a defendant who resides in New York. If the moving party was the New York resident, that defendant could argue that *Van Breda* factor (a) clearly is not a connecting factor and Ontario should not assume jurisdiction. If the moving party was the Ontario defendant, that defendant could argue that *Van Breda* factor (a) applies, and there would be a connecting factor to Ontario. In the situation where the moving party was the New York defendant, there would be no presumptive connecting factor, which would result in the splitting of the case. M. L. Edwards J. said that such a situation would, to use language from *Van Breda*, "breach the principles of fairness and efficiency on which the assumption of jurisdiction is based." Keeping the case in Ontario would likely avert a situation in which the proceedings against the various defendants are split, which would raise the prospect of inconsistent verdicts.

[42] Courts which have considered *Cesario* disagree about whether M. L. Edwards J. identified a new presumptive connecting factor (*Marrarino v. Brown Estate*, 2015 ONSC 3167, at para. 33)

or whether he was simply applying factor (a) in *Van Breda* (*Stapper v. Taylor*, 2021 ONSC 243, at para. 33: *Best v. Palacios*, 2016 NBCA 59, at para. 20).

[43] *Cesario* has been considered in several decisions in which jurisdiction was at issue, including the following:

- *Tamminga v. Tamminga* 2014 ONCA 478 was a case in which an Ontario resident was injured when she fell off a truck in Alberta. She started an action, in Ontario, against the Alberta owners and operator of the truck and her Ontario automobile insurer. In upholding the motion judge's stay of the action against the Alberta defendants, the Court of Appeal concluded that there was no nexus between the Ontario insurance contract and the Alberta defendants. The Court of Appeal agreed with the motions judge that *Cesario* was distinguishable because *Cesario* had involved two accidents, joint tortfeasors allegedly responsible for damages and damages that were considered inseparable, and because *Cesario* did not turn on the presence of an insurance contract.

- *Best* involved a plaintiff who had been injured at a Boston airport and was subsequently involved in a car accident in New Brunswick. The New Brunswick Court of Appeal upheld a lower court decision staying the action against the Boston defendants for lack of jurisdiction. The Court of Appeal distinguished *Cesario* on the basis that, in *Best*, the New Brunswick defendant and the Boston defendants were not involved in the same tort. The only link between the incident in Boston and the accident in New Brunswick was that some of the injuries might be proven to be similar, identical or interrelated. The Court of Appeal held that the plaintiff's action alleged wholly different tortious conduct against wholly different defendants on different dates and in different jurisdictions.

- *Stapper* involved plaintiffs injured in a car accident in Georgia and then, less than five months later, an accident in Mississauga, Ontario. The plaintiffs' action named as defendants the owner and the operator of the truck involved in the Georgia accident, the plaintiffs' automobile insurer and the driver of the other vehicle involved in the Mississauga accident. The action against the Georgia defendants was stayed. *Cesario* appears to have been distinguished on the basis that, in *Cesario*, an Ontario resident, the plaintiff husband, was named as a defendant involved in the New York accident, while in *Stapper*, the defendants involved in the Georgia accident were both residents of Georgia.

- In *Mannarino*, the plaintiff was involved in an accident in Ontario in 2006 and another one in New York in 2008. He started separate actions, both in Ontario. In response to the New York defendant's motion to dismiss the action on the basis of lack of jurisdiction, the plaintiff argued that the injuries from the two accidents could not be separately identified and assessed, and that the plaintiff intended to move to consolidate the two

actions. The action in respect of the New York accident was dismissed. Skarica J. distinguished *Cesario* in part on the basis that the plaintiff husband in *Cesario*, a resident of Ontario, had been named as a defendant in respect of his involvement in the New York accident. Skarica J. said he was not dealing with a situation in which the New York accident involved a Canadian defendant; he said the New York accident he was dealing with had no connecting factors to Ontario at all.

- In *Khan v. Layden*, 2014 ONSC 6868, the plaintiff was a passenger in a car involved in an accident in Pennsylvania. The plaintiff and the driver of the car were residents of Ontario. The plaintiff sued the Ontario driver of the car in which she was a passenger and the owner and the operator of the other car, who were residents of Pennsylvania. The Pennsylvania defendants brought a motion to dismiss or stay the action against them for lack of jurisdiction or because Ontario was not the convenient forum for the action. The Pennsylvania defendants argued that the fact that one of the defendants resided in Ontario did not permit the court to assume jurisdiction over the non-resident defendants. Broad J. held that M. L. Edwards J.'s conclusion in *Cesario* should not be limited to a situation involving two or more separate actions in different jurisdictions. Broad J. said that "in *Tamminga*, the basis for distinguishing *Cesario* was not limited to the fact that the plaintiff had been in two accidents but extended to the fact that there were joint tortfeasors alleged to be responsible for the plaintiffs' damages and that the damages were considered inseparable." Broad J. noted that in *Cesario*, M. L. Edwards J. had concluded that to force an Ontario litigant to split a case between more than one jurisdiction would not do justice between the parties. Broad J. concluded that the same principles apply where there are joint or multiple tortfeasors, one of which is located in Ontario, and inseparable damages claimed by the plaintiff, regardless of whether there was one accident involving the plaintiff or more than one. The motion of the Pennsylvania defendants was dismissed.

- In *Mitchell v. Jeckovich*, 2013 ONSC 7497, the plaintiff was involved in a car accident in Niagara Falls, New York. The plaintiff sued the owner and operator of the New York vehicle and her own Ontario-based insurer. In dismissing the action against the New York defendants, Milanetti J. distinguished *Cesario* on the basis that, unlike the case before her, *Cesario* involved both an Ontario and a New York defendant, in itself "a sufficient 'real and substantial' connection as defined in *Van Breda"* (para. 36.)

[44] Ontario's Court of Appeal has neither affirmed nor over-ruled *Cesario.* In *Tamminga*, the Court of Appeal simply agreed that *Cesario* could be distinguished from a case that focused on an insurance contract and did not involve joint tortfeasors or damages alleged to be inseparable. The other decisions in which *Cesario* has been considered, including that of New Brunswick's Court of Appeal, have limited the application of *Cesario.* As I read these decisions, they have found that

factor (a) in *Van Breda* is present if "any" defendant1 is domiciled or resident within a jurisdiction only where: (1) there are multiple defendants; (2) a tort is committed outside of the jurisdiction; (3) a defendant domiciled or resident in the jurisdiction is alleged to have been involved in the same tort as a defendant who is domiciled or resides outside the jurisdiction; and (4) the damages are inseparable.

[45] There are multiple defendants to Ms. Moore's action: Dr. Kemgni, a resident of Quebec, and Mr. Kiska, a resident of Ontario. Any torts committed by Dr. Kemgni were committed in Quebec, and not in Ontario. To determine, in a manner that is consistent with the case law, whether *Cesario* applies to this situation, I must consider whether Ms. Moore alleges that Dr. Kemgni and Mr. Kiska were involved in the same tort and that the damages they caused are inseparable.

[46] Ms. Moore does not make either allegation. She does the opposite. In paragraph 1 of Ms. Moore's statement of claim, Ms. Moore asserts separate claim for damages from Dr. Kemgni and Mr. Kiska, based on separate tortious conduct:

1. The plaintiff claims:

    - Pecuniary damages in the amount of $250,000 due to Dr. Paule Kemgni's negligence, defamation, intentional infliction of emotional suffering and/or malice.

    - Pecuniary damages in the amount of $250,000 (less the amount awarded for Dr. Paule Kemgni's negligence, defamation, intentional infliction of emotional suffering and/or malice) due to her negligent infliction of emotional suffering.

    - Pecuniary damages in the amount of $250,000 due to Jonathan Kiska's breach of fiduciary duty, defamation, intentional infliction of emotional suffering and/or malice.

    - Pecuniary damages in the amount of $250,000 (less the amount awarded for the (sic) Jonathan Kiska's breach of fiduciary duty, defamation, intentional infliction of emotional suffering and/or malice) due to the negligent infliction of emotional suffering.

    - Other damages that the Court deems to be fair and just.

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1 For clarity: "Any" defendant as opposed to only "the" defendant who is challenging jurisdiction.

- Costs on a full-indemnity basis.

[47] I have considered whether my reliance on the strict wording of paragraph 1 of Ms. Moore's pleading is fair in these circumstances or whether I am holding the self-represented Ms. Moore to too high a standard. I have concluded my reliance on the pleading is appropriate. Dr. Kemgni's counsel drew to my attention that, on the same day that Ms. Moore issued the statement of claim in her action against Dr. Kemgni and Mr. Kiska, Ms. Moore issued a separate statement of claim against Mr. Kiska and four other defendants. In paragraph 1 of the second statement of claim, Ms. Moore claims the same damages amount from multiple defendants for the same alleged wrongdoing. 2. I infer from the contrast between the two pleadings that Ms. Moore's request in the first statement of claim for separate damages amounts from Dr. Kemgni and Mr. Kiska, based on separate tortious conduct, was deliberate.

[48] A comparison of Ms. Moore's two statements of claim also raises the question of whether Mr. Kiska was added as a defendant to the claim against Dr. Kemgni to "bootstrap"3 the claim against Dr. Kemgni through a secondary claim against an Ontario-based defendant. I note that in the concluding paragraphs of the statement of claim in which Mr. Kiska and four others are defendants, under the heading "Damages", Ms. Moore pleads that, as a result of the wrongful acts of the defendants, she has suffered and continues to suffer injury and damages. Ms. Moore's injury and damages are then particularized. In the concluding paragraphs of the statement of claim in which Dr. Kemgni and Mr. Kiska are defendants, Ms. Moore's claim against Dr. Kemgni is summarized: para. 39 states that Dr. Kemgni owed a duty to Ms. Moore not to harm her; para. 40

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2 Paragraph 1 of the second statement of claim reads as follows:

1. The Plaintiff Deirdre Moore ("Moore") claims against Khaldoon Habib-Allah ("Allah"), Lamah El-Rayes ("EL-Rayes"), Diego Fernandez-Stoll ("Stoll") and Jonathan Kiska ("Kiska") compensatory damages due to the loss and/or theft of her property following an eviction scam, the de-frauding of her and/or the unjust enrichment enjoyed by Allan, El-Rayes, Stoll and/or Kiska in the amount of $500,000 ("FIVE HUNDRED THOUSAND DOLLARS").

3 The term and concept are borrowed from Sharpe J.A. in *Gajraj v. DeBernardo*, (2002), 2002 CanLII 44959 (ON CA), 60 O.R. (3d) 68, [2002] O.J. No. 2130 (C.A.), who said: "It seems to me that this situation is very different from the situation in *McNichol Estate v. Woldnik* (2001), 2001 CanLII 5679 (ON CA), 150 O.A.C. 68. In *McNichol*, the core of the plaintiff's claim was against the domestic defendants and adding the foreign defendant was necessary to avoid a multiplicity of proceedings. By contrast, here the core of the claim is against the New York defendants and the claim against the Ontario defendant is entirely secondary and contingent. Jurisdiction over claims against extra-provincial defendants should not be bootstrapped by such a secondary and contingent claim against a provincial defendant."

states that Dr. Kemgni harmed Ms. Moore; para. 41 states that how Dr. Kemgni harmed Ms. Moore has already been addressed but "the damages, however, will be difficult to assess as the harm is ongoing and escalating"; and para. 42 states that because of an approaching statute of limitations, Ms. Moore "has no choice to originate this claim immediately even though Kemgni's 2019 conduct and misconduct continues to cause harm to her and her children." There are no comparable concluding paragraphs summarizing the claim against Mr. Kiska, asserting that Mr. Kiska harmed Ms. Moore or referring to the damages caused by Ms. Kiska.

[49] In her oral submissions, in response to one of the submissions by Dr. Kemgni's counsel, Ms. Moore said that she might want to amend her statement of claim to allege that there was collusion between Dr. Kemgni and Mr. Kiska. Ms. Moore had not taken steps to amend her claim before the hearing. She did not request an adjournment of the motion to amend the claim. I am satisfied that, in the interest of fairness to all parties, it was appropriate for me to decide the motion based on the statement of claim that was before me.

[50] As Dr. Kemgni and Mr. Kiska are not alleged to have been involved in the same tort and as the damages claimed from each of them are separate, and not inseparable, I conclude that the reasoning of M. L. Edwards J. in *Cesario* does not apply to this case. Consequently, I interpret presumptive connecting factor (a) in *Van Breda*, "the defendant is domiciled or resident in the province" to apply only to the defendant who brought the motion to challenge Ontario's jurisdiction in this case, Dr. Kemgni. As Dr. Kemgni is not domiciled or resident in Ontario, I find that factor (a) in *Van Breda*, like factors (b), (c) and (d) is not present. As such, none of the presumptive connecting factors identified in *Van Breda* applies to establish a real and substantial connection between Ontario, the subject matter of Ms. Moore's statement of claim and Dr. Kemgni.

[51] I have no reason to conclude that, in this situation, I should identify a new presumptive connecting factor.

Issue #1: Disposition

[52] For the above reasons, I find that Ontario does not have jurisdiction over Ms. Moore's action against Dr. Kemgni.

[53] Ms. Moore's action against Dr. Kemgni shall be stayed.

Issue #2: If Ontario has jurisdiction, is Ontario the proper forum for Ms. Moore's action?

[54] Although it is not necessary for me to do so in light of my disposition of Issue #1, I will deal briefly with the issue of *forum non conveniens*, which was raised by Dr. Kemgni.

[55] If I had found that Ontario had jurisdiction over Ms. Moore's action against Dr. Kemgni, I would have found that Quebec, not Ontario, is the proper forum for Ms. Moore's action against Ms. Moore. This is for the following reasons:

- Dr. Kemgni lives in Quebec.
- Dr. Kemgni is licensed to practices medicine in Quebec, not in Ontario.
- Dr. Kemgni practiced medicine only in Quebec.
- Dr. Kemgni conducted a psychiatric assessment of Ms. Moore at a hospital in Quebec, at the request of a Quebec court.
- The law which applies to Ms. Moore's claim against Dr. Kemgni is the law of Quebec. (*Lapierre v. Lecuyer*, 2018 ONSC 1540, at para. 13: "In domestic litigation in Canada, the substantive law to be applied in tort cases is the law of the place where the activity occurred: *lex loci delicti*… In Canada, if you are involved in a tort in a given province, it is the law of that province that applies, and it does not matter that you or the other person involved in that tort comes from another province.")
- If the action against Dr. Kemgni were heard in Ontario, it would be necessary to establish Quebec law through expert opinion evidence.
- The documents, including hospital and police records, and the witnesses, with the exception of Mr. Kiska, are in Quebec.
- If Ms. Moore wishes to commence an action against Dr. Kemgni in Quebec, she is within time to do so. (Affidavit of Pierre Leduc.)
- Ms. Moore may commence and prosecute a Quebec claim in English. (Affidavit of Pierre Leduc.)

- If Ms. Moore wishes to limit the number of her outstanding legal proceedings, she could seek to add her claim against Mr. Kiska in this action to the other action in which she named Mr. Kiska as a defendant.

Disposition

[56] Ms. Moore's action against the defendant Paule Kemgni is stayed under Rule 17.06 of the *Rules of Civil Procedure* and s. 106 of the *Courts of Justice Act*.

[57] In accordance with the request in para. 26(e) of her factum, Ms. Moore shall have leave to amend her statement of claim to remove Dr. Kemgni as a defendant and to otherwise revise the pleading, subject to the operation of law.

[58] The parties were informed of this disposition in my endorsement of April 1, 2022. They were also reminded, at that time, of the evidence of Dr. Kemgni's expert on Quebec law, Pierre Leduc, who said the limitation period for Ms. Moore to start an action in Quebec expires on April 11, 2022.

Costs

[59] If there is no agreement with respect to costs, Dr. Kemgni may deliver brief written costs submissions within 14 days. Ms. Moore may deliver brief responding submissions within 14 days of receipt of Dr. Kemgni's submissions. These deadlines may be extended on consent of the parties, provided the parties inform the court of any extensions.

Justice H. J. Williams

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REASONS

Justice Heather J. Williams

Released: April 7, 2022