SUPERIOR COURT

(Class action)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

Nº: 500-06-000530-101

DATE: **27 April 2011**

PRESIDED OVER BY: THE HONOURABLE BENOÎT EMERY, J.C.S.

ASSOCIATION CANADIENNE CONTRE L'IMPUNITÉ (A.C.C.I.)

Petitioner

vs

ANVIL MINING LIMITED

Respondent

JUDGMENT

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[1] The court has been asked for a declinatory exemption to be applied to a request for authorization of a class action.

I - THE FACTS :

[2] This is how the High Military Court of the Democratic Republic of Congo (hereafter, the "Congo") summarized the events of 13, 14 and 15 October 2004 in Kilwa, in the Congo.

> Thursday 13 October 2004, at 2 a.m., the coastal town of KILWA was attacked by insurgents coming from ZAMBIA, belonging to the Revolutionary Movement for the Liberation of KATANGA (MRLK), led by Commander Alain KAZADI MUKALAYI.
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> After the complete routing of the Armed Forces of the Democratic Republic of CONGO (FARDC), the coastal town of KILWA fell into the hands of the insurgents.
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> On the morning of Friday 14 October 2004, Commander Alain KAZADI MUKALAYI held a public meeting in the centre of KILWA, in "TSANGA NA MAYI" square, during which he announced the liberation and independence of KATANGA. He recruited large numbers of men of all ages, giving each man the sum of $300 (three hundred US dollars) and a weapon.
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> He then began to loot shops and warehouses, as well as the fuel supplies of the company Anvil Mining Congo (AMC). He then distributed these provisions to the whole population, civilian and police, who received him as a liberator, welcomed him, and joined his Movement.
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> When he was apprised of the situation, the President of the Republic ordered the 6th Regional Military Commander at LUBUMBASHI to retake KILWA at all costs within 48 hours. The commander therefore decided to organize a rapid counter-attack by the 62nd Infantry Brigade based in PWETO and led by Colonel ILUNGA Adémar.
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> Confronted with the serious problem of transporting troupes from PWETO and LUBUMBASHI to KILWA, the Governor of KATANGA, who had been contacted by the 6th Regional Military Commander, addressed a requisition order to ANVIL MINING CONGO, which has a port in KILWA and whose mine site is situated at DIKULUSHI, 55 km from KILWA. AMC was asked to supply the army with the logistical support necessary to retake KILWA.
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> To fulfil this request, ANVIL MINING CONGO provided the 62nd Infantry Brigade with three large trucks, a jeep, and provisions. A plane which was evacuating Anvil personnel to LUBUMBASHI was then used to transport FARDC troops to reinforce the 62nd Infantry Brigade in KILWA.

> Approaching KILWA on 15 October 2004, the defendant, Colonel ILUNGA Adémar sent messages in which he ordered the civilian population to leave the town in order to be safe from the imminent conflict between the two opposing forces.
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> On that same date, 15 October 2004, at around 3 p.m., the 62nd Infantry Brigade commanded by the defendant, Colonel ILUNGA Adémar, fired shells from their position at the naval base and airport. The insurgents responded in similar fashion. After three hours of combat which caused deaths and injuries on both sides, and led to some thatched-roof houses catching fire, the FARDC regained control of KILWA.
>
> The result of this skirmish is that the FARDC lost 15 lives; on the enemy's side, Commander Alain KADAZI MUKALAYI was seriously injured. He was transferred to LUBUMBASHI, where he later died.

[3] ACCI's version of events differs. According to ACCI, a hundred civilians were killed in KILWA (population c. 48,000). The petitioner contests the claim that Anvil was forced by the Congolese government to provide logistical support on 14 and 15 October 2004 in Kilwa. In its request for the authorization of a class action, the petitioner claims:

> **2.136** If Anvil had acted in a reasonably cautious manner, it would have immediately ceased all form of collaboration with the FARDC by withdrawing all form of logistical support. Furthermore, it would have listed all crimes committed and would have denounced them;
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> **2.137** Instead, Anvil had kept silent about what it should have denounced, thereby becoming complicit in the crimes committed;
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> […]
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> **2.165** It is evident that the atrocities committed by the FARDC against the population of Kilwa with the assistance and knowledge of Anvil constitute crimes against humanity, and that in making itself complicit in these crimes, Anvil assumes responsibility under Congolese law;
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> […]
>
> **2.172** And yet Anvil did not evaluate the risks, however obvious, of providing logistical support to a military force known for its brutality;
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> **2.173** Anvil did nothing to mitigate the negative consequences that were, however, very foreseeable;
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> **2.174** Anvil did nothing to prevent its equipment from being used to commit crimes, behaviour which is all the more at fault because Anvil maintained control over the equipment through its security agents and drivers;

> […]
>
> **2.176** Anvil did not record and report the serious violations of the rights of the victims, claiming falsely not to have any knowledge of them;
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> […]
>
> **2.179** In view of the above, it is obvious that by its complicity in the serious crimes committed by the FARDC, Anvil committed several offences which directly caused the harm suffered by these members and which invoke, by this very fact, Anvil's responsibility;

[4] After having been unsuccessful before the Congolese courts, and later before the Australian authorities, the petitioner now refers the case to a Quebec court in order that Anvil respond to its alleged offences committed in Kilwa in October 2004.

II - THE PARTIES :

[5] Anvil Mining Limited is a Canadian mining company created in January 2004 in Northwest Territories. Its head office is situated in Perth, Australia. Anvil's primary, if not only, activity is the exploitation of a copper and silver mine in Dikulushi in the Congo.

[6] Since 2005, Anvil has leased commercial premises in the Place Ville-Marie in Montreal. Two employees work there: the vice president of corporate affairs and a secretary working 30 hours per week.

[7] According to the petitioner, Anvil emerged from the reorganization of the Australian company Anvil Mining Management NL in 2004. Also according to the petitioner, this reorganization was in part motivated by the desire to have access to the Canadian capital markets. Anvil is listed on the Toronto Stock Exchange as well as on those of Australia and Berlin.

[8] The Canadian Association Against Impunity (CAAI – *Association canadienne contre l'Impunité* -ACCI) is the name of the petitioner.

[9] The petitioner was formed following a joint initiative of five non-governmental organizations with the principal aim of undertaking the present class action: Association contre l'Impunité pour les droits humains (ACIDH) Association Africaine de Défense des Droits de l'Homme (ASADHO), the Canadian Centre for Internatioanal Justice (CCIJ), Global Witness and Rights and Accountability in Development (RAID).

[10] In its Articles of association, the petitioner's mission is described as follows:

To assist the victims of crimes committed by companies or persons in countries where the justice system does not allow reasonable access to justice.

To represent, in the context of a class action, the interests of the victims of the incidents of Kilwa in the Democratic Republic of Congo in 2004.

III - THE PARTIES' CLAIMS :

A) THE PETITIONER'S CLAIMS :

[11] The court reproduces the following extract taken from the petitioner's argument:

Article 3148 (2) CCQ. refers to the time the action is initiated

The respondent Anvil produces as its first argument that it had no establishment in Quebec at the time of the events under discussion. Anvil has expressed its preference for the case to be pursued in the place where the company was, rather than where it is now. Yet the text of the Article, case law and common sense demonstrate that what is relevant is not when the events happened but when the application is filed.

With respect, it seems a little curious for a defendant to state that it would prefer for the case to be heard before a court in a jurisdiction where it once was, but is no longer, based.

In the present case, Anvil Mining Limited (hereafter "Anvil") is a Canadian company whose principal Canadian establishment has been in Quebec since 2005. Evidence shows that it carries out activities there which are connected to the litigation.

The dispute is related to Anvil's activities at its Quebec establishment

Case law has a broad interpretation of the notion of "activities" for the purposes of Article 3148(2) CCQ. As such, it is not at all necessary for the decision relating to the activity at issue to be taken at the establishment in Quebec: it is enough that the activity at issue take place in Quebec and that the defendant have an establishment there.

In the present case, the dossier demonstrates that the petitioner's sole activity is the exploitation of African mines and that the activities of

the Montreal establishment are inextricably linked to the activities conducted in the Democratic Republic of Congo (hereafter “DRC”) or in Australia. This is enough to demonstrate that the dispute is relevant to Anvil’s activities in Quebec. Moreover, it is proven that the Montreal establishment was directly implicated in the handling of the crisis created by the events at issue.

Quebec is the appropriate forum to hear the present case

The discretionary power to refuse to hear a suit by virtue of the doctrine of *forum non conveniens* should not be exercised by the judge except in exceptional circumstances, and only if it is evident that another court would clearly be a more appropriate forum to hear the dispute.

The burden for the petitioner is not to demonstrate that another court would be better suited for hearing the dispute. Rather, the law requires proof that the Quebec court is clearly inappropriate and that another forum is manifestly more appropriate to hear the case should the present court, in exceptional circumstances, declare itself not competent.

Where several courts are equally appropriate or suited for hearing the case, without any one court having a particular advantage, there must then exist a presumption in favour of the court chosen by the party making the request: that court should *ipso facto* prevail if no other forum is clearly more appropriate.

a) The burden of proof

Within the framework of a request for a declinatory exemption, the facts alleged in the request for certification, in order to give jurisdiction to the Quebec courts, must be accepted, unless the petitioner specifically contests them. The respondent does not have to demonstrate that the alleged facts *justify* the results sought, but that they appear to justify them: the burden is therefore that of demonstration and not proof.

In the present case, several facts alleged by the respondent in its certification request have not been contested and must therefore, at this stage of proceedings, be taken as established.

b) The criteria for analysis

In analysing the doctrine of *forum non conveniens*, the judge must examine the following criteria, among other things, in order to decide if the authorities in another State are better placed to decide the dispute: 1) the place of residence of the parties, ordinary witnesses and expert witnesses; 2) the location of

the pieces of evidence; 3) the place where the contract giving rise to this application was drawn up and carried out; 4) the existence and nature of any other action being attempted overseas and progress already made in pursuit of this action; 5) the location of the respondent's assets; 6) the law applicable to the dispute; 7) the advantage enjoyed by the petitioner in the chosen forum; 8) the interest of justice; 9) the interests of both parties; 10) need to have the judgement recognized in another jurisdiction.

The Appeals Court specifies that: "No single one of these criteria should be the deciding factor in and of itself; rather, they should be examined together, bearing in mind that their consideration should clearly establish a unique forum."

c) The facts in the present case

1) The DRC is not an appropriate forum

Anvil Congo Sarl, a subsidiary of Anvil, has already been prosecuted in the DRC. Anvil claims that the trial in the DRC was serious and fair, and cites an affidavit from Professor Nyabirungu to this effect.

However, Professor Nyabirungu appears to state that as far as the civilians involved in attempting to bring the case in the DRC, including the designated member in the present application, it is *res judicata*. It is difficult to see how a forum in which the matter is *res judicata* could still be appropriate. It is not that Anvil wants the judgment handed down by the Congolese military to be recognized; Anvil wants the application to be heard in the Congo, where it is *res judicata*.

Moreover, Nyabirungu's expert opinion on the trial's fairness confirms, partly at least, a fundamental flaw of the military trial: the lack of reasoning. The trial in the Congo has been subject to a lot of criticism from several NGOs, who have catalogued several violations of natural justice. The remarks concerning the military court's verdict by the High Commissioner for Human Rights, Louise Arbour, are also eloquent. Furthermore, the Mapping Report, by the UN High Commission, explicitly cites the Kilwa trial to illustrate the dysfunctional character and the lack of impartiality and independence of military justice in the DRC.

The facts and evidence submitted by the respondent demonstrate *prima facie* that the DRC does not offer guarantees of a fair trial and, therefore, that it is not an appropriate forum.

2) Australia is not an appropriate forum

Anvil claims that a class action in Australia is still possible. The declarant S.K. Dharmananda, whom the respondent was not able to question in spite of a

request to that effect, states in his affidavit that the *Limitation Act 1935* would be relevant to the present case, but is silent as regards the consequences resulting from the application being heard in Australia. Anvil is playing on several fronts at the same time. S.K. Dharmananda's affidavit is ambiguous, both as regards the law and the statute of limitations applicable to this case.

Furthermore, according to the Dharmananda's affidavit, no civil action based on the Statute of Rome would be possible in Australia. Moreover, the fact that the victims were unable to find Australian lawyers prepared to represent them in the present case, despite efforts to this effect, is not disputed. In this respect, Anvil has not fulfilled its task of demonstrating that Australia would be a manifestly more appropriate forum.

3) Quebec is the only appropriate forum

The advantage enjoyed by the petitioners in the chosen forum, i.e. the possibility of being represented by lawyers who are prepared to see the trial through to its conclusion, is clearly more important than any disadvantages which the other party might cite. The respondent is a Quebec company, Anvil is incorporated in Canada, and its principal premises are in Quebec. Several other factors have an equal bearing on Quebec as the favoured forum.

The respondent's allegation that that majority of ordinary and expert witnesses are either in the DRC or in Australia is not supported by any evidence.

The Superior Court is the best forum, and no other forum is clearly more appropriate. In this respect, the petitioner's choice must *ipso facto* be respected. Quebec is the only forum in which they will have access to justice and will be able to avoid a denial of justice.

B) THE ARGUMENTS OF THE RESPONDENT, ANVIL :

[12] The tribunal reproduces the following extract from Anvil's argument:

BURDEN AND RELEVANT PROVISIONS

The burden of establishing the jurisdiction of the Quebec courts rests on the party instituting the proceedings.

ANVIL WAS NEVER DOMICILED IN QUEBEC – ART. 3148(1) CCQ

Art. 307 CCQ provides that "'[t]he domicile of a legal person is at the place and address of its head office."

Anvil was never domiciled in Quebec, as its head office was and is still located in Australia; Art. 3148(1) CCQ therefore cannot confer jurisdiction on the Quebec authorities.

ANVIL HAD NO ESTABLISHMENT AND WAS NOT CARRYING OUT ACTIVITIES IN QUEBEC AT THE TIME OF THE INCIDENTS; IN ANY EVENT, THE DISPUTE DOES NOT RELATE TO ITS QUEBEC ACTIVITIES – ART. 3148(2) CCQ

Art. 3148(2) CCQ gives jurisdiction to the Quebec authorities when two cumulative criteria are satisfied: the defendant, legal person, has an establishment in Quebec, and the dispute is related to the defendant's activities in Quebec;

At the time of the events in dispute, October 2004, Anvil did not have an establishment in Quebec and did not carry on any activities in Quebec; at the earliest, Anvil began carrying on activities in Quebec in June 2005 when its Montreal establishment was set-up [sic].

This combination only achieves purpose if the defendant is actually established and carrying on related activities in Quebec at the time of the events in question.

To ground jurisdiction in the carrying out of activities in Quebec at some point after the events in dispute would make the jurisdiction of Quebec courts contingent on corporate decision-making rather than on any true nexus between the events in question and Quebec.

Moreover, a contrary interpretation of Art. 3148(2) CCQ could allow the Quebec courts to exercise jurisdiction retrospectively over potentially ancient disputes which arose long before any meaningful connection to Quebec arose.

The Court must first examine what "activities" have been carried out in Montreal by Anvil since June 2005. The only activities performed by Anvil out of its Montreal establishment relate to investor relations, and starting in 2008, to communicate information concerning the Company's activities to governments.

The Court must next analyse what the dispute is about. The events in dispute concern the role allegedly played by Anvil during the repression of an insurrection by the military in Kilwa, a small village in the DRC, in October 2004.

Regardless of how the dispute is defined by Petitioner, it does not relate to the activities carried out by Anvil in Montreal since June 2005.

THE ALLEGED FAULT WAS NOT COMMITTED IN QUEBEC AND THE ALLEGED DAMAGES WERE NOT SUFFERED IN QUEBEC – ART. 3148(3) CCQ

Art. 3148(3) CCQ sets out four different grounds for the Quebec courts to assume jurisdiction:

"(1) a fault was committed in Quebec; (2) damage was suffered in Quebec; (3) an injurious act occurred in Quebec; or (4) one of the obligations arising from a contract was to be performed in Quebec. IN order to interpret "injurious act" in a manner that reflects the development of the rule and that will not render redundant the three other grounds set out in Art. 3148(3), it must refer to a damage-causing event that attracts no-fault liability".

Because Petitioner does not (and cannot) dispute that the alleged fault—aiding or facilitating (through acts or omissions) the commission of wrongful acts by the Congolese military—was committed outside Quebec, and that the alleged damages were suffered abroad, Art. 3148(3) CCQ cannot provide any basis for jurisdiction in this case.

RESPONDENT'S ARGUMENT BRIEFMOTION TO DISMISS ON THE GROUND OF *FORUM NON CONVIENS* ARTICLE 3135 CCQ

RELEVANT PROVISION

Art. 3135 CCQ provides that the Court can decline jurisdiction if it considers that a foreign court is better situated to hear the dispute:

> Even though a Québec authority has jurisdiction to hear a dispute, it may exceptionally and on application by a party, decline jurisdiction if it considers that the authorities of another country are in a better position to decide. (emphasis added)

DOCTRINE OF *FORUM NON CONVENIENS*

The doctrine of *forum non conveniens* is flexible and factual and allows the Court to decline jurisdiction on the ground that a foreign court of justice is a better suited forum.

The Superior Court of Quebec is the third tribunal seized with the present case. At least two of the organizations forming ACCI have been involved in prior legal proceedings (in the DRC and in Australia) which sought the liability of Anvil for damages as a result of the 2004 Kilwa incidents.

Unsatisfied with the outcomes of the two previous proceedings, one may wonder if Petitioner's decision to select the province of Quebec (which has very little jurisdictional connection to the litigation) for its third attempt is related to the forum's reputation for its flexible rules in class actions proceedings. One might even suggest that the absence of any alleged fault committed in Quebec plays to Petitioner's advantage in that it allows for the application of the alleged 30-year prescription of DRC law. The circumstances of the present case give rise to "forum shopping" concerns, which have been highlighted by this Court.

The Court will only decline jurisdiction in exceptional circumstances and it must analyse several criteria prior to making a decision.

Anvil never carried out any activities in Quebec related to the dispute. The *ex post facto* presence in Montreal of the Anvil establishment and of Mr. Robert LaVallière, who chose to work from Montreal for personal reasons and who's [sic] function relates primarily to investor relations and since, 2008, to communicate information concerning the Company's activities to governments.

NONE OF THE CRITERIA FAVOUR THE QUEBEC FORUM

A review of the criteria developed by the case-law makes it plain and obvious that this case presents the exceptional circumstances demonstrating that the Quebec authorities are a wholly inappropriate forum, and that the other alternative forums are clearly more appropriate to hear this dispute.

Parties' residence, that of witnesses and experts. The parties (including all of the proposed class members) reside in the DRC or in Australia. None of the witnesses with personal knowledge of the Kilwa incidents (including current or former Anvil employees) reside in Quebec.

Location of the material evidence. The relevant locations and material evidence are located in the DRC or Australia.

Existence of proceedings between the parties in another jurisdiction. The deference associated with being the first tribunal seized with a dispute is unwarranted here. The liability of Anvil for damages resulting from the 2004 Kilwa incidents has been sought twice before, in the DRC and in Australia, on behalf of the same individuals.

Location of Defendant's assets. Petitioner does not (and cannot) dispute that Anvil's principal assets are located in the DRC and Australia.

Applicable law. Petitioner alleges that the DRC law is the applicable law, including its 30-year limitation period.

Advantages conferred by the chosen forum. When considered from the perspective of the location of evidence—and omitting advantageous [sic] derived from "forum shopping"—, the Quebec forum does not confer any advantage to the proposed class.

Interests of justice. Respondent respectfully submits that the present case squarely fits with the following cautionary language used by the Court in *Rudolf Keller, supra* para. 5, at para. 60 [Tab 12]: "[L]'intérêt de la justice doit en tout temps guider le tribunal surtout lorsque le demandeur choisit un for exorbitant ne présentant aucun facteur de rattachement substantiel".[1]

Interest of the parties. The unmanageable logistics of this case would create an undue economic burden for all parties and interveners involved.

Need to have the judgment recognized in another jurisdiction. Anvil has no significant assets in Quebec which would allow the execution of a judgment rendered here. Moreover, Quebec courts should guard against proposed class actions filed on behalf of class members exclusively residing elsewhere.

3. RESPONDENT'S ARGUMENT BRIEF MOTION TO DISMISS FOR DECLINATORY EXCEPTION INAPPLICABILITY OF ARTICLE 3136 CCQ

BURDEN OF PROOF AND OPINION ALLEGATIONS

The Court seized with a motion for declinatory exception must generally take as proven the "facts" alleged in support of the jurisdiction of the Quebec courts. This mirrors the rule usually applicable to class action authorization hearings. In both these contexts, however, the respondent or defendant can dispute some of these facts, and the Court cannot consider allegations which are not facts but rather opinions, impressions and legal arguments.

LACK OF SUFFICIENT CONNECTION TO QUEBEC

The first criterion that must be met, the sufficient connection to Quebec, can be assimilated to the real and substantial connection test elaborated by the Supreme Court of Canada.

1 The interest of justice must at all times guide the tribunal, especially when the petitioner chooses a completely inappropriate forum in the absence of any substantial link.

PROCEEDINGS COULD BE AND WERE INSTITUTED OUTSIDE QUEBEC

Even if a sufficient connection to Quebec could be established, Petitioner does not (and could not) show that proceedings "cannot possibly be instituted outside Quebec" or "cannot reasonably be required" to be instituted outside Quebec.

This cannot be demonstrated in this particular case as individuals who were parties to the proceedings related to the 2004 Kilwa incidents before the Court militaire du Katanga sought the liability of Anvil and its agents for damages.

Quebec is the third forum to which this dispute is submitted. This Quebec courts should not encourage forum shopping from unsatisfied litigants.

IV - DISCUSSION :

[13] Firstly, Anvil argues that, as it is not domiciled in Quebec, Article 3148(1) CCQ. cannot apply. This is not contested by ACCI.

[14] In fact, ACCI uses Article 3148(2) CCQ. as the basis for the competence of the Quebec authorities. Article 3148(2) CCQ. states:

> **3148**. In personal actions of a patrimonial nature, a Quebec authority has jurisdiction where
>
> (1) […]
>
> (2) the defendant is a legal person, is not domiciled in Québec but has an establishment in Québec, and the dispute relates to its activities in Québec.

[15] ACCI must therefore satisfy two conditions: firstly, that Anvil has an establishment in Quebec, and secondly, that the dispute is relevant to its activity in Quebec.

[16] Anvil claims that there is also a third condition: that the establishment must have existed at the time the facts and events happened, and not at the time that the action is begun. The tribunal must immediately discard this supposed third condition, which has no basis in any point of law. It will suffice to cite the Court of Appeals in *Rees v. Convergia*[2]:

> [48] If we return to 3148 CCQ., we note that the facts pertaining to jurisdiction provided for in indents 1 and 2 (domicile or residence of the

2 *Rees v. Convergia*, 2005 QCCA 353.

> defendant, or the legal person's establishment) must necessarily exist at the moment the action is pursued.
>
> [49] The same cannot be said of indents 3, 4 or 5, or of the last paragraph of Article 3148 CCQ. In these cases, the conditions attributing jurisdiction must necessarily have existed before the appeal is initiated.

[17] Anvil claims, however, that the premises it leases at Place Ville-Marie in Montreal are only occupied by two employees, including one secretary who works part time; furthermore, that this office only concerns itself with communication between the company and its North American investors. Consequently, Anvil asserts that the two conditions laid out in Article 3148(2) CCQ. are not satisfied.

[18] With the authorization of the tribunal, Anvil has produced an affidavit to support its claims from Robert LaVallière, who is one of the two Anvil representatives who works at Place Ville-Marrie. Robert LaVallière also gave testimony at the hearing.

[19] This evidence revealed that Robert LaVallière was hired by Anvil on 12 April 2005. He holds the post of Anvil's Vice President of Corporate Affairs. A number of weeks after being hired, Robert LaVallière, acting for Anvil, rented commercial premises of 170 square feet located at Place Ville-Marie in Montreal.

[20] Clause 5 of the lease, signed 29 April 2005 between the owner of Place Ville-Marie and Anvil, reads:

> USE OF PREMISES
>
> **5.** The Tenant agrees that the Premises are for the use of the Tenant only and no one else and only, to carry on a business in the mining industry and activities related thereto, it being understood that the Tenant shall not carry on any other business.

[21] Robert LaVallière holds a university degree in geology as well as an MBA in advanced business studies from the University of Montreal. He is also a member of the Quebec Order of Geologists and the Canadian Institute of Mining and Metallurgy. In 2005, his title was Vice President, Investor Relations. In his affidavit of 25 March 2011, Robert LaVallière describes his functions:

> [13] Since June 13, 2005, my role with Anvil is to provide information to Anvil's shareholders, other investors or potential investors, the security market (brokers), the media and to security analysts or research analysts about the Company;
>
> [14] I have never been involved in any decision-making with respect to the management of, or the operations of, the Dikulushi mine or any other of the Company's mining and development operations in the Democratic Republic of Congo ("DRC"). Those decisions were, and are still, taken principally from Anvil's

> head office located in Perth, Australia, and/or from Anvil's office located in Lubumbashi, DRC.

[22] Robert LaVallière was questioned on 31 March 2011 under Article 93 CPC, regarding his affidavit signed six days earlier. In the course of questioning, he explained that his role also consists of maintaining relations with the government of the Congo:

> R – I take the salient facts, facts about the company, then I say: "We have this number of employees at that mine. These are the economic implications. We pay royalties, we pay taxes, we pay salaries, we undertake social programmes." That's my role with the government of the Congo (p. 116 of the transcript – unofficial translation)

[23] Robert LaVallière mentioned that that part of his duties was to go to the province of Katanga in the Congo. He added, however, that his primary role was to maintain relations with North American investors from the Montreal office.

[24] It emerges from the evidence that although Robert LaVallière went more than once to the Dikulushi Mine in the Congo, he had no part in the decisions concerning the events that transpired at Kilwa in October 2004.

[25] In this case, the tribunal must decide whether the dispute relates to Anvil's establishment at Place Ville-Marie in Montreal in terms of Article 3148(2) CCQ.

[26] To begin with, the tribunal is reminded of certain basic principles of jurisdiction in international private law, as established by case law. In the case of *Spar Aerospace Ltée* v. *American Mobile Satellite Corp.*[3], the Supreme Court writes:

> [31] First, it appears that the procedural context for challenging jurisdiction at a preliminary stage supports the concept that Art. 3148 establishes a broad basis for a court to assert jurisdiction. In order to challenge jurisdiction in a preliminary motion, one must bring a declinatory motion to dismiss under Art. 16 *C.C.P.* Case law has established that a judge hearing such an application should not consider the merits of the case, but rather, is to take as given the facts that are alleged by the plaintiff in order to bring it within the competence of the Quebec courts [case law omitted].
>
> [32] The declinatory motion allows the respondent to challenge the facts alleged by the plaintiff. Indeed, in this case, the applicants presented evidence to demonstrate that the

3 *Spar Aerospace Ltée* v. *American Mobile Satellite Corp.*, [2002] R.C.S. 205.

> incentive payments were made to the respondent's head office in Toronto and not to the respondent's establishment in Ste-Anne-de-Bellevue […]
>
> [45] The alternative argument advanced by Motient and Viacom is that jurisdiction cannot be assumed by Quebec courts on the basis of either an "injurious act" or "damage" in Quebec under Art. 3148 because this Court has enunciated a further constitutional requirement in *Morguard* and *Hunt*, that there must be a "real and substantial connection" between the forum and the action in order for jurisdiction to be assumed […]
>
> [49] […] In any event, the criterion of a "real and substantial" link is a common law principle that should not be imported into the civil law. Similarly, it would be contrary to principles of interpretation to add this criterion into Art. 3148 where it is also not specifically mentioned […]
>
> [54] […] In my view, there is nothing in these cases that supports the appellants' contention that the constitutional "real and substantial connection" criterion is required in addition to the jurisdiction provisions found in Book Ten of the *CCQ.* […]
>
> [58] There is abundant support for the proposition that Art. 3148 sets out a broad basis for jurisdiction […]

[27] Until 2009, there was a certain amount of controversy around the applicability of the words, "the dispute relates to its activities in Quebec," to Article 3148(2) CCQ.

[28] The Court of Appeal settled this debate in the case of *Interinvest (Bermuda) Ltd.* v. *Herzog*[4]. The Court writes:

> [36] […] Both criteria must be satisfied, but it is not necessary that the decision relating to the activity in dispute be taken at the establishment in Quebec; it is enough that the activity in dispute take place in Quebec and that the defendant have an establishment there […]
>
> [40] This interpretation is much more liberal than the interpretation offered by the authors who criticized the *Rosdev* judgement, but it seems to me that it tallies more neatly with the generous approach adopted by the courts in relation to the other clauses of Art. 3148 CCQ., particularly paragraph 3148(3). In *Spar Aerospace Ltée* c. *American Mobile Satellite*, [2002] 4 R.C.S. 205, Judge LeBel, of the Supreme Court, speaks of "the broad basis for jurisdiction set out in Art. 3148" (paragraphs 57-59).
>
> [41] <u>In conclusion, a foreign legal person with an establishment in Quebec can be sued if the matter in dispute relates to its activity in Quebec,</u>

4 *Interinvest (Bermuda) Ltd.* c. *Herzog*, 2009 QCCA 1428.

> Even if the decisions relating to that activity were not taken by the Quebec establishment. [our emphasis]

[29] It appears that the role of Robert LaVallière, Vice President of Corporate Affairs in Montreal, is necessarily linked to the exploitation of the Dikulushi Mine in the Congo, since that is the primary, if not the only, activity that Anvil engages in. Whether he goes to the Congo to maintain links with the local government or stays in Montreal to encourage business people to invest in the company, Robert LaVallière's activities are necessarily connected to the exploitation of the Congolese mine where, voluntarily or otherwise, local employees provided logistical support to the army to counter an insurrection in Kilwa in October 2004. The court is reminded that case law has often reasserted the broad jurisdictional basis set out in 3148 CCQ., even if it means that courts might intervene on the basis of Article 3135 in cases where the connection is neither real nor substantial.

[30] Anvil's subsidiary argument is that if the court concludes that it has jurisdiction by virtue of Article 3148(2) CCQ., it must decline this jurisdiction by virtue of Article 3135 CCQ. concerning *forum non conveniens*.

[31] In 2003, the Superior Court had the opportunity to weigh in on the origins of the *forum non conveniens* rule. Thus, in the case of *Rudolf Keller SRL* c. *Banque Laurentienne du Canada*[5], the Court writes:

> [51] In comparative law, two systems exist side by side:
>
> a system in the Romano-Germanic tradition, which applies civil law (as in Quebec); these jurisdictions generally favour strict rules of jurisdiction; and
>
> a system in common law countries, which, in contrast, privilege flexible rules of jurisdiction, rules which are most often established by precedent.
>
> [52] The doctrine of *forum non conveniens*, of Scottish origin, is a creation of common law. It was originally developed in order to forbid the petitioner from choosing a wildly inappropriate forum, that is, a jurisdiction having little or no connection with the matter in dispute […]
>
> [53] Generally speaking, civil law jurisdictions do not recognize the doctrine of *forum non conveniens*. These countries favour strict rules of competence. Thus, once a court has been properly seized of a case in conformity with internal rules of jurisdictional competence, it may not refuse to exercise jurisdiction. In principal, this system strengthens the position of those on trial in their legal dealings with persons from overseas; there are fewer imponderables relating to the determination of the court

5 *Rudolf Keller SRL* c. *Banque Laurentienne du Canada*, 2003 CanLII 34078 (QC C.S.).

to which any potential dispute might be referred. On the other hand, these rules, created in the abstract, are not always adapted to a given legal situation.

[54] At the time of the 1994 reforms of the Civil Code, and after some equivocation, lawmakers decided that the doctrine of *forum non conveniens* would apply in Quebec. Among jurisdictions with civil law, then, Quebec is unique in applying this doctrine.

[55] The rule of *forum non conveniens* is decreed in Article 3135 of the Civil Code of Quebec:

> **3135.** Even though a Québec authority has jurisdiction to hear a dispute, it may exceptionally and on an application by a party, decline jurisdiction if it considers that the authorities of another country are in a better position to decide.

[56] Quebec is clearly distinguished from other civil law jurisdictions, which probably explains the condition whereby the court may only decline jurisdiction in exceptional circumstances.

[57] Additionally, the exceptional nature of this declinatory measure is not generally found in the case law of common law jurisdictions such as the United States or the United Kingdom. What is at issue here is therefore a purely local situation, considering, no doubt, the uniqueness of this declinatory measure in a jurisdiction in the Romano-Germanic tradition.

[58] Furthermore, the recent decision by the Supreme Court of Canada in the *Spar Aerospace Ltd*[6]*.* case makes the exceptional nature of this rule, as applied in Quebec, clear:

> It should be kept in mind that, when applying Art. 3135, the discretion to decline to hear a case on the basis of *forum non conveniens* should *only* be exercised exceptionally. This exceptional character is reflected in the wording of Art. 3135 and is also emphasized in the case law. Under this test, the court must determine whether there is another forum that is clearly more appropriate. Article 3135 CCQ. does not establish a sovereign rule of judicial discretion, which continues to be subordinate to the rules of jurisdiction established by the law and collateral to it. The starting point should be the principle that the plaintiff's choice of forum should be declined only in exceptional circumstances, when the respondent would be exposed to great injustice as a result. I insist on the exceptional quality of the *forum non conveniens* doctrine. Courts may unwittingly create uncertainty and inefficiency in cases involving private international law issues, resulting in greater costs for the parties. In my opinion, such uncertainty could seriously compromise the principles of

6 *Spar Aerospace Ltd.* v. *American Mobile Satellite Corp.*, [2002] CSC 78.

> comity, order and fairness, the very principles the rules of private international law are set out to promote. [Our emphasis] […]
>
> [62] The burden is incumbent on the petitioner. In reference to the conditions laid out above, the petitioner must demonstrate, not only that the Quebec court is clearly less appropriate, but also that another court is clearly better suited to settle the dispute between the two parties. In this respect, the declinatory exception has to meet a double standard.
>
> [63] […] The plaintiff enjoys the prerogative of referring the case to the appropriate court and, short of exceptional circumstances which would expose the respondent to great injustice, the court must respect this privilege.

[32] In this case, Anvil is not in a position to say which State, Congo or Australia, would be the most appropriate forum.

[33] Both these States have had the matter of the Kilwa incidents of October 2004 referred to them.

[34] In its class action request, ACCI alleges:

> 2.203 Aside from the fact that the justice system provides no guarantees of a fair and equitable trial, a trial was held before the Katanga Military Court, in the course of which some of the victims who are members of the group constituted themselves as *parties civiles*;
>
> 2.204 And yet, in a decision which constitutes a flagrant denial of justice, as will be discussed further, the Katanga Military Court declared the civil claims to be unfounded and rejected them, as appears in a copy of the decision, exhibit **R-39**. It would therefore be completely false to claim that the DRC could be a more appropriate forum than Quebec for these victims, because they have no further recourse available in the DRC;
>
> 2.205 As for Australia, 61 members of the group were briefly represented by the Australian law firm Slater & Gordon, which petitioned the Superior Court of Western Australia to obtain disclosure of proof prior to a lawsuit against Anvil's Australian entity Anvil Mining SL, as well as Anvil itself;
>
> 2.206 After the respondent had questioned the validity of the lawyers' instructions, the DRC government interfered with efforts to confirm these instructions by refusing to allow the victims to travel from Kilwa to Lubumbashi;
>
> 2.207 Following this, the victims' Congolese lawyers were subjected to death threats and the law firm Slater & Gordon withdrew from the proceedings;

2.208 Despite efforts by RAID and the Human Rights Law Resource Center in Melbourne, the victims were unable to find other lawyers who were prepared to take on the case;

2.209 And yet it is essential that the victims be able to rely on lawyers who are ready to act and able to take on the very onerous demands of a class action such as this.

2.210 Thus there is no possibility for the group of pursuing a class action in Australia. […]

2.223 Unfortunately, the trial (in the Congo) soon became a parody of justice, leading to the acquittal of all the parties accused of taking part in the events at Kilwa;

2.224 Numerous violations of the rules of natural justice led to this result. These violations are recorded in part in the document entitled “The Kilwa Trial: A Denial of Justice” prepared by Global Witness, ACIDH, RAID and ASADHO/Katanga, exhibit **R-42**;

2.225 For example, the military prosecutor, who signed the indictment and who had conducted the interviews with the accused and several witnesses, was recalled to Kinshasa for a month and was put under intense pressure from President Kabila’s office to drop the proceedings, as appears notably in a report by MONUC’s Human Rights division dated 8 February 2007, exhibit **R-43**; […]

2.229 Moreover, the presiding judge refused to call several witnesses that the victims’ lawyer had requested to be summonsed, including the former provincial governor, Kisula Ngoy, a key witness on the subject of the so-called requisitioning of Anvil’s equipment and personnel, as appears notably in a letter dated 16 December 2006 from Maitre Georges Kapiamba, exhibit **R-44**; […]

2.231 The High Commissioner of Human Rights made the following observations on the Military Court’s verdict:

> “I am concerned at the court's conclusions that the events in Kilwa were the accidental results of fighting, despite the presence at the trial of substantial eye-witness testimony and material evidence pointing to the commission of serious and deliberate human rights violations".

As appears in a copy of a press statement dated 24 July 2007, exhibit **R-45**;

2.232 The High Commissioner had also criticised civilians being tried by a military , as also appears in exhibit R-45;

2.233 The judgment of 28 June 2007 was the object of an appeal which was also accompanied by a large number of violations of the rules of natural justice, as appears notably in the document "*L'appel de Kilwa – un simulacre de justice*" dated 5 May 2008, exhibit **R-46**;

2.235 The Mapping report also mentions Anvil's involvement and the difficulty of demonstrating the responsibility of a private company:

> 774. The Kilwa case demonstrated the difficulty in proving the legal responsibility of private companies in the perpetration of human rights abuses and violations of international humanitarian law, even when they are supplying arms or logistical support to armed groups. This case also showed that political interference[7] and a lack of impartiality are all the more striking when economic interests are at stake.[8] In this incident in 2004, at least 73 people were killed by the Congolese army (FARDC) in Kilwa, a town in Katanga that had fallen into the hands of a rebel group.[9] An Australian-Canadian mining company was accused of supplying the army with logistics and transport during its military operation. In 2007, in the first case of its kind, nine Congolese soldiers and three expatriate employees of the mining company were charged with war crimes and complicity in war crimes, respectively, in connection with these events. The case could have set an important precedent in terms of corporate accountability. Instead, all the defendants were acquitted of the charges relating to the events in Kilwa, in a trial by a military court that failed to meet international standards of fairness.
>
> [Notes omitted]

[35] In response to these allegations, Anvil produced (with the authorization of the court) an affidavit from Professor Raphaël Nyabirungu, dated 24 March 2011. Professor Nyabirungu has been Dean of the Faculty of Law at the University of Kinshasa since 19 March 2011. He studied in Zaïre and Belgium.

[36] Professor Nyabirungu asserts that the victims had access to justice, while acknowleding that it would have been better if Katanga's Military Court had provided stronger reasoning for its decision. Professor Nyabirungu writes:

> 9. It might be useful to clarify that normal criminal procedures apply in military courts, except those clauses which directly contravene the Code of Military Justice (Art. 129, extracts reproduced in appendix E).
>
> 10. Contrary to the opinion expressed in par. 2.202 of the Request, the victims of the Kilwa events had access to justice and were represented by well-respected lawyers recruited by or representing ASADHO and Avocats Sans Frontières (ASF) Belgium.

7 MONUC Human Rights Division, "The human rights situation in the DRC during the period of July to December 2006", 8 February 2007.

8 For a more detailed analysis of the Kilwa case and legal practice in the DRC, see Section III.

9 MONUC, *Report on the conclusions of the Special Investigation into allegations of summary executions and other violations of human rights committed by the FARDC in Kilwa (Province of Katanga) on 15 October 2004*, paras. 24 to 29.

11. Paragraph 2.203 of the Request exhibits the Petitioner's rather negative opinion of the Congolese justice system and the guarantees it offers those participating in the trial; an opinion I do not share. MONUC, ASF Belgium and ASADHO have on several occasions organized training sessions for Congolese civil and military judges, with the aim of strengthening the capacity of the justice system and their ability to judge international crimes. This is what permitted the opening of investigation and the SONGO MBOYO trial in 2006, in which the Mbandaka military court (Equateur Province), directly applying the Statute of Rome tried army personnel for crimes against humanity and sentenced them to life imprisonment. For reference, I include examples of other court cases pursued in the Congo which have given resulted in fines or other sanctions (appendix F).

12. The judgment of the Katanga Military Court in the Kilwa affair might be criticised because of the way it was written or the train of thought: the lack of reasoning or insufficient reasoning, the summary nature of the decision which does not always take the argument of all parties into account, etc. It would have been preferable, in view of the seriousness of the accusations, if the Katanga Military Court had delivered a better written and reasoned judgment.

13. However, the most authoritative doctrine states that the summary nature of military decisions cannot be used on its own as a basis for referring a case to the International Criminal Court: "Military proceedings, conducted in good faith by States, and applying the principle of criminal responsibility resulting from definitions of crimes, grounds for exemption, and general principles of criminal law, cannot lead to a referral of the case to the ICC, based solely on the fact that the proceedings are somewhat summary". Clumsy expression and lack of reasoning do not detract from the fair and equitable nature of military proceedings.

14. The weakness of expression and reasoning found in the judgment of 28 June 2007 do not put into question the correct application of the law. In the absence of evidence establishing the crimes committed by Anvil and its representatives, and particularly in light of the requisition orders made by the Government and forces of law, the Katanga Military Court was correct in finding the civil claims to be unfounded.

15. In Congolese law, the unity of civil and criminal wrongs is a sacred principle. When a judge acquits in a criminal case, he cannot then order that damages be paid. Just as a judge in a civil case could not award damages without violating the authority of *res judicata* of the criminal trial. This principle is recognized by Art. 108 of the Code of Judicial Organisation and Competence (extracts in appendix G), interpreted as enacting the maxim "*Electa una via*". This means that when a victim is constituted as a *partie civile* in a criminal prosecution, and that court has handed down a final judgment (as is the case here), it is no longer possible to refer the same case to a civil court.

16. In the Congo there exists the principle of the *unicité* of the Public Prosecutor. Thus the allegation laid out in par. 2.225 of the Request, according to which the case passed from an officer in the Public Prosecutor's office to another, is irrelevant. The magistrate who replaced Colonel NZABI, Colonel SHOMARY, is experienced in matters of international criminal law, and prepared a valuable and courageous case in the SONGO MBOYO affair.

17. Regarding para. 2.229 of the Request, in the context of Congolese law, the judge is under no obligation to hear the testimony of all the witnesses called by the parties if he judges himself to have garnered sufficient information from other facts. The judge retains his sovereign power of judgement.

[37] The Tribunal must stress, in passing, that it has not been seized, for the moment at least, by a request based on Article 3137 CCQ.

[38] It emerges, from all the above, that it is impossible to determine whether the Congolese or Australian authorities are clearly better suited to settle this dispute.

[39] In fact, at this stage of the proceedings, everything indicates that if the Tribunal dismissed the action on the basis of article 3135 C.C.Q, there would exist no other possibility for the victims to be heard by civil justice.

[40] In light of the conclusions which the tribunal has reached, it is not necessary to make a statement on Article 3136 CCQ.

FOR THESE REASONS, the tribunal :

[41] **REJECTS** Anvil Mining Limited's request for a declinatory exemption;

[42] **THE WHOLE** with costs to follow.

BENOÎT EMERY, J.C.S.

Mr Bruce Johnston
Mr Philippe Trudel
Trudel & Johnston
Laywers for the Petitioner
Association Canadienne contre l'Impunité

Mr Jean-François Lehoux
Mr Pierre-Jérôme Bouchard
McCarthy Tétrault
Laywers for the Respondent
Anvil Mining Limited

Dates of the hearings: 4, 5, 6, April 2011

BIBLIOGRAPHY

DOCTRINE :

Gérald GOLDSTEIN et Ethel GROFFIER *Droit international privé*, tome 1, Cowansville, Éditions Yvon Blais, 1998, p. 308, 348-350;

Jeffrey TALPIS, "*If I am from Grand-Mère, why am I being sued in Texas!? Responding to Inappropriate Foreign Jurisdiction in Quebec-United States Crossborder Litigation*, Montréal, Éditions Thémis, 2001, p. 23, 24, 46-51;

Jeffrey TALPIS, Shelley L. KATH, *The Exceptional as Commonplace in Quebec Forum Non Conveniens Law: Cambior, a Case in Point,* Revue juridique Thémis, (2000) 34 R.J.T. 761, p. 13-28, 31-39;

Trevor C.W. FARROW, *Globalization, International Human Rights, and Civil Procedure*, Alberta Law Review, (2003) 41 Alta. L. Rev. 671 – 712, p. 12 à 15;

Craig FORCESE, "Militarized Commerce": The Prospect of Liability for "Privatized" Human Rights Abuse, Revue de droit d'Ottawa, (1999-2000) 31 R.D. Ottawa 171 – 211, p. 18-20;

Serge GAUDET et Patrick FERLAND, « Les conflits de juridiction » dans *Contrats, sûretés et publicité des droits*, Collection de droit 2010-2011, École du Barreau du Québec, vol. 6, 2010, EYB2010CDD275, p. 8, 9;

Marie-Louise DELISLE, « Commentaire sur la décision Interinvest (Bermuda) Ltd. c. Herzog - La Cour d'appel confirme de nouveau l'interprétation libérale des facteurs de rattachement en droit international privé québécois », dans *Repères*, novembre 2009, *Droit civil en ligne* (DCL), EYB2009REP882, p. 4;

H. Patrick GLENN, « Droit international privé », dans *LA RÉFORME DU CODE CIVIL. Priorités et hypothèques, preuve et prescription, publicité des droits, droit international privé, dispositions transitoires*, t. 3, Sainte-Foy, Les Presses de l'Université Laval, 1993, n° 426;

Claude EMANUELLI, *Droit international privé québécois*, 2e éd., Montréal, Wilson & Lafleur, 2006, n0 168.

CASE LAW :

SUPREME COURT

Spar Aerospace Ltée c. *American Mobile Satellite*, 2002 CSC 78 (CanLII), [2002] 4 R.C.S. 205, par. 21, 31, 32, 42, 55, 57, 71, 75-77, 79, 81;

GreCon Dimter inc. c. *J.R. Normand inc.*, 2005 CSC 46 (CanLII), [2005] 2 R.C.S. 401, par. 33;

Bourdon c. *Stelco inc.* c. *J.R. Normand inc.*, 2005 CSC 64 (CanLII), [2005] 3 R.C.S. 279, par. 37;

Amchem Products Inc. c. *Colombie-Britannique (Workers' Compensation Board)*, 1993 CanLII 124 (CSC), [1993] 1 R.C.S. 897, par. 32, 53, 55;

Impulsora Turistica de Occidente, S.A. de C.V. c. *Transat Tours Canada Inc.*, EYB 2007-119920 (C.S.C.), par. 7;

Lubbe and al. v. *Cape Plc*, [2001] 1. W.L.R. 1545, 259 N.R. 18 (U.K. H.L.), p. 1554, 1555, 1559, 1560;

Connelly v. *RTV Corp.*, [1997] 4 All E.R. 335, p. 872 à 874;

Spar Aerospace Ltée c. *American Mobile Satellite Corp.*, 2002 CSC 78 (CanLII), [2002] 4 R.C.S. 205, par. 42, 55-57, 71;

Morguard Investments Ltd. c. *De Savoye*, 1990 CanLII 29 (CSC), [1990] 3 R.C.S. 1077, p. 1103, 1106;

Hunt c. *T&N PLC*, 1993 CanLII 43 (CSC), [1993] 4 R.C.S. 289, p. 325.

COUR D'APPEL :

Interinvest (Bermuda) Ltd c. *Herzog*, EYB 2009-161934 (C.A.), par. 13, 24, 28, 34-36, 37, 40, 41;

Rees c. *Convergia*, EYB 2005-88752 (C.A.), par. 47-50;

Canadian Oil Recovery & Remediation Enterprises Ltd. c. *McKinnon*, 2010 QCCA 620 (CanLII), 2010 QCCA 620, par. 8, 12;

Lexus Maritime inc. c. *Oppenheim Forfait G.M.B.H.*, REJB 1998-07102 (C.A.), par. 16, 19, 22, 23;

Republic Bank Ltd. c. *Firecash Ltd.*, J.E. 2004-818 (C.A.), par. 23, 34;

Lamborghini (Canada) Inc. c. *Automobili Lamborghini S.P.A.*, EYB 1996-65621 (C.A.), par. 45-48, [1996] n^0 AZ-97011075 (C.A.), p. 18-20;

Baird v. *Matol Botanical International Ltd.*, EYB 1994-56860 (C.A.), par. 5;

Bern et *Elfe Juvenile Products Inc.* v. *Bern,* EYB 1995-64873 (C.A.), par. 7, 20, 24, 37, 38;

Ville de Montréal v. *Dinasaurium Production inc.*, REJB 1999-14509 (C.A.), par. 19-21;

Perez v. *Bank of Nova Scotia*, 2003 CanLII 31473 (QC CS), 2003 CanLII 31473 (QC S.C.), par. 5, 9, 10, (confirmed on appeal [2004] n^0 AZ-04019613 (C.A.));

Oppenheim forfait GMBH v. *Lexus maritime inc.*, 1998 CanLII 13001 (QC CA), 1998 CanLII 13001 (QC C.A.), p. 7, 8;

Rudolf Keller SRL c. *Banque Laurentienne du Canada*, J.E. 2003-1950 (C.A.), par. 69, 70, 85, 91.

SUPERIOR COURT :

Rosdev investments Inc. c. *Allstate Insurance Company of Canada*, J.E. 94-1891 (C.S.), par. 18-21, 24;

Option Consommateurs c. *British Airways p.l.c.*, EYB 2010-168653 (C.S.), par. 17, 23-27, (appel rejeté dans 2010 QCCA 1134 (CanLII), 2010 QCCA 1134);

Souffrant c. *Haytian American Sugar Company*, J.E. 2007-371 (C.S.), par. 14, 17, 31-35;

Royal Bank of Canada c. *Capital Factors Inc. and Union Bank of Florida*, REJB 2004-66827 (C.S.), par. 19, 32, 36;

Procureur général du Canada c. *St-Julien Richard*, EYB 2010-175907 (C.S.), par. 8-17;

Recherches Internationales Québec c. *Cambior Inc.*, REJB 1998-08013 (C.S.);

Stag Management Canada Ltd. c. *HQ Sustainable Maritime Industries Inc.*, J.E. 2007-1458 (C.S.), par. 21, 22;

Robinson c. *Films Cinar inc.*, REJB 1997-00255 (C.S.), par. 7;

Mondino v. Octagon Capital Corporation, 2004 CanLII 21405 (QC CS), 2004 CanLII 21405 (QC S.C.), par. 4, 8;

MNC Multinational Consultants Inc. v. *Dover Corporation*, REYB 1998-06856 (S.C.), par. 17;

Bil'In (Village Council) c. *Green Park International Inc.*, 2009 QCCS 4151 (CanLII), 2009 QCCS 4151, p. 335;

Goyette c. *GlaxoSmithKline inc.*, 2009 QCCS 3745 (CanLII), 2009 QCCS 3745, par. 95;

Option Consommateurs c. *Infineon Technologies, a.g.*, 2008 QCCS 2781 (CanLII), 2008 QCCS 2781, par. 52;

Union des consommateurs v. *Bell Canada*, 2011 QCCS 118 (CanLII), 2011 QCCS 118, par. 26

Souffrant c. *Haytian American Sugar Company*, 2006 QCCS 5580 (CanLII), 2006 QCCS 5580, par. 40, 41;

E.B. c. *B.K.*, [2003] N^{0} AZ-50185263 (C.S.), par. 27, 28;

Rudolf Keller SRL c. *Banque Laurentienne du Canada*, J.E. 2003-1950 (C.S.), par. 52, 60, 65, 69.

COURT OF QUEBEC :

Wester c. *Standard Life du Canada*, EYB 2009-159244 (C.Q.), par. 22.