Quebec Court Stays Palestinian Claim Against West Bank Builders

Things have certainly been quiet on the Canadian front over the past few months. Ending the lull, in a decision filled with different conflict of laws issues, the Quebec Superior Court held, in *Bil'In Village Council and Yassin v. Green Park International Inc.* (available here), that Israel is the most appropriate forum for the dispute and therefore it stayed the proceedings in Quebec.

The plaintiffs, resident in the occupied West Bank, sued two corporations incorporated in Quebec for their involvement in building housing for Israelis in the West Bank. The plaintiffs alleged violation of several international law principles.

The reasons address several interesting issues: 1. whether the defendants are protected by state immunity as agents of Israel [no], 2. whether decisions of the High Court of Justice in Israel in which the plaintiffs participated were recognizable in Quebec [yes], 3. whether these judgments statisfied the test for res judicata [no], 4. whether the plaintiffs had the necessary legal interest required under Quebec law to bring the proceedings [yes for one, no for the other], 5. whether the cause of action had no reasonable hope of succeeding [no], 6. whether the court should stay the proceedings [yes].

On the appropriate forum issue, the factual connections massively pointed away from Quebec. The defendants were incorporated there, but largely for tax purposes – they did no business there – and that was the only connection to Quebec. A key issue was whether the issues raised in the proceedings could be fairly resolved by an Israeli court, but the court found the expert evidence on this point favoured the defendants, not the plaintiffs. This may be the most controversial aspect of the decision.

The decision also contains lengthy analysis of the applicable law and some comments on the absence of proof of foreign law.

It is not common for Canadian courts to mention, as a factor in the *forum non conveniens* analysis, the state of access to the local courts for local plaintiffs (the docket-crowding issue American courts do consider). In this case, however, this

factor is noted by the court in its reasons for staying the proceedings.