

Federal Court



Cour fédérale

Date: 20210721

Docket: T-276-21

Citation: 2021 FC 773

Ottawa, Ontario, July 21, 2021

PRESENT: Mr. Justice McHaffie

BETWEEN:

SEISMOTECH SAFETY SYSTEMS INC.

Applicant

and

**IRADJ FOROOTAN, SMART DISASTER
RESPONSE TECHNOLOGIES, INC.**

Respondents

ORDER AND REASONS

I. Overview

[1] Seismotech Safety Systems Inc seeks an *ex parte* anti-suit injunction to prevent Iradj Forootan from starting or continuing litigation in respect of six Canadian patents in any other court. The requested injunction targets in particular a claim started by Mr. Forootan on March 11, 2021 in California against Smart Disaster Response Technologies, Inc [SDRT], a dormant and suspended California company majority owned by Seismotech, and

Reza (Mohammadreza) Baraty, a British Columbia resident who is the CEO and majority shareholder of Seismotech.

[2] For the reasons given below, I dismiss Seismotech’s motion. An anti-suit injunction is an extraordinary and discretionary remedy that should be granted rarely and with caution given its impacts on judicial comity. I do not consider the circumstances Seismotech has presented to meet the standard set for such an injunction. In particular, I do not accept this Court has exclusive statutory jurisdiction under the *Patent Act*, RSC 1985, c P-4 to decide the issues raised in the California litigation as they relate to the Canadian Patents and that an anti-suit injunction is necessary to “protect” that jurisdiction. Nor do I accept that the only reasonable conclusion the California court could reach—which to date it has not been asked to reach—is that the Federal Court is the clearly more appropriate forum. In the circumstances, I cannot conclude there would be an injustice to permit Mr. Forootan to continue with the proceeding in California.

[3] I am also not satisfied that granting the requested injunction would avoid a multiplicity of proceedings as Seismotech contends. To the contrary, it appears it would further increase the number of proceedings. As Seismotech admits, it would not end the California litigation. It would simply add a parallel Canadian proceeding regarding the same agreement and court judgment at issue in California.

[4] I recognize Seismotech’s concerns about the extent and nature of litigation to date. However, these concerns can be appropriately addressed in California. They do not make it appropriate for this Court to issue an order limiting Mr. Forootan’s ability to pursue litigation in that forum.

[5] The motion is therefore dismissed. There is no order as to costs.

II. Issues

[6] The overall issue raised on Seismotech's motion is whether the Court should issue an anti-suit injunction enjoining Mr. Forootan from commencing or continuing litigation outside Canada pertaining to certain Canadian patents until adjudication of this application. This issue raises the following sub-issues:

- (1) Should notice of this motion have been given to Mr. Forootan?
- (2) Has Seismotech shown it meets the requirements for an anti-suit injunction, namely:
 - (a) Does the Court have personal jurisdiction over Mr. Forootan for the purpose of the requested order?
 - (b) Could the foreign court reasonably conclude that the Federal Court is not a clearly more appropriate forum?
 - (c) Would the requested injunction deprive Mr. Forootan of a legitimate juridical advantage it would be unjust to deprive him of?
 - (d) Does the fact that Seismotech has not sought a stay of the foreign litigation preclude the relief sought?

[7] I will address these issues in sequence after a review of the relevant facts and the general principles applicable to anti-suit injunctions.

III. Analysis

A. *Factual Background*

(1) Assignment of technology and patents from Seismotech to SDRT

[8] There are two individuals and two companies at the centre of this litigation. Reza Baraty is a BC resident who is and always has been the majority owner (directly or indirectly) of Seismotech, a BC company. Iradj Forootan is a California resident. He founded SDRT and was formerly a shareholder and its President and CEO, among other positions. Seismotech is now the majority owner of SDRT, although that company is suspended.

[9] The disputes involving these four parties stems from a Purchase and Sale Agreement [PSA] they all signed in January 2003. The PSA pertained to what was termed the “SUMS Technologies,” which was certain disaster management and utilities management technology invented by Mr. Baraty. The SUMS Technologies included the following patents and patent applications related to the technology:

- Canadian Patent 2,199,189 [the '189 Patent], which was issued in 1999 and has since expired;
- a Canadian patent application that resulted in the later issuance of five further Canadian patents, namely Canadian Patent Nos. 2,364,081; 2,551,847; 2,551,854; 2,552,603; and 2,621,287 (together with the '189 Patent, these six patents constitute the “Canadian Patents” at issue in this motion);
- US Patent 6,266,579;

- a US patent application the Court presumes similarly led to the five further US patents that are identified in the documents: US 6,842,706; US 7,353,121; US 7,729,993; US 7,774,282; and US 7,711,651 (I will call these six patents the US Patents); and
- European and Japanese patent applications apparently related to the '189 Patent.

[10] Mr. Baraty is the sole inventor of the Canadian Patents and the US Patents.

[11] At the time of the PSA, Seismotech owned the SUMS Technologies and Mr. Baraty largely owned Seismotech and was its President and CEO. Mr. Forootan was a shareholder and President of SDRT. It was apparently anticipated that Mr. Forootan could assist in raising capital to fund commercialization of the SUMS Technologies. Under the PSA, Seismotech assigned the SUMS Technologies, including the patents and applications, to SDRT. Mr. Forootan was to raise \$2,000,000 in capital financing within 12 months of closing to develop the SUMS Technologies. If the funds were not raised, Mr. Forootan was to transfer 10% of his shares of SDRT to Seismotech, with a further 10% for each six-month period in which the \$2,000,000 in funding was not obtained. Seismotech refers to this obligation in the PSA as the "Capital Promise."

[12] As a result of the assignment in the PSA, SDRT is currently the registered owner of the Canadian Patents other than the '189 Patent. Mr. Baraty is the registered owner of the '189 Patent rather than SDRT, as an assignment from Mr. Baraty to Seismotech had not been recorded at the time the transfers from Seismotech to SDRT were filed with the Canadian Intellectual Property Office (CIPO).

[13] The PSA includes a choice of law clause, stating that the agreement “shall be governed by and construed in accordance with the laws of Canada, without giving effect to conflict of laws.” It was signed by Mr. Baraty, on his own behalf and on behalf of Seismotech, in British Columbia. It was signed by Mr. Forootan, on his own behalf and on behalf of SDRT, in Orange County, California.

(2) Disputes and the 2015 litigation in California

[14] Seismotech alleges Mr. Forootan and SDRT did not fulfill the “Capital Promise” since Mr. Forootan did not raise the \$2,000,000 required. Mr. Forootan, for his part, alleges he made significant loans to SDRT to secure the patents. He also alleges Mr. Baraty improperly “colluded and conspired” against SDRT and Mr. Forootan, infringed the patents at issue, and formulated fraudulent business plans. It is clear from the limited record before me that between the 2003 PSA and the early 2010s, difficulties arose in the business relationship.

[15] In 2015, Mr. Forootan filed a complaint in the Superior Court of the State of California, County of Orange [California State Court], bearing Case No. 30-2015-00788310-CU-BT-CJC [2015 California Action]. The complaint in the 2015 California Action is not in the record, but according to later filings it alleged breach of fiduciary duty, breach of contract, and fraud. Mr. Forootan started the action on his own behalf and as a derivative action on behalf of SDRT, against SDRT and Mr. Baraty as well as a series of 100 unnamed “Doe” defendants.

[16] The 2015 California Action was settled in 2017. Mr. Forootan, Mr. Baraty, and SDRT signed a Stipulation for Settlement [Settlement Agreement], stipulating that the matter is deemed

settled on certain terms and conditions. Since the obligations in the Settlement Agreement are contested, I will refrain from detailed comment on its contents. However, I reproduce the following passages from the Settlement Agreement:

1. Defendant SDRT shall pay to plaintiff Iradj Forootan, or to his attorney Ulwelling Siddiqui LLP, the total sum of \$ \$1,380,000 (One Million Three Hundred Eighty Thousand US Dollars) (see payment schedule below) in full settlement and compromise of this action and in release and discharge of any and all claims and causes of action made in this action, and in release and discharge of any and all claims and causes of action arising out of the events or incidents referred to in the pleadings in this action.

[...]

8. The Parties hereby agree that the Orange County Superior Court shall retain jurisdiction over the action for all purposes to enforce the terms of this Agreement pursuant to California Code of Civil Procedure § 664.6

9. The Parties hereby agree that Defendants SDRT and Baraty will sign a stipulated judgment, whereby in the event of a default by the Defendants of any payment listed above, after notice and 10 calendar days opportunity to cure, then, upon ex parte application of counsel, Judgment shall be taken and entered against Defendants SDRT for the full amount owed under this Agreement of \$1,380,000 (One Million Three Hundred Eighty Thousand US Dollars), less any amounts previously paid pursuant to the Agreement.

10. The Parties hereby agree that Plaintiff FOROOTAN shall have the exclusive right to enjoin and prevent any sale of any SDRT patents and related intellectual property, unless such sale would fully and completely satisfy the outstanding balance owed to Plaintiff FOROOTAN under this agreement AND such proceeds are paid to Plaintiff FOROOTAN to satisfy the balance owed. The patents subject to this term include, but are not limited to, the following: [a list of patents including the US Patents and the Canadian Patents].

11. Plaintiff Forootan will surrender any and all SDRT shares under his control, including without limitation 6,050,000 shares, and relinquish any rights and ownership interests therein.

12. Any provisions of Evidence Code §§1115 - 1128 notwithstanding, this agreement may be enforced by any party hereto by a motion under Code of Civil Procedure §664.6 or by any other procedure permitted by law in the Superior Court of Orange County.

[...]

[17] The parties signed an Amendment to the Settlement Agreement in June 2018. The Amendment clarified certain aspects of the Settlement Agreement, extended the first payment date, and attached an agreed draft Stipulation for Entry of Judgment, Stipulation for Dismissal, and other documents.

[18] On March 4, 2019, Mr. Forootan obtained an order from the California State Court entitled “Order re Plaintiff’s *Ex Parte* Application for Enforcement of Stipulation for Entry of Judgment Under CCP § 664.6 and Award of Attorneys’ Fees” [2019 California Order]. Paragraph 2 of the 2019 California Order states “The Court shall enter Judgment in favor of Plaintiffs in the sum of \$1,380,000 pursuant to the Parties Stipulation for Entry of Judgment.” Costs of \$2,235 were also awarded.

[19] A judgment was entered on May 14, 2019 [2019 California Judgment] by virtue of the 2019 California Order. The 2019 California Judgment states that judgment is entered for Mr. Forootan in the amount of \$1,382,235, against both SDRT and Mr. Baraty.

(3) Litigation in the California District Court, BC Supreme Court, and this Court

[20] On January 23, 2020, Mr. Forootan filed a complaint in the United States District Court for the Central District of California, Southern Division [California District Court] against SDRT and Mr. Baraty, as well as 10 unnamed “Doe” defendants, bearing Case No. 8:20-cv-00146-JLS-DFM [2020 District Court Action]. The 2020 District Court Action alleged that under the terms of the Settlement Agreement, SDRT and Mr. Baraty agreed to pay \$1,380,000 to Mr. Forootan, and that no payments had been made. It also alleged the 2019 California Judgment gave judgment against both defendants.

[21] The 2020 District Court Action raised two claims. First, it claimed a breach of contract, alleging a failure by the defendants to comply with the Settlement Agreement. In respect of that claim, Mr. Forootan sought primarily money damages and costs. Second, it made a claim for “declaratory relief,” seeking declarations about the parties’ obligations under the Settlement Agreement. In respect of the second claim, Mr. Forootan sought (i) a declaration conferring all rights and title in the “Patents” (defined to include the US Patents and Canadian Patents) to Mr. Forootan; (ii) a declaration transferring the Patents to Mr. Forootan; and (iii) a declaration and order to the United States Patent and Trademark Office (USPTO) to transfer ownership of the Patents to Mr. Forootan.

[22] About five months later, on July 9, 2020, Seismotech started an action against SDRT and Mr. Forootan in the Supreme Court of British Columbia, bearing Court File No. NEW-S-S-228726 [2020 BC Action]. That action seeks a declaration that the transfer of the “Seismotech

Technologies” (*i.e.*, the SUMS Technologies) to SDRT under the original 2003 PSA was or is void, on grounds of failure to fulfill the Capital Promise. Based on the definitions in the Notice of Civil Claim in the 2020 BC Action, the declaration sought by Seismotech pertains to both the Canadian Patents and the US Patents. Mr. Forootan apparently filed an application to challenge the jurisdiction of the BC Supreme Court, which was to be heard in February 2021, but did not proceed owing to Mr. Forootan’s failure to file necessary documents.

[23] On February 1, 2021, after issuing a show cause order, the California District Court dismissed the 2020 District Court Action for lack of subject matter jurisdiction. In essence, the California District Court found the matter related to enforcement of the Settlement Agreement, which was a matter for the state courts. It held that “Plaintiff seeks to enforce his alleged rights to various patents pursuant to the terms of the settlement agreement, but such claims do not arise under patent law” [emphasis added]. It therefore dismissed the claim without prejudice to refile in state court. Mr. Baraty sought his costs of that action (including Mr. Baraty’s own jurisdictional motion, which was not decided) in the amount of about \$25,800. However, since most of the costs claimed were based on a provision of the Settlement Agreement, over which the California District Court did not have jurisdiction, the California District Court awarded only \$327.48 in costs on July 6, 2021.

[24] After the 2020 District Court Action was dismissed, but before Mr. Forootan filed a proceeding in state court, Seismotech started this application in Canada’s Federal Court on February 16, 2021. This application relates only to the Canadian Patents. It seeks declarations similar to those in the 2020 BC Action, namely that the assignment of the Canadian Patents to

SDRT is void or voidable. It also seeks an order pursuant to section 52 of the *Patent Act* directing the Commissioner of Patents to vary the entries in the records of the Patent Office (*i.e.*, CIPO) to record Seismotech as the registered owner of the Canadian Patents. Further or in the alternative, it seeks a declaration that paragraph 10 of the Settlement Agreement, reproduced at paragraph [16] above, is not enforceable against SDRT, Seismotech, or the Canadian Patents, and does not preclude SDRT from assigning or licensing the Canadian Patents back to Seismotech.

[25] Seismotech concedes this application seeks overlapping relief to that in the 2020 BC Action. It states this arose in light of the Federal Court of Appeal's conclusion in *SALT Canada Inc v Baker*, 2020 FCA 127, which was issued a few weeks after the 2020 BC Action was started. That decision confirmed that the Federal Court's jurisdiction under section 52 of the *Patent Act* to "order that any entry in the records of the Patent Office relating to the title to a patent be varied or expunged" includes the jurisdiction to determine patent title issues that require interpreting agreements or other commercial instruments: *SALT* at paras 8–14, 47. Prior to *SALT*, there was concern this Court could not interpret agreements even if they related to title to a patent, so Seismotech commenced its action in the BC Supreme Court since it requires interpretation of the PSA. Seismotech says that in light of the present application in this Court, the 2020 BC Action is now in "abeyance." This apparently only means Seismotech is not currently taking any steps. The proceeding has not been discontinued, and no stay or other order has been sought from the BC Supreme Court.

(4) The impugned claim in the California State Court

[26] On March 11, 2021—three weeks after this application was started, and about five weeks after the California District Court dismissed the 2020 District Court Action without prejudice to refile in state court—Mr. Forootan filed a complaint in California State Court, bearing Case No. 30-2021-01188996-CU-BC-CJC [2021 California Action]. The 2021 California Action is largely the same as the 2020 District Court Action. Much of it reproduces verbatim the allegations first raised (in the wrong court) in the 2020 District Court Action. It defines the “Patents” in the same way to include the US Patents and the Canadian Patents.

[27] As with the 2020 District Court Action, the complaint in the 2021 California Action raises two claims, namely a claim for breach of contract and a claim for declaratory relief. Again, while asserting that the 2019 California Judgment was obtained against both SDRT and Mr. Baraty, the 2021 California Action as drafted is based primarily on the underlying Settlement Agreement rather than the 2019 California Judgment. It also seeks the same monetary and declaratory relief based on the Settlement Agreement, including as to ownership of the Patents and an order issued to the USPTO to transfer ownership of the Patents to Mr. Forootan.

[28] On May 4, 2021, the California State Court issued a show cause order to Mr. Forootan for failure to comply with rules regarding service. On July 1, 2021, Mr. Forootan filed a declaration saying Mr. Baraty and SDRT had been served by email on June 29. Counsel for Seismotech advised at the hearing of this application that Mr. Baraty (who he also represents) contests the validity of that service, but that is clearly an issue for the California State Court and

not this one. Seismotech points to the show cause order and dilatory service as evidence of the tactical nature of Mr. Forootan's litigation against Mr. Baraty and SDRT.

(5) Mr. Baraty's motion to vacate

[29] In the meantime, on April 9, 2021, Mr. Baraty filed a motion in the 2015 California Action to vacate the 2019 California Judgment and/or the 2019 California Order on grounds of clerical error, the judgment being void, and/or equitable relief arising from extrinsic fraud or mistake. In essence, the motion to vacate argues that (i) under paragraph 1 of the Settlement Agreement, reproduced at paragraph [16] above, it is only SDRT who is obliged to pay the settlement amount, not Mr. Baraty; (ii) the parties' Stipulation for Entry of Judgment similarly provided that judgment would be entered only against SDRT; (iii) the 2019 California Order stated that judgment should enter pursuant to the parties' Stipulation for Entry of Judgment; and (iv) the reference in the 2019 California Judgment to judgment being against Mr. Baraty was therefore in error, caused by Mr. Forootan.

[30] The motion to vacate is scheduled to be heard on August 10, 2021. Counsel advises the motion could not be set down sooner owing to a backlog of available hearing dates. Counsel gave their view that if that motion is successful, much of the litigation, including at least the 2021 California Action that relies on the 2019 California Judgment, will fall away.

[31] To summarize, the following is a timeline of the main events leading to this motion:

January 2003	Parties enter PSA
May 18, 2015	Mr. Forootan starts 2015 California Action
May 19, 2017	Mr. Forootan, Mr. Baraty and SDRT enter Settlement Agreement, settling the 2015 California Action
March 4, 2019	2019 California Order
May 14, 2019	2019 California Judgment
January 23, 2020	Mr. Forootan starts 2020 District Court Action
July 9, 2020	Seismotech starts 2020 BC Action
February 1, 2021	California District Court dismisses 2020 District Court Action
February 16, 2021	Seismotech starts this Federal Court application
March 11, 2021	Mr. Forootan starts 2021 California Action
April 9, 2021	Mr. Baraty brings motion to vacate 2019 California Order and 2019 California Judgment, which is set to be heard August 10, 2021
July 8, 2021	Seismotech brings this motion for an anti-suit injunction

[32] Against this background, I will address the general principles applicable to anti-suit injunctions, and then apply them to the facts and circumstances of this case.

B. *Anti-Suit Injunctions: Principles*

[33] An anti-suit injunction orders a party subject to the Court's jurisdiction to cease litigation proceedings in a different jurisdiction. It does not purport to directly order the other court or

tribunal to do anything. But the impact on proceedings in another jurisdiction, and on the other court to control its process, is clear. As the Federal Court of Appeal has described it, an anti-suit injunction is “an aggressive remedy, and contrary to judicial comity”: *Apotex Inc v AstraZeneca Canada Inc*, 2003 FCA 235 at para 13.

[34] The principles applicable to anti-suit injunctions in Canada remain those set out by Justice Sopinka for the Supreme Court of Canada in *Amchem Products Incorporated v British Columbia (Workers’ Compensation Board)*, [1993] 1 SCR 897. Assessing whether an anti-suit injunction should issue involves a two-part analysis. First, the Court must determine whether the foreign court has assumed jurisdiction on a basis inconsistent with principles relating to *forum non conveniens* (inconvenient forum). Second, if it has, the Court must assess whether the requested injunction will deprive the plaintiff in the foreign court of a juridical advantage it would be unjust to deprive them of: *Amchem* at pp 931–933; *Li v Rao*, 2019 BCCA 264 at paras 46–48, 77.

[35] In addition to these two steps, Justice Sopinka referred to several “preliminary aspects of procedure.” As can be seen, the first branch of the *Amchem* analysis effectively assumes the foreign court has made a determination on jurisdiction. Given the importance of principles of comity, a Canadian court should not generally entertain an application for an anti-suit injunction that is merely theoretical because there is no foreign proceeding pending, and it is “preferable” that a stay or similar remedy has been unsuccessfully sought in the foreign court: *Amchem* at pp 930–931. These preliminary aspects are sometimes broken out as part of a five-part framing of the *Amchem* requirements for an anti-suit injunction: *Bell’O International LLC v Flooring &*

Lumber Co, [2001] OJ No 1871 (SCJ) at para 9; *Precious Metal Capital Corp v Smith*, 2008 CanLII 64008 (ONSC) at para 18.

[36] In addition, since an anti-suit injunction is directed to an individual litigant rather than a foreign court, the Canadian court must have personal jurisdiction (*in personam* jurisdiction) over the individual in order to issue the order: *Amchem* at p 913; *Veritas Investment Research Corporation et al v Indiabulls Real Estate Limited et al*, 2015 ONSC 6040 at para 43; *Google Inc v Equustek Solutions Inc*, 2017 SCC 34 at para 38. Personal jurisdiction over an out-of-jurisdiction party may arise in three ways: presence-based jurisdiction (physical presence of the non-resident); consent-based jurisdiction (by submission, attornment, or prior agreement); or assumed jurisdiction based on the “real and substantial connection” test: *Chevron Corp v Yaiguaje*, 2015 SCC 42 at para 82, citing *Club Resorts Ltd v Van Breda*, 2012 SCC 17 (see para 79) and *Muscutt v Courcelles*, 2002 CanLII 44957 (ON CA) at para 19.

[37] The real and substantial connection test seeks to assess whether a Canadian court has jurisdiction over an action by considering objective factors that connect the litigation to the jurisdiction of the court. It is informed by concerns about fairness, flexibility, and consistency in resolving conflict of laws issues: *Van Breda* at para 66.

[38] While *Van Breda* focuses on principles applicable to tort cases, the real and substantial connection test is also relevant to (and indeed has its roots in) cases involving breach of contract: *Morguard Investments Ltd v De Savoye*, [1990] 3 SCR 1077 at pp 1106–1108; J Blom & E Edinger, “The Chimera of the Real and Substantial Connection Test” (2005) 38:2 UBC L Rev

373 at pp 374–375. It is also applicable in cases involving multiple claims and in assessing the territoriality of intellectual property rights: *Van Breda* at para 99; *Society of Composers, Authors and Music Publishers of Canada v Canadian Assn. of Internet Providers*, 2004 SCC 45 at para 60. As stated by my colleague Justice Denis Gascon, sitting as Judicial Member and Chair of the Competition Tribunal, “the ‘real and substantial connection’ test is flexible and should be adapted to the circumstances [...] The specific factors that should be considered in any given case will vary based on the facts and issues of the case [...]” [citations omitted]: *The Commissioner of Competition v HarperCollins Publishers LLC and HarperCollins Canada Limited*, 2017 CACT 10 at para 147.

C. *Application to the Present Situation*

- (1) Should notice have been given to Mr. Forootan?

[39] Before turning to the *Amchem* requirements for an anti-suit injunction, I will briefly address the fact that Seismotech brought this motion *ex parte* under Rule 361 of the *Federal Courts Rules*, SOR/98-106, with no notice to or service on Mr. Forootan.

[40] Seismotech argues it was not required to serve Mr. Forootan with the motion because he was served with the notice of application and did not file a notice of appearance pursuant to Rule 305. A party who has not filed a notice of appearance within the time set out in the *Rules* need not be served with any further documents in the proceeding prior to final judgment: Rule 145(a). Seismotech points to the prayer for relief in its notice of application, which states it would be seeking an “interim, interlocutory and/or permanent injunction enjoining the

Respondent Forootan from commencing any proceedings in relation to the Canadian Patents without leave of this Honourable Court.” It argues Mr. Forootan was therefore on notice of its intent to seek the relief sought in this motion and failed to take any steps to respond.

[41] At the same time, Seismotech recognizes the concerns raised by an *ex parte* anti-suit injunction motion. It suggests the Court could include in its order a safeguard permitting Mr. Forootan to return to the Court to seek a variation, referring to the approach of the British Columbia Court of Appeal in the *Equustek* litigation: *Equustek Solutions Inc v Google Inc*, 2015 BCCA 265 at paras 110–112.

[42] In my view, rather than the two-step process proposed by Seismotech, in which the Court issues an *ex parte* order and then permits Mr. Forootan to argue the matter subsequently, it would have been more convenient and appropriate for Mr. Forootan to have the opportunity to make arguments before any order is issued. There seems to be little reason Mr. Forootan or his counsel could not have been given specific notice of this motion and an opportunity to present any contrary arguments. While counsel for Seismotech made reference to concerns about Mr. Forootan “racing to judgment” in California in response, it is unclear how this could be achieved, or how this concern coincides with Seismotech’s position that Mr. Forootan was slow in serving the 2021 California Action and has even now not effected proper service.

[43] The principle in Rule 145(a), that parties who fail to appear are not required to be given notice of subsequent steps in the proceeding, is an important one for the orderly conduct of litigation in this Court. However, I have some concern that the prayer for relief in Seismotech’s

notice of application pertains only to commencing litigation, whereas this motion also seeks an order enjoining Mr. Forootan from continuing the 2021 California Action. I do not believe Rule 145(a) can be read as allowing an applicant to seek substantive *ex parte* orders against a respondent that go beyond what is encompassed by the originating document, even if the respondent has not appeared.

[44] Given my conclusions on the merits of the motion, I need not address the potential deficiency in bringing it *ex parte*. However, I observe that given Seismotech’s suggestion that the requested anti-suit injunction provide for Mr. Forootan to return to the Court to vary the order, some form of prior notice to Mr. Forootan may have been more efficient notwithstanding Rule 145(a).

(2) The requirements for an anti-suit injunction are not met

(a) *This Court has personal jurisdiction over Mr. Forootan*

[45] To issue the requested injunction, the Court must have jurisdiction over Mr. Forootan, either by presence-based jurisdiction; consent-based jurisdiction; or assumed jurisdiction based on the “real and substantial connection” test: *Veritas* at paras 43–44; *Chevron* at para 82.

[46] Seismotech does not rely on presence-based jurisdiction. Mr. Forootan resides in California and the only evidence of his having been in Canada pertains to a social visit to Mr. Baraty in BC some time ago (Mr. Forootan is married to Mr. Baraty’s cousin). Mr. Forootan has also not consented or agreed to the jurisdiction of this Court with respect to the requested

injunction or its subject matter. The PSA, which I will discuss further, includes a choice of law clause saying that it is to be interpreted under Canadian law, but it does not contain a choice of jurisdiction clause (otherwise known as a choice of forum or forum selection clause). The two are different in nature and effect, including in the context of anti-suit injunctions: see, e.g., *Li* at paras 49–60; *ZI Pompey Industrie v ECU-Line NV*, 2003 SCC 27 at paras 20–21; *687725 BC Ltd v Rakov*, 2021 ABQB 462 at paras 77–78; *Entreprise Publique Économique Air Algérie, Montréal, Québec v Hamamouche*, 2019 FC 272 at paras 49–50.

[47] Seismotech argues the Court has jurisdiction based on the Court’s statutory jurisdiction in respect of Canadian patents, including the contractual interpretation jurisdiction confirmed in *SALT*, and the real and substantial connection between the subject matter and this Court. It points to the PSA, which it executed and performed in BC and which chooses Canadian law, and to the *situs* of the Canadian Patents in Canada: J Walker, *Castel & Walker: Canadian Conflict of Laws*, 6th ed (LexisNexis Canada: online) loose-leaf at §24.1(d).

[48] The requested anti-suit injunction targets the 2021 California Action as it pertains to the Canadian Patents. This is therefore the claim that should be the basis of the real and substantial connection analysis for purposes of considering jurisdiction, rather than this application. As noted above, the 2021 California Action seeks damages and declaratory relief based on asserted breaches of the Settlement Agreement. The declaratory relief sought includes declarations “conferring all rights and title in the Patents” and “transferring the Patents” to Mr. Forootan.

[49] The Settlement Agreement was made to settle the 2015 California Action in the California State Court. It resulted from a mediation conducted in California. It contains articles 8 and 12 reproduced at paragraph [16] above which refer to the California State Court and the California Code of Civil Procedure. It resulted in the 2019 California Judgment from the California State Court. None of these factors point to a connection with this Court.

[50] At the same time, the 2015 California Action was based on the PSA and the conduct of Mr. Baraty and SDRT under the PSA. The PSA, while it has no forum selection clause, is subject to the laws of Canada, and Mr. Baraty's actions pursuant to the PSA were undertaken in Canada. While the Settlement Agreement grants the California State Court jurisdiction to enforce it, it does not appear to expressly exclude the jurisdiction of any other Court. The 2021 California Action also alleges Mr. Forootan funded the Patents, including the Canadian Patents, and impugns alleged acts in Canada by Mr. Baraty before and after the Settlement Agreement.

[51] The declarations sought by Mr. Forootan include declarations conferring ownership of the Canadian Patents based on contractual agreements. These are matters closely related to this Court's jurisdiction to make orders varying entries in CIPO records relating to title to Canadian patents under section 52 of the *Patent Act*: *SALT* at paras 8–10. Put another way, if a party to the Settlement Agreement were to come before this Court seeking declarations as to ownership of the Canadian Patents on the basis of the Settlement Agreement, as is being done in the 2021 California Action, I am satisfied on the basis of section 52 and the *SALT* decision that this Court would have jurisdiction to hear that case. On balance, I am satisfied that there is a sufficient “real and substantial connection” between the Canadian Patent issues raised in the 2021 California

Action and this Court's territorial and substantive jurisdiction that this Court has jurisdiction *simpliciter* over the claims raised in it.

[52] This is not to say that this Court is necessarily the only forum for such issues or the appropriate or convenient forum. That question will be addressed below. It is simply to say that I conclude the Court has sufficient jurisdiction over the claims asserted in the 2021 California Action to have the personal jurisdiction necessary to issue an anti-suit injunction if one were justified. I therefore turn to that question.

(b) *The California State Court could reasonably, and in keeping with forum non conveniens principles, conclude it should maintain jurisdiction*

[53] As set out above, the first step of the *Amchem* analysis requires the Court to determine whether the foreign court has assumed jurisdiction on a basis inconsistent with *forum non conveniens* principles. I note that the analysis is not whether the foreign court is a clearly more appropriate forum. Nor is it whether the domestic court is an appropriate forum. Rather, the test is, as stated by Justice Sopinka,

If, applying the principles relating to *forum non conveniens* outlined above, the foreign court could reasonably have concluded that there was no alternative forum that was clearly more appropriate, the domestic court should respect that decision and the application should be dismissed.

[Emphasis added; *Amchem* at p 932.]

[54] The question is thus whether the California State Court could reasonably have concluded there was no alternative forum (here, the Federal Court) that was clearly more appropriate: *Li* at para 47. *Amchem* contemplates that determination initially being made by the foreign court.

Here, the California State Court has not made a determination about its jurisdiction over the 2021 California Action as it relates to the Canadian Patents, or whether the Federal Court is a clearly more appropriate forum, as Seismotech has not asked it to do so. I discuss that fact further below. The Court will therefore consider whether the California State Court “could reasonably” reach this conclusion, despite not having the guidance of that Court on the issue: *Veritas Investment* at para 49.

[55] *Forum non conveniens* principles arise when two or more potential forums have jurisdiction: *Van Breda* at paras 101–103. The California State Court will, of course, itself ultimately ascertain whether it has jurisdiction over the action brought before it, in accordance with the law and principles applicable to its jurisdiction. Nonetheless, the *forum non conveniens* analysis required by the *Amchem* approach to anti-suit injunctions is undertaken with reference to Canadian law, without assuming that the foreign law will necessarily apply those principles under that name or on the same basis: *Amchem* at pp 934–935, 937–939.

[56] As noted, the 2021 California Action primarily seeks remedies relating to breach of the Settlement Agreement and declarations regarding the parties’ obligations under that agreement. The Settlement Agreement arose from and resolved the 2015 California Action. The parties to the Settlement Agreement agreed the California State Court “shall retain jurisdiction over the action for all purposes to enforce the terms of this Agreement.” The Amendment to the Settlement Agreement did not change this, but rather confirmed the parties’ intent to file documents, including the stipulated judgment, in the California State Court. As discussed above,

Mr. Forootan is a California resident and SDRT, the registered owner of the majority of the patents, is a (suspended) California company.

[57] Based on these factors, I find the California State Court could reasonably conclude that the Federal Court was not a clearly more appropriate forum for the 2021 California Action, including as it relates to the Canadian Patents.

[58] I reach this conclusion notwithstanding the fact that some of the assets over which Mr. Forootan seeks to enforce the agreements are Canadian patents. There is no question that patent rights are territorial. Relying on this principle, Seismotech cites Professor Walker's statement that "no assignment or transfer [of patent rights] can take place except in accordance with the laws of that jurisdiction": *Castel & Walker* at §24.1(d). While an assignment of a Canadian patent must take place "in accordance with" the laws of Canada, that does not mean that every dispute relevant to ownership of a Canadian patent must be determined in a Canadian court.

[59] Contractual agreements pertaining to intellectual property will frequently cover rights in multiple jurisdictions, and even globally. Contrary to Seismotech's submission, there is no requirement that the same provisions in the same contract be litigated separately in every jurisdiction in the world in which those intellectual property rights arise. I note that courts in Canada have been willing to interpret contracts as they pertain to international intellectual rights, even where those contracts are made under foreign law: *Verdellen v Monaghan Mushrooms Ltd*, 2011 ONSC 5820 at paras 1, 9–15, 48; *Quantum Leap Research Inc c Kay*, 2010 QCCS 1449 at

paras 2, 11–18, 38–60, 85, 106–109. A Canadian court may also be considered *forum conveniens* in respect of a transborder intellectual property dispute, even where relief is sought pursuant to the laws of the United States: *Research in Motion Limited v Atari Inc*, 2007 CanLII 33987 (ON SC) at paras 1–3, 32–37. As Professor Vaver summarizes, “IP-related activity that has a real and substantial connection with a country, province, or state can be handled by a court that is a convenient forum, whether or not the defendant accepts or is present within the jurisdiction”:
D Vaver, *Intellectual Property Law*, 2nd ed (Toronto: Irwin Law, 2011) at p 30.

[60] The remedies sought by Mr. Forootan in the 2021 California Action are also relevant. Section 52 of the *Patent Act* is understood to confer exclusive jurisdiction on this Court to make orders varying or expunging entries in the records of the Patent Office: see, *e.g.*, *CAE Inc v Canada (Commissioner of Patents)*, 2021 FC 307 at para 17; *Micromass UK Ltd v Canada (Commissioner of Patents)*, 2006 FC 117 at para 12. Seismotech argues that this means a non-Canadian court does not have jurisdiction to vary the records in the Patent Office. While I agree a non-Canadian court cannot order a change to the records in the Canadian Patent Office, this does not mean the Federal Court is the only court that can address contractual issues relevant to title.

[61] Indeed, Seismotech’s own claim in the BC Supreme Court confirms this. The 2020 BC Action seeks a declaration that Seismotech is the owner of the SUMS Technologies including the Canadian *and* US Patents, and that the transfers and/or assignments of the SUMS Technologies to SDRT are void. It expressly pleads the BC Supreme Court has jurisdiction over the action in part because it involves ownership rights to the Canadian Patents. Seismotech’s

own actions thus confirm its understanding that the jurisdiction conferred on the Federal Court by section 52 does not affect another court's ability to consider contracts relating to patent title.

[62] The declarations Seismotech seeks in the 2020 BC Action are similar to the declarations Mr. Forootan seeks in the 2021 California Action: a declaration conferring all rights and title in the Patents and transferring the Patents to Mr. Forootan. While these declarations go to ownership of the patents as between the parties to that litigation, they do not go to the registered ownership of the patents. They therefore do not offend section 52 of the *Patent Act* and no anti-suit injunction is necessary to “protect” the jurisdiction conferred on this Court by the *Patent Act*.

[63] It is worth noting at this point that one of the orders sought in the 2021 California Action is a “declaration and order issued to the [USPTO] to transfer the ownership of the Patents to Plaintiff.” As noted, the “Patents” is defined in the complaint to cover both the Canadian Patents and US Patents. It seems unlikely that the California State Court would order the USPTO to register ownership of a Canadian patent, or that the USPTO would know what to make of such an order if it were made. However, I cannot conclude that this one reference in the prayer for relief in the 2021 California Action affects the overall assessment.

[64] This does not mean that the California State Court will conclude that it has jurisdiction in respect of the Canadian Patents, that it should exercise that jurisdiction, or that it should make the orders requested. It simply means that on the basis of the Canadian approach set out in *Amchem*, this Court finds that the California State Court “could reasonably” conclude there is no clearly more appropriate forum to address the dispute.

[65] Seismotech pointed the Court to a number of aspects of the Settlement Agreement in an effort to underscore the spurious nature of the 2021 California Action. In particular, it argues paragraph 10 of the Settlement Agreement, reproduced at paragraph [16], does not confer any patent rights or title to the Canadian (or US) Patents, but merely permits Mr. Forootan to prevent a sale of the patents unless the proceeds satisfy the balance owing to Mr. Forootan. This is, in my view, a substantive defence to the 2021 California Action. It does not go to whether the California State Court could reasonably assert jurisdiction. Leaving aside the question of whether the frivolous or vexatious nature of foreign proceedings might in some cases be considered in assessing whether an anti-suit injunction should issue, I conclude that the arguments put forward by Seismotech speak more to matters of the substantive merits. Given my conclusions regarding the requested anti-suit injunction, I will not comment on those merits.

[66] The foregoing analysis is premised on the 2021 California Action as it is pleaded, namely as an action seeking relief arising from breach of the Settlement Agreement, and not as an effort to enforce the 2019 California Judgment. As set out above, Mr. Forootan already appears to have exercised the provision in the Settlement Agreement that in the event of a default in payment, a judgment may be taken and entered. Whether this stands in the way of Mr. Forootan seeking another judgment based on default or breach of the Settlement Agreement is another substantive matter for the California State Court. However, for present purposes, it means that the subject matter of the 2021 California Action—which is the target of the requested anti-suit injunction—is a claim related primarily to breach and enforcement of the Settlement Agreement, and not enforcement of the 2019 California Judgment.

[67] I flag this for two reasons. First, I do not take the 2021 California Action as being an effort to enforce the 2019 California Judgment through the seizure of Canadian assets. As Seismotech submits, subject to statutory provisions governing registration, for a foreign judgment is to be enforced in Canada over Canadian assets it must first be recognized through a Canadian judgment: *Lax v Lax*, 2004 CanLII 15466 (ON CA) at para 29. The foreign judgment is considered evidence of a debt or obligation, on which the domestic action is brought: *Chevron* at paras 42–44; *Pro Swing Inc v Elta Golf Inc*, 2006 SCC 52 at para 11. The Canadian judgment can then be enforced against Canadian assets like any other Canadian judgment: *Pro Swing* at para 11, quoting V Black, “Enforcement of Foreign Non-money Judgments: *Pro Swing v. Elta*” (2006), 42 CanBusLJ 81 at p 89.

[68] Second, although the enforcement of a foreign judgment also raises issues of comity, jurisdiction, and *forum non conveniens*, it raises different issues under private international law than either an action for breach of contract or an anti-suit injunction, including importantly the nature of available defences: *Beals v Saldanha*, 2003 SCC 72 at paras 39–41; *Pro Swing* at 10–15.

[69] Seismotech argues the need to seek recognition and enforcement in Canada speaks against the California State Court and in favour of the Federal Court as the convenient forum. It contends that Mr. Forootan’s approach results in multiple proceedings, which their narrowly tailored anti-suit injunction seeks to curb. I cannot accept this argument. It is true that at some stage it might be necessary to bring a proceeding brought in Canada to enforce any judgment from the California State Court arising from the 2021 California Action. However, this is a

necessary consequence of transborder litigation. Effectively bifurcating the 2021 California Action so that the entirety of that action pursues two tracks simultaneously does not solve a concern about multiplicity of actions. To the contrary, it exacerbates it.

[70] Even if the requested injunction issues, the 2021 California Action would continue with respect to the claims for monetary relief and the US Patents. Mr. Baraty gave no evidence he would not be defending the 2021 California Action in respect of these issues. Nor would the issues with respect to the Canadian Patents necessarily be brought within Seismotech's application in the Federal Court underlying the present motion. The Federal Court application involves different parties and, for the most part, a different agreement. Seismotech's submission is that if the requested anti-suit injunction issues, Mr. Forootan would have to come to Canada to start a new proceeding to seek the same relief it seeks in the 2021 California Action in respect of the Canadian Patents. This would simply add to the four ongoing proceedings between the parties (this application, the 2021 California Action, the 2020 BC Action, and the motion to vacate brought in the 2015 California Action).

[71] I therefore conclude that Seismotech has not met the first branch of the *Amchem* analysis.

(c) *There is no juridical advantage it would be unjust to deprive Mr. Forootan of*

[72] The second step in the *Amchem* analysis is to assess whether the requested injunction would deprive the foreign plaintiff of "some personal or juridical advantage that is available" in the foreign forum: *Amchem* at pp 932–933. Seismotech argues there is no juridical disadvantage

to Mr. Forootan in having to proceed in Canada. Indeed, it argues there would be a juridical advantage to doing so, since it would avoid Mr. Forootan having to later bring an action in Canada to enforce any California judgment, and would avoid any concerns about Canadian recognition of such judgment.

[73] In my view, having a contractual dispute determined in a single forum instead of multiple forums simultaneously can be considered a juridical advantage. The fact that Mr. Forootan could bring a separate claim in this Court (or another Canadian court) in respect of the Settlement Agreement and the Canadian Patents does not mean he would not be deprived of the juridical advantage of pursuing one action rather than two on the same contract.

[74] That said, I cannot conclude that depriving Mr. Forootan of this juridical advantage would go so far as being an “injustice” in the circumstances, as required by the *Amchem* analysis. The parties may well end up litigating in multiple jurisdictions, given that they have signed agreements in multiple jurisdictions and have intellectual property in multiple jurisdictions. The orderly conduct of litigation suggests that each issue ought to only be determined once. However, the addition of a further proceeding in an already crowded litigation landscape might not itself rise to the level of injustice.

[75] Seismotech also points to the timing of the 2021 California Action as indicative of the inappropriateness of Mr. Forootan’s conduct in starting foreign litigation. It argues there would be an “inter-jurisdictional procedural nightmare” if Mr. Forootan can continue his claims against

the Canadian Patents in the California State Court when this proceeding is already underway in respect of the same Canadian Patents.

[76] I cannot accept that this is a material factor in the circumstances. While Mr. Forootan started the 2021 California Action just weeks after Seismotech started this litigation, the context is not limited to those two proceedings. Mr. Forootan first sought the same relief from the California District Court. While that action was brought in the wrong court, it forms part of the background to the 2021 California Action, which was brought after the California District Court dismissed the 2020 District Court Action without prejudice to refile in state court. Seismotech started its own action in Canada (the 2020 BC Action) after Mr. Forootan started the 2020 District Court Action. It then started this application, seeking overlapping relief to the 2020 BC Action, in the period between Mr. Forootan's two proceedings in California. In this broader context, I can draw little from the timing of the 2021 California Action or the fact that there are several proceedings all of which make claims to the Canadian Patents and some of which also make claims to the US Patents.

[77] Normally, a party affected by an anti-suit injunction motion, such as Mr. Forootan, would put forward other potential juridical disadvantages. In this case, he has not done so and could not do so, given his failure to appear in the proceeding and his not being served with this motion as a result.

[78] On balance, based on the record before me, I cannot conclude Mr. Forootan would have been unjustly deprived of a juridical advantage if the first step of the *Amchem* test had been met and the requested anti-suit injunction were issued.

(d) *The lack of a stay request in the California State Court speaks against issuing an anti-suit injunction*

[79] While it is not determinative given my conclusions above, I am of the view that Seismotech's failure to seek a stay of the 2021 California Action from the California State Court speaks against issuing the requested injunction. Given the significance of this issue, I will provide my reasons for this view notwithstanding my conclusions on the merits.

[80] It is in keeping with principles of comity that a foreign court be asked by a litigant to cease its own proceedings rather than being told by a domestic court, via an order to a litigant, that its proceedings should cease. It is therefore preferable for a stay to be sought in the foreign court before an anti-suit injunction is requested in the domestic court: *Amchem* at pp 930–931; *Li* at paras 42–43, 46. The foreign court's conclusion may provide a full answer or provide relevant guidance to the domestic court: *Veritas Investment* at para 49.

[81] Seismotech has not asked the California State Court to stay the 2021 California Action. Nor has Mr. Baraty. Seismotech argues this should not act as a bar to an anti-suit injunction.

[82] Seismotech underscores Justice Sopinka's description of the obligation to first seek a stay in the foreign court as "preferable." It notes that the Ontario Superior Court of Justice has

recognized on a number of occasions that a stay need not have been sought in the foreign proceeding: *Hudon v Geos Language Corp*, 1997 CanLII 16250 (Ont Div Ct) at paras 22–23; *Dent Wizard International Corp v Brazeau*, [1998] OJ No 5336, 31 CPC (4th) 174 (Gen Div) at paras 16–19; *Bell’O* at paras 11–14; *Precious Metal* at paras 18, 23–34. I agree based on both *Amchem* and these decisions that an unsuccessful stay in the foreign jurisdiction is not invariably required before an anti-suit injunction can be obtained. However, this does not make it simply optional: *UD Trading Group Holding PTE Limited et al v TAP Private Capital Limited*, 2021 ONSC 1957 at para 59. As *Amchem* makes clear, the “preference” is based on important principles of judicial comity that dictate that a Canadian court should only rarely pre-empt a foreign court’s opportunity to address whether an action before them is properly brought: *Amchem* at pp 930–931. Either a stay should have been unsuccessfully brought in the foreign jurisdiction or there should be compelling reasons for not having done so.

[83] The factual circumstances and the reasons for not seeking a stay are thus central to assessing whether the failure to do so is fatal to an anti-suit injunction motion. The Ontario cases cited by Seismotech are instructive. In *Hudon*, an Ontario resident sued her former employer, a Japanese company, in Ontario in connection with an accident that occurred in China that left her permanently disabled. The company sought a stay in Ontario based on *forum non conveniens*, which was dismissed. It then started proceedings in Japan seeking a declaration as to the interpretation of the contract. The plaintiff’s injuries rendered her unable to travel to Japan to defend that lawsuit: *Hudon* at paras 3–11. The Divisional Court concluded that the failure to seek a stay in Japan before seeking an anti-suit injunction was not in itself a ground to set that injunction aside: *Hudon* at paras 22–23.

[84] *Hudon* was applied in *Dent Wizard*. In that case, an employer first started proceedings in Ontario regarding acts in Ontario. After the defendant employee, an Ontario resident, defended the action and the discovery process was underway, the employer started an arbitration in Missouri raising the same allegations and seeking the same relief: *Dent Wizard* at paras 2–6, 11. In these circumstances, Justice Webber concluded that the failure to seek a stay of the arbitration in Missouri was not fatal: *Dent Wizard* at paras 17–19. Among other factors, the Court noted that in a similar action against another party, a stay request by an Ontario resident had been rejected: *Dent Wizard* at para 17.

[85] *Hudon* was also applied in *Bell'O*. There again, the plaintiffs first started proceedings in Ontario. After being unsuccessful in obtaining an injunction from the Ontario courts, the plaintiffs started another action in New Jersey, with claims arising out of the same factual matrix and a similar request for injunctive relief: *Bell'O* at paras 3–6. Despite its vagueness, Justice Nordheimer accepted the defendants' uncontradicted evidence that it would be "prohibitively expensive" to retain and brief US counsel to bring a stay action in New Jersey: *Bell'O* at paras 12–14. He therefore found the failure to seek a stay in New Jersey was not fatal to the anti-suit injunction request.

[86] Finally, in *Precious Metal*, the defendants unsuccessfully sought a stay of the Ontario action in favour of UK courts on *forum non conveniens* grounds. The defendants nonetheless continued their UK action: *Precious Metal* at paras 5–12. Justice Campbell concluded that an anti-suit injunction should issue in respect of the UK action even though the Ontario plaintiff had not sought a stay in the UK for a number of reasons, including the plaintiff's demonstrated

impecuniosity, the fact that Ontario had already determined it was a *forum conveniens*, and the absence of any apparent juridical disadvantage to the defendants: *Precious Metal* at paras 23–27, 32–33.

[87] As can be seen, none of these situations are much like the current case. In *Hudon*, both expense and the health of the plaintiff spoke against requiring the foreign stay. In *Dent Wizard* and *Bell'O*, the plaintiffs had themselves first started Ontario proceedings before then starting foreign proceedings. In *Hudon* and *Precious Metal*, the defendants had already unsuccessfully litigated the *forum conveniens* issue in Ontario. In other decisions, the Ontario Superior Court has emphasized the importance of pursuing a stay. In *UD Trading*, for example, Justice Gilmore noted that the parties were large and sophisticated, and found their failure to seek a stay elsewhere made it impossible for the Court to apply the *Amchem* assessment based on *forum non conveniens*: *UD Trading* at paras 56–61.

[88] The BC Supreme Court has expressed the proposition more forcefully, indicating that the “definitive law” in British Columbia is that an anti-suit injunction may not be brought until the foreign court has had an opportunity to rule on a *forum non conveniens* application: *McMillan v McMillan*, 2012 BCSC 32 at para 17; *Quigg v Quigg*, 2018 BCSC 853 at para 55.

[89] Seismotech raises three grounds why it is not required to first seek a stay in California. First, it says it is not a named party in the 2021 California Action so it may not have standing to seek a stay. Not being a party to the foreign litigation is not fatal to an anti-suit injunction motion, even if it means it is not a conventional one: *Shaw v Shaw*, 2007 CanLII 27337 (ON SC)

at paras 19, 23. However, in my view it does not speak materially in Seismotech's favour in these circumstances. If Seismotech has enough of an interest in the 2021 California Action to ask this Court for an anti-suit injunction, it should have enough of an interest to seek standing or relief from that Court.

[90] Second, Seismotech argues that it does not have the resources to litigate in multiple jurisdictions, and that Mr. Baraty also does not have resources to personally fund further litigation for Seismotech in California. I recognize that financial pressure may be a material factor in assessing the need to seek a foreign stay: *Bell'O* at paras 12–14. However, the argument rings somewhat hollow in the context of Seismotech having commenced two different proceedings in Canada, and Mr. Baraty having recently brought motions in both the 2020 District Court Action and the 2015 California Action.

[91] Other than Mr. Baraty's statement that he was advised by his counsel (who is also a member of the California State Bar and represents Mr. Baraty in the California proceedings) that it would be "very expensive" for Seismotech to bring a stay application in the California State Court, I have little information as to the relative cost of seeking a stay in that Court and seeking an anti-suit injunction here. Similarly, while Seismotech contends that the courts in the United States are not on a "loser pay" system, I note Seismotech has also not sought its costs of this motion. Further, the California District Court's recent limited costs award to Mr. Baraty was based on it not having jurisdiction over the agreement Mr. Baraty relied on for his costs claim.

[92] It is also relevant that, as discussed above, the effect of Seismotech's requested anti-suit injunction is not to stop the 2021 California Action, but to divide it in two: to have the enforceability of the Settlement Agreement and the 2019 California Judgment against the Canadian Patents litigated in Canada, and to have the enforceability of the same agreement and judgment against the US Patents and other assets litigated in California. An argument that it is too expensive to seek an order in the foreign jurisdiction is less persuasive in this context.

[93] Third, Seismotech notes that the '189 Patent has expired, and four of the remaining Canadian Patents expire at the end of this year. It argues that given the decreasing value of the patents with the passage of time, it would suffer significant prejudice if required to seek a stay in California. These arguments of delay and prejudice are undermined by the fact that Seismotech did not take steps to void the assignments in the PSA until the 2020 BC Action was started, many years after Mr. Forootan is said to have failed to live up to the Capital Promise. It also did not bring this motion for an anti-suit injunction until some four months after the 2021 California Action was started. This Court is cognizant of the need for urgency where expiring rights are at stake. But it should not overlook important issues of comity on grounds of urgency when a party has itself let time pass before acting.

[94] I conclude Seismotech has not shown this to be a case where an anti-suit injunction should issue despite it not having first sought a stay in the California State Court. While this might be sufficient to deny Seismotech's request, I need not decide this given my conclusions on the main elements of the *Amchem* analysis.

IV. Conclusion

[95] I conclude that Seismotech has not established that this is one of the rare circumstances that the Court should interfere with litigation in a foreign court through an anti-suit injunction. While this Court has jurisdiction to decide contractual issues pertaining to ownership of Canadian patents, other courts may also have jurisdiction to address such contractual issues where there is a real and substantial connection between the dispute and the forum. The Superior Court of the State of California, County of Orange, may ultimately decide it lacks jurisdiction or that it is not the appropriate forum to decide those issues. For purposes of the requested anti-suit injunction, however, I find that that Court could reasonably conclude it has the jurisdiction to decide them and is the appropriate forum to do so.

[96] The motion is therefore dismissed. No costs were requested or are appropriate in the circumstances.

ORDER IN T-276-21

THIS COURT ORDERS that

1. The motion is dismissed.
2. There is no order as to costs.

“Nicholas McHaffie”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-276-21

STYLE OF CAUSE: SEISMOTECH SAFETY SYSTEMS INC v IRADJ
FOROOTAN ET AL

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: JULY 14, 2021

ORDER AND REASONS: MCHAFFIE J.

DATED: JULY 21, 2021

APPEARANCES:

Simon Lin

FOR THE APPLICANT

SOLICITORS OF RECORD:

Evolink Law Group
Burnaby, British Columbia

FOR THE APPLICANT