UKSC on Traditional Rules of Jurisdiction: Brownlie v Four Seasons Holdings Incorporated

Shortly before Christmas the UKSC released its decision on jurisdiction in *Brownlie v Four Seasons Holdings Incorporated* (available here). Almost all the legal analysis is *obiter dicta* because, on the facts, it emerges that no claim against the British Columbia-based holding corporation could succeed (para 15) and the appeal is allowed on that basis. I suppose there is a back story as to why it took a trip to the UKSC and an extraordinary step by that court (para 14) for the defendant to make those facts clear, but I don't know what it is. On the facts there are other potential defendants to the plaintiffs' claim and time will tell whether jurisdictional issues arise for them.

The discussion of the value of the place of making a contract for jurisdiction purposes is noteworthy. In para 16 two of the judges (Sumption, Hughes) are critical of using the traditional common law rules on where a contract is made for purposes of taking jurisdiction. This has been the subject of debate in some recent Canadian decisions, notably the difference in approach between the Court of Appeal for Ontario and the Supreme Court of Canada in *Lapointe Rosenstein Marchand Melançon LLP v Cassels Brock & Blackwell LLP*, 2016 SCC 30 (available here). The SCC was fine with using the traditional rules for this purpose. In *Brownlie*, I do not think it is clear as to what view the other three judges take on this point.

Even more interestingly, the UKSC judges split 3-2 on how to understand the idea of damage in the forum as a basis for jurisdiction. Three judges (Hale, Wilson, Clarke) retain the traditional broad common law view – the position in many Canadian provinces prior to *Club Resorts Ltd v Van Breda*, 2012 SCC 17 (available here) – that ongoing suffering in the forum in respect of a tort that happened abroad is sufficient. Two judges (Sumption, Hughes) reject that approach and adopt a more narrow meaning of damage in the forum (it must be direct damage only).

This 3-2 split is closer even than it might first seem, since Lord Wilson (para 57)

suggests that in a different case with fuller argument on the point the court might reach a different result.

Canadian law does not get a fair description in the UKSC decision. The court notes twice (para 21 and para 67) that Canada's common law uses a broad meaning of damage for taking jurisdiction. *Club Resorts,* and the change to the law it represents on this very issue, is not mentioned. This is yet another illustration of the importance of being careful when engaging in comparative law analysis.