

Jurisdiction to Garnish Funds in Foreign Bank Account

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Instrubel, N.V., a Dutch corporation, has been attempting in litigation in Quebec to garnish assets of the Republic of Iraq. The difficult issue has been the nature of the assets sought to be garnished and where they are, as a matter of law, located. The assets are funds in a bank account in Switzerland payable to the Republic of Iraq (through the Iraqi Civil Aviation Authority) by IATA, a Montreal-based trade association.

The judge at first instance held the assets were not a debt obligation but in effect the property of the Republic of Iraq and located in Switzerland and so could not be subject to garnishment in Quebec proceedings. The Court of Appeal reversed, holding the assets were a debt due to the Republic of Iraq which it could enforce against the trade association at its head office in Quebec, so that the debt was located in Quebec under the basic rule for locating the *situs* of a debt.

Last December the Supreme Court of Canada denied the appeal for the reasons of the Quebec Court of Appeal. One judge, Justice Cote, dissented with reasons to follow. On May 1, 2020, she released those reasons: see *International Air Transport Association v. Instrubel, N.V.*, 2019 SCC 61 (available here).

As a Quebec case, the decision is based on the civil law. Justice Cote's dissent hinges on the view that the funds in the account are the property of the Republic of Iraq, not the IATA, and are merely being held by the latter before being remitted to the former (see para. 36). The funds are not part of the "patrimony" of the IATA. This is because the nature of the agreement between the Republic of Iraq and the IATA is one of "mandate" (see paras. 40-41 and 45). As Justice Cote notes (at para. 48) "there is a general principle in the law of mandate that a mandatary's obligation towards a mandator is not a debt". While the payments that went into the bank account were collected and held by the IATA, they were made to the Republic of Iraq (para. 53). Indeed, the account "is for practical purposes equivalent to a trust account" (para. 61).

As noted, the six judges in the majority simply adopted the reasons of the Quebec

Court of Appeal (available here). So they did not directly engage with Justice Cote's reasons. The Court of Appeal concluded (at para. 41) that "there is no ownership of or real right to the funds ... Rather, there is a creditor/debtor relationship". It also observed that the Republic of Iraq "never owned the debts due it by various airlines in consideration of landing at Iraqi airports. It does not now own the funds collected in satisfaction of those debts and deposited by IATA in its bank account. IATA's obligation is to pay a sum of money not to give the dollar bills received from third parties" (para. 43).

The Court of Appeal noted (at para. 50) a practical rationale for its conclusion: "More significantly it seems that [Instrubel, N.V.] and others in similar positions which seek to execute an unsatisfied claim would be forced into an international "shell game" of somehow discovering (or guessing) where the mandatary/garnishee (IATA), deposited the money - a virtually impossible task. The law, correctly applied, should not lead, in my view, to such unworkable results. As the *in personam* debtor of ICAA, it matters not whether IATA deposited the money it collected and giving rise to such indebtedness in a bank account in Geneva, New York or Montreal. The *situs* of its bank account does not change the *situs* of the debt IATA owes to its creditor. As such, that funds were initially collected in Montreal or at an IATA branch office in another country is inconsequential."

The case is at minimum important for what it does not do, which is authorize the garnishing of assets outside Quebec. All judges take the position that would be impermissible.