Broad Grounds for Service of Australian Originating Process Outside of Australia in Tort Cases

Heilbrunn v Lightwood PLC [2007] FCA 433 is a recent Federal Court of Australia decision which evidences the breadth of rules for service of originating process outside of Australia in tort cases, which are common to all Australian superior courts except the Supreme Court of Western Australia.

A vintage Vauxhall motor car made in 1921, owned by the Australian-resident plaintiff, was damaged while being loaded into a container in England by an employee of the English-based defendant. The Vauxhall had been shipped to England from Australia to participate in a celebration of the centenary of production of Vauxhalls and the damage occurred while it was being loaded for the return journey. Repairs to the car were undertaken in Australia upon its return.

The plaintiff sought leave to serve the defendant, which did not carry out business in Australia, in England pursuant to the provision of the *Federal Court Rules* permitting service overseas in a proceeding 'based on, or seeking the recovery of, damage suffered wholly or partly in Australia caused by a tortious act or omission (wherever occurring)'. Unlike the rules of some other Australian superior courts, the *Federal Court Rules* require leave of the Court before service can be made out of the jurisdiction.

Following the interpretation adopted in relation to similar rules by other Australian courts, the Federal Court held that the rule did not require that the injury which completed the tort occur in Australia, but only that the disadvantage or detriment suffered by the plaintiff as a result of the tort occur in Australia. This can be satisfied where a degree of personal suffering or expenditure has occurred within the jurisdiction, as took place in this case by virtue of the fact that the repairs to the car were undertaken and paid for by the plaintiff in Australia.

On the basis of the broad interpretation of the rule evidenced by this case, Australian courts have jurisdiction based on service overseas in many tort cases

where the only connection to Australia is the fact that the plaintiff has come to Australia (even where they were not previously resident in Australia) and personal suffering or expenditure has occurred in Australia. Indeed, the *Federal Court Rules* make it clear that service out is permitted where a tort claim causing damage in Australia is only one of several causes of action alleged in a proceeding, even if service out would not be authorised in respect of the other causes of action. The rules of some other Australian superior courts are narrower on this point, requiring that service out be authorised in respect of each of the causes of action alleged.

Or course, even if an Australian court would have jurisdiction based on service overseas, it may decline to exercise jurisdiction on the basis that the court is a clearly inappropriate forum pursuant to the narrow Australian doctrine of *forum non conveniens*, but this is a relatively difficult test to satisfy: see the High Court of Australia decision of *Regie National des Usines Renault SA v Zhang* (2002) 210 CLR 491; 187 ALR 1; [2002] HCA 10.