

COURT OF APPEAL

CANADA
PROVINCE OF QUEBEC
REGISTRY OF MONTREAL

No.: 500-09-029899-226
(500-17-119144-213)

DATE: February 7, 2022

PRESIDING: THE HONOURABLE LUCIE FOURNIER, J.A.

CCDM HOLDINGS LLC
DEVAS EMPLOYEES FUND US LLC
TELECOM DEVAS LLC

APPLICANTS – Plaintiffs in continuance of proceedings

v.

THE AIRPORT AUTHORITY OF INDIA
RESPONDENT – Impleaded party

and

AIR INDIA LIMITED
IMPLEADED PARTY – Impleaded party

and

REPUBLIC OF INDIA
IMPLEADED PARTY – Defendant

and

INTERNATIONAL AIR TRANSPORT ASSOCIATION
IMPLEADED PARTY – Third-Party Garnishee

CORRECTED JUDGMENT

[1] A clerical error appears in the second sentence of paragraph [5] of the judgment rendered on February 3, 2022. It erroneously indicates that AAI is seeking leave to appeal

the first instance judgment. In actuality, it is Air India Limited, a distinct impleaded party, which is also seeking leave to appeal the first instance judgment.

[2] The judgment is corrected as follows:

[5] In the present case, AAI, through its Quebec counsel, is aware of the application for a special mode of service and of the Applicants' desire to seek leave to appeal the judgment rendered in first instance¹. Moreover, Air India Limited, a distinct impleaded party, is also seeking leave to appeal a part of the judgment in first instance that is the subject of the Applicants' application for leave to appeal.

LUCIE FOURNIER, J.A.

Mtre Mathieu Piché-Messier
Mtre Karine Fahmy
Mtre Philippe Boisvert
Mtre Amanda Afeich
Mtre Dayeon Min
Mtre Ira Nishisato
BORDEN LADNER GERVAIS
For the Applicants

Mtre William Brock
Mtre Corey Omer
Mtre Amélie Lehouillier
DAVIES WARD PHILLIPS & VINEBERG
For the Respondent

Mtre Patrick Ouellet
Mtre Ioana Jurca
Mtre Marc-Antoine Côté
WOODS
For Air India Limited

Mtre Claude Morency
Mtre Anthony Rudman
DENTONS CANADA
For International Air Transport Association

¹ *CC/Devas (Mauritius) Ltd. c. Republic of India*, 2022 QCCS 7.

Date of hearing: January 27, 2022

COURT OF APPEAL

CANADA
PROVINCE OF QUEBEC
REGISTRY OF MONTREAL

No.: 500-09-029899-226
(500-17-119144-213)

DATE: February 3, 2022

PRESIDING: THE HONOURABLE LUCIE FOURNIER, J.A.

CCDM HOLDINGS LLC
DEVAS EMPLOYEES FUND US LLC
TELECOM DEVAS LLC

APPLICANTS – Plaintiffs in continuance of proceedings

v.

THE AIRPORT AUTHORITY OF INDIA
RESPONDENT – Impleaded party

and

AIR INDIA LIMITED
IMPLEADED PARTY – Impleaded party

and

REPUBLIC OF INDIA
IMPLEADED PARTY – Defendant

and

INTERNATIONAL AIR TRANSPORT ASSOCIATION
IMPLEADED PARTY – Third-Party Garnishee

JUDGMENT

[1] The Applicants seek the authorization for a special mode of service of their *Application for Leave to Appeal from a Judgment Quashing a Seizure before Judgment*, the *Notice of Appeal*, the *Application to Suspend the Provisional Execution and Furnish a Surety*, and any other related proceedings and documents in the Court record, upon the

Respondent/Impleaded party The Airport Authority of India (hereinafter “AAI”) by means of electronic mail to the lawyers who represented AAI in first instance.

[2] They assert that AAI has no establishment in Quebec and that the mode of service provided for in art. 494 para. 1 of the *Code of Civil Procedure* (“C.C.P.”) and Article 5 of the *Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters* (hereinafter the “Convention”) cannot be completed within the time limit for appeal.

[3] At the hearing, AAI contested the application for a special mode of service. AAI was represented at the hearing by its Quebec counsel, just as it had been in first instance when it contested the seizure before judgment proceedings. AAI argues that the Applicant has not completed the steps for service as required by the Convention, nor has it established that it is impossible to serve the proceedings in accordance with the Convention, which is the only valid service in the present circumstances.

[4] In a very recent judgment, the Court ruled on the mode of service in Quebec of an application for leave to appeal and a notice of appeal on counsel who had represented a party in first instance to whom the Convention applied. It pointed out that in authorizing the applicant to notify the appeal pleadings to Quebec counsel who had represented the respondent in first instance, it was not setting aside the Convention, and that each case must be analyzed in light of its specific circumstances:²

[28] Là encore, la Cour tient à préciser qu’il faut se garder de conclure de l’analyse qui précède qu’une partie appelante devrait pouvoir facilement obtenir l’autorisation de notifier ses procédures d’appel aux avocats qui représentaient la partie intimée en première instance. Chaque cas doit demeurer un cas d’espèce et l’ordonnance recherchée devra être justifiée à la lumière des circonstances propres au dossier, des principes directeurs de la procédure et de l’objectif de porter l’acte de procédure visé à la connaissance de la partie destinataire.

[Emphasis added]

[5] In the present case, AAI, through its Quebec counsel, is aware of the application for a special mode of service and of the Applicants’ desire to seek leave to appeal the judgment rendered in first instance.³ Moreover, AAI itself is seeking leave to appeal part of the judgment in first instance that is the subject of the Applicants’ application for leave to appeal.

² *Hazan c. Micron Technology Inc.*, 2022 QCCA 117, para. 28.

³ *CC/Devas (Mauritius) Ltd. v. Republic of India*, 2022 QCCS 7.

[6] I am of the view that, in the present matter, there are special and particular circumstances for granting the application, for the reasons set out by this Court in the above cited decision:⁴

[22] S'agissant d'abord du dossier Option consommateurs, la Cour est d'avis qu'il y a lieu de rendre les ordonnances recherchées. Puisque les appels envisagés concernent des jugements rendus dans le cadre d'une instance toujours pendante, requérir de la requérante qu'elle s'adresse à l'Autorité centrale coréenne poserait problème, et ce, pour au moins deux raisons. La première a trait aux coûts et aux délais non négligeables que cette solution pourrait engendrer, ainsi qu'à son impact sur la progression du dossier dans son ensemble : le principe de proportionnalité (article 18 *C.p.c.*) serait mis à mal, tout comme l'objectif de veiller au bon déroulement des dossiers civils (article 19 al. 1 *C.p.c.*). Le second problème a trait au déséquilibre qui surgirait dans l'exercice du droit d'appel, puisque la requérante serait confrontée à des coûts et des délais avec lesquels Samsung n'aurait pas à composer dans l'éventualité où cette dernière souhaiterait porter en appel un autre jugement rendu en cours d'instance.

FOR THESE REASONS, THE UNDERSIGNED:

[7] **GRANTS** the *Application for Special Mode of Service*;

[8] **AUTHORIZES** the service of the *Application for Leave to Appeal, Notice of Appeal, Application to Suspend the Provisional Execution and Furnish a Surety*, and any other related proceedings and documents in the Court record, upon the Respondent/Impleaded party The Airport Authority of India by means of electronic mail to the lawyers who represented the Respondent in first instance and to the representatives of the Respondent who attended the hearing before the tribunal of first instance, Mr. Raj Kumar Khanagwal and Mr. R. Ramani, at the following email addresses:

- i. wbrock@dwpv.com (Mtre William Brock);
- ii. comer@dwpv.com (Mtre Corey Omer);
- iii. alehouillier@dwpv.com (Mtre Amélie Lehouillier);
- iv. gmlawchq@aai.aero (Mr. Raj Kumar Khanagwal);
- v. ramanir@aai.aero (Mr. R. Ramani);

[9] **AUTHORIZES** that the proof of email delivery (i.e. the printout of the email from the "Sent Items" box to the email addresses identified above) be attached to the

⁴ *Hazan c. Micron Technology Inc.*, 2022 QCCA 117, para. 22.

Application for Leave to Appeal and the Notice of Appeal as proof of service of the foregoing.

LUCIE FOURNIER, J.A.

Mtre Mathieu Piché-Messier
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Mtre Dayeon Min
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DENTONS CANADA
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Date of hearing: January 27, 2022