

Physical Presence of Defendant As a Ground For International Jurisdiction – Decision of the South African Supreme Court of Appeal

In a recent decision, *Richman v Ben-Tovim* 2007 2 SA 283 (SCA); [2007] 2 All SA 234 (SCA), the Supreme Court of Appeal of South Africa decided that the mere physical presence of the defendant in the foreign jurisdiction at the time process was served is a sufficient basis for international jurisdiction in the context of the recognition and enforcement of foreign judgements sounding in money. (The judgement under neutral citation [2006] SCA 148 (RSA) may be downloaded from www.supremecourtofappeal.gov.za. The decision of the court *a quo* was reported as *Richman v Ben-Tovim* 2006 2 SA 591 (C) (*per* Van Zyl J).)

There was some uncertainty in this regard as in *Purser v Sales*; *Purser v Sales* 2001 3 SA 445 (SCA) it was stated by the same court that South African private international law only accepted domicile or residence within the foreign jurisdiction and submission to the jurisdiction of the foreign court as grounds for international jurisdiction in this context. But in the *Richman* case, it was held: “There are compelling reasons why..., in this modern age, traditional grounds of international competence should be extended, within reason, to cater for itinerant international businessmen” (par 9; *per* Zulman JA). “[P]ublic policy would require the recognition by a South African court of a lawful judgment given by default by an English court where personal service in England had taken place” (par 12; *per* Zulman JA). Reading the *Purser* and *Richman* decisions together, it may be stated that the following

grounds for international jurisdiction in respect of judgements sounding in money are recognised in South African private international law today: (1) domicile, residence or physical presence of the defendant within the foreign jurisdiction at the commencement of the proceedings; and (2) submission to the jurisdiction of the foreign court.