IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Huang v. Silvercorp Metals Inc.,*
2015 BCSC 549

Date: 20150413
Docket: S146424
Registry: Vancouver

Between:

Kun Huang

Plaintiff

And

Silvercorp Metals Inc.

Defendant

Before: The Honourable Madam Justice Ross

Reasons for Judgment

Counsel for the Plaintiff:	Howard A Mickelson, Q.C. Lorne M.A. Kotler
Counsel for the Defendant:	Herman H. Van Ommen, Q.C. Angela M. Juba
Place and Date of Hearing:	Vancouver, B.C. January 14 and 15, 2015
Place and Date of Judgment:	Vancouver, B.C. April 13, 2015

Introduction

[1] The plaintiff Kun Huang has commenced this action in which he alleges that the defendant Silvercorp Metals Inc. ("Silvercorp"), both itself and through its subsidiary Henan Found Mining Co. Ltd. ("Henan"), engaged in misconduct and malicious actions directed at Mr. Huang. In particular, Mr. Huang alleges that Silvercorp committed the torts of false imprisonment and defamation. Mr. Huang was detained, investigated by Chinese authorities, and imprisoned in China following a criminal trial. Mr. Huang alleges that Silvercorp wrongfully initiated and directed these events.

[2] Silvercorp concedes that this court has jurisdiction simpliciter. It also concedes that this court is the more appropriate forum in which to try the defamation action. The issue in this application is whether the court should exercise its discretion to decline jurisdiction with respect to the allegations of false imprisonment on the basis that China is a more appropriate forum in which to litigate those allegations.

Background

[3] Silvercorp is a Vancouver-based public company with mining interests principally located in China. Silvercorp is inter-listed on the Toronto Stock Exchange and the New York Stock Exchange. It owns 77.5% of its subsidiary, Henan. The remaining 22.5% of Henan is owned by the Chinese government.

[4] Mr. Huang is a Canadian citizen. He attended the University of British Columbia's Sauder School of Business and obtained a Bachelor of Commerce degree in finance and accounting, graduating with honours. During the relevant period, Mr. Huang was employed by Vancouver-based Eos Holdings LLC ("Eos"). Mr. Huang was employed as a researcher based in China who supplied information to Eos. As part of his duties, Mr. Huang performed on-the-ground investment research, which included visits to factories, customers, suppliers, and competitors to get a picture of a company's financial performance.

[5] The information from Mr. Huang, as well as from other sources, was used in a report issued on Alfredlittle.com ("Alfredlittle"). Jon Carnes, the manager of Eos owned and controlled the Alfredlittle website. He used the website to release reports about public companies.

[6] On September 13, 2011, Alfredlittle released a brief report raising a number of questions about Silvercorp's financial circumstances. On September 19, 2011, a second, complete version of the Alfredlittle Report was released (the brief report and the full report are collectively "the Alfredlittle Report"). The Alfredlittle Report alleged, *inter alia*, that:

a. The mining output of Henan reported to Chinese authorities did not reconcile mathematically with the mining output reported to Canadian authorities.

b. The number of deliveries of ore by truck to Silvercorp's mills did not appear to be sufficient to support the output of the mine that was reported to Canadian authorities.

c. Silvercorp had not had independent testing of its ore quality since 2004 or 2005.

d. Ninety-eight percent of the sales growth in 2010 came from two questionable sources: a related party customer that had not yet commenced operations and a company that did not appear to exist at its registered address.

e. Five percent of Henan (owned by Silvercorp's Chinese joint venture partner) was sold at auction for a very low price, suggesting that Silvercorp's North American market capitalization was overvalued by comparison.

[7] The issues raised in the Alfredlittle Report were based in part on Mr. Huang's research and local investigations. This research included obtaining resource reports

and other records filed with the Chinese government, as well as research into customers and suppliers. Local investigations included hiring local investigators to make videos of trucks going to and from Silvercorp's main mining property, the "Ying mine", and to collect and test ore samples that had fallen off the trucks and onto the side of the road.

[8] Silvercorp took several measures in response. On September 22, 2011, it filed a defamation action against both Alfredlittle and Chinastockwatch.com in the state of New York. The claim was dismissed in August 2012 without a trial. Silvercorp abandoned its appeal in 2013. It also made complaints to various securities regulators and law enforcement agencies claiming that these critical reports, including the Alfredlittle Report, were illegal short-selling tactics.

[9] Mr. Huang alleges that Silvercorp, through its own investigations, identified the principal and researchers behind the Alfredlittle Report and issued defamatory publications against Mr. Huang and others associated with the Alfredlittle Report.

[10] Mr. Huang alleges further that in the days and months following the Alfredlittle Report, Silvercorp directed and encouraged local Chinese investigations into Alfredlittle, with a particular focus on its researchers working in China. He alleges that in violation of Canadian and Chinese law, including the *Corruption of Foreign Public Officials Act*, S.C. 1998, c. 34, Silvercorp funded these foreign investigations and in particular engaged the local police, known as the Public Security Bureau ("Luoyang PSB"), effectively as Silvercorp's agent. Mr. Huang asserts that at various times, Silvercorp representatives provided on-the-ground support and direction to the Luoyang PSB's investigations and interrogations.

[11] On December 28, 2011, Mr. Huang was detained in Beijing as he was trying to leave the country. His passport had been flagged by the Luoyang PSB. Mr. Huang was strip-searched by airport authorities and his possessions were seized, including his laptops, external hard drive, and passport. Mr. Huang asserts that he was placed in a cell in the Beijing First Detention Centre with 12 other inmates, where he was

deprived of sleep for three days while airport authorities waited for the Luoyang PSB to pick him up.

[12] Luoyang is a relatively small prefecture-level city located in Henan Province, central China, and is the closest major city to Silvercorp's main mining asset, the Ying mine. In the environs of Luoyang, Silvercorp is one of the primary economic drivers and one of the largest taxpayers. Mr. Huang alleges that Silvercorp has and is known to have significant influence on local officials, including the Luoyang PSB.

[13] Mr. Huang alleges that at all material times, Luoyang PSB officers acted under the direction and encouragement of Silvercorp and effectively as Silvercorp's agents. At all material times, Silvercorp provided logistical and financial support to the Luoyang PSB. He alleges that at various times, Silvercorp representatives provided on-the-ground support and direction to the Luoyang PSB's investigations and interrogations.

[14] On or about December 31, 2011, Mr. Huang was formally placed into the custody of the Luoyang PSB. He alleges that he was driven in a rental car paid for by Silvercorp on the approximately 800-kilometre journey from Beijing to Luoyang (the commencement of the "First Luoyang Imprisonment").

[15] Upon arrival in Luoyang, at midnight, Mr. Huang was taken straight to the office of the local Luoyang PSB detachment and interrogated. Following the initial interrogation, Mr. Huang was confined to a local "inn" by Luoyang police for a further three weeks.

[16] Mr. Huang alleges that the Luoyang PSB conducted the interrogation of Mr. Huang as its prisoner based on a list of questions provided by Silvercorp. He alleges further that during the actual conduct of the interrogation, Luoyang PSB officers were in direct communication with Silvercorp, including receiving texts from Silvercorp to further focus the interrogation.

[17] Mr. Huang alleges that the substantial majority of the questions that Silvercorp directed did not relate to any potential violation by Mr. Huang of any

Chinese laws, but were rather directed towards obtaining information that could be used by Silvercorp in connection with its defamation action in New York and with respect to Silvercorp's interactions with regulatory bodies and law enforcement agencies in Canada and the United States.

[18] During the course of the First Luoyang Imprisonment, the Luoyang PSB demanded passwords to gain access to Mr. Huang's email, as well as email and trading accounts associated with Eos. Mr. Huang alleges that questions concerning passcodes to access the email and trading accounts were prepared by Silvercorp, who specifically requested the interrogating officers to obtain this information for Silvercorp's own collateral benefit.

[19] Mr. Huang alleges that Silvercorp, through the agency of the Luoyang PSB, gained possession of the laptops and external drive, or alternatively their data, and thus gained access to Mr. Huang's electronic information. He alleges that the Luoyang PSB obtained this information and conducted interrogations of their prisoner for Silvercorp's benefit.

[20] Mr. Huang alleges that Silvercorp then used the electronic information obtained by the Luoyang PSB to seek document production in support of its defamation claim.

[21] Approximately three weeks after the commencement of the First Luoyang Imprisonment, Mr. Huang was granted a limited release from custody, essentially a "house arrest", but was restricted in his movements and was not allowed to leave the country.

[22] Mr. Huang alleges that between this period of house arrest from January 2012 to the resumption of his imprisonment in July 2012, he continued to be under the control of Silvercorp and the Luoyang PSB. Mr. Huang was not permitted to leave China and was repeatedly required to return to Luoyang for further interrogation and to travel to other parts of China in the custody of the Luoyang PSB to interview other Chinese researchers. He alleges that the Luoyang PSB's

expenses were paid for, or reimbursed by, Silvercorp. He alleges further that Silvercorp representatives accompanied the Luoyang PSB on these trips.

[23] On or about July 13, 2012, the New York Times published an article entitled "In China, Little Urge to Audit the Auditors" (the "July 2012 NYT article"). The July 2012 NYT article contained, *inter alia*, discussion about Silvercorp's response to the Chinastockwatch and Alfredlittle reports. The article included the following excerpts:

> Jon Carnes, an analyst who published sharply critical reports about the company at Alfredlittle.com, claims that after the company filed a criminal complaint in China, the police in Luoyang, a small town where a Silvercorp subsidiary is based, "arrested, terrorized, and forbid my researchers from communicating with me or performing any further research on Chinese companies."
>
> …
>
> Mr. Carnes's most recent report points to what he thinks are conflicting statements by Silvercorp regarding the Ying mine, which is the company's primary source of revenue. When I tried to ask the company about that, a spokesman cited the pending litigation in saying the company would not talk to me.

[24] Mr. Huang alleges that in retaliation for the July 2012 NYT article, Silvercorp caused Mr. Huang to be removed from house arrest and placed back into a prison cell. Mr. Huang alleges that although he was still not charged and had made a cash payment to secure his limited release, he was nevertheless taken from his home and locked in a 300-square-foot cell at the Luoyang jail with as many as 34 other prisoners. Mr. Huang further alleges that the Luoyang PSB authorities confirmed that the imprisonment was directly in retaliation for the July 2012 NYT article.

[25] On or about September 8, 2012, The Globe and Mail published an article entitled "In China, Silvercorp critic caught in campaign by police" (the "September 2012 Globe article"). The September 2012 Globe article featured an interview with Mr. Huang from May 2012 and included statements to the effect that Silvercorp was using its influence to control the Luoyang PSB. Mr. Huang alleges that as a result of the articles he was subjected to harsh treatment by the Luoyang PSB.

[26] In June 2013, after he had been imprisoned for nearly a year, Mr. Huang was charged with the crimes of harming the business credibility and product reputation of a third party and the illegal use of wiretapping and undisclosed photographic devices. He alleges that the charges were brought by the local Luoyang PSB authorities at the direction of Silvercorp and effectively acting as Silvercorp's agent.

[27] Mr. Huang's trial was conducted on September 10, 2013. The only persons permitted to attend the proceeding were Mr. Huang's lawyers and two lawyers from Silvercorp. Mr. Huang alleges that the Silvercorp lawyers effectively acted as the prosecutor.

[28] Mr. Huang was convicted of harming the business credibility and product reputation of Silvercorp and Henan. He was sentenced to two years in prison, a fine, and deportation from China. He was subsequently released and expelled from China. He returned to Canada on July 18, 2014.

[29] Mr. Huang appealed his conviction to the Luoyang Intermediate People's Court, including on the grounds that the Luoyang PSB received financial assistance from Henan and therefore the evidence against him was illegally obtained. The court concluded that there was no proof that the Luoyang PSB received financial assistance from Henan and upheld the conviction.

Expert Evidence

[30] Both parties introduced expert evidence with respect to aspects of the legal system in China. On the basis of that evidence, certain propositions appear to be uncontradicted:

(a) There has been tort law in China since 2010 with the passage of a statute *(Tort law of the People's Republic of China: Adopted at the 12th session of the Standing Committee of the Eleventh National People's Congress on December 26, 2009, Effective as of July 1, 2010).* The statute enabled individuals to sue each other for torts identified in the statute.

(b) There is, however, no tort of false imprisonment in China.

(c) There are no jury trials in China for the adjudication of civil torts. No depositions are available.

(d) Mr. Huang could claim compensation pursuant to Article 17(3) of the PRC State Compensation Law which provides for compensation for loss incurred resulting from a sentence carried out under an original judgment where the original sentence was fully executed, and the individual is declared innocent during a trial supervision proceeding.

(e) Mr. Huang could commence proceedings in China for a trial supervision proceeding by appointing a representative to act on his behalf.

(f) It is unlikely that a court in British Columbia would receive assistance in China to collect evidence for use in the British Columbia proceedings.

Legal Principles

[31] The provisions of the *Court Jurisdiction and Proceedings Transfer Act*, S.B.C. 2003, c. 28 [*CJPTA*] govern jurisdictional challenges to the British Columbia courts' territorial competence, including the courts' discretion to decline jurisdiction based on the doctrine of *forum non conveniens*. The *CJPTA* is a codification of the common law rules on jurisdiction.

[32] Section 11 of the *CJPTA* governs *forum non conveniens* applications. The section provides:

> 11 (1) After considering the interests of the parties to a proceeding and the ends of justice, a court may decline to exercise its territorial competence in the proceeding on the ground that a court of another state is a more appropriate forum in which to hear the proceeding.
>
> (2) A court, in deciding the question of whether it or a court outside British Columbia is the more appropriate forum in which to hear a proceeding, must consider the circumstances relevant to the proceeding, including

> (a) the comparative convenience and expense for the parties to the proceeding and for their witnesses, in litigating in the court or in any alternative forum,
>
> (b) the law to be applied to issues in the proceeding,
>
> (c) the desirability of avoiding multiplicity of legal proceedings,
>
> (d) the desirability of avoiding conflicting decisions in different courts,
>
> (e) the enforcement of an eventual judgment, and
>
> (f) the fair and efficient working of the Canadian legal system as a whole.

[33] In *Spar Aerospace Ltd. v. American Mobile Satellite Corp.*, 2002 SCC 78, the Supreme Court of Canada, *per* LeBel J., discussed these additional factors:

> (a) the residence of the parties, witnesses, and experts;
>
> (b) the location of material evidence;
>
> (c) the place where the contract was negotiated and executed;
>
> (d) the existence of proceedings pending between the parties in another jurisdiction;
>
> (e) the location of the defendant's assets;
>
> (f) the applicable law;
>
> (g) advantages conferred on the plaintiff by its choice of forum, if any;
>
> (h) the interests of justice; and
>
> (i) the interests of the parties.

[34] More recently, in *The Original Cakerie Ltd. v. Renaud*, 2013 BCSC 755 [*The Original Cakerie*], Ballance J. applied the following factors:

> (1) where each party resides;
>
> (2) where each party carries on business;
>
> (3) where the cause of action arose;
>
> (4) where the loss or damage occurred;

(5) any juridical advantage to the plaintiff in this jurisdiction;

(6) any juridical disadvantage to the defendant in this jurisdiction;

(7) the convenience or inconvenience to potential witnesses;

(8) the cost of conducting the proceeding in this jurisdiction;

(9) the applicable substantive law;

(10) the difficulty and cost of proving foreign law, if necessary;

(11) whether there are parallel proceedings in any other jurisdiction.

[35] The burden on a party seeking a stay on the basis of *forum non conveniens* was addressed in *Club Resorts Ltd. v. Van Breda*, 2012 SCC 17, where LeBel J., for the Court, stated at paras. 103, 108 and 109:

> [103] If a defendant raises an issue of *forum non conveniens*, the burden is on him or her to show why the court should decline to exercise its jurisdiction and displace the forum chosen by the plaintiff. The defendant must identify another forum that has an appropriate connection under the conflicts rules and that should be allowed to dispose of the action. The defendant must show, using the same analytical approach the court followed to establish the existence of a real and substantial connection with the local forum, what connections this alternative forum has with the subject matter of the litigation. Finally, the party asking for a stay on the basis of *forum non conveniens* must demonstrate why the proposed alternative forum should be preferred and considered to be more appropriate.
>
> …
>
> [108] Regarding the burden imposed on a party asking for a stay on the basis of *forum non conveniens*, the courts have held that the party must show that the alternative forum is clearly more appropriate. The expression "clearly more appropriate" is well established….
>
> [109] The use of the words "clearly" and"exceptionally" should be interpreted as an acknowledgment that the normal state of affairs is that jurisdiction should be exercised once it is properly assumed. The burden is on a party who seeks to depart from this normal state of affairs to show that, in light of the characteristics of the alternative forum, it would be fairer and more efficient to do so and that the plaintiff should be denied the benefits of his or her decision to select a forum that is appropriate under the conflicts rules. The court should not exercise its discretion in favour of a stay solely because it finds, once all relevant concerns and factors are weighed, that comparable forums exist in other provinces or states. It is not a matter of flipping a coin. A court hearing an application for a stay of proceedings must find that a forum exists that is in a better position to dispose fairly and efficiently of the litigation. But the court must be mindful that jurisdiction may

> sometimes be established on a rather low threshold under the conflicts rules. *Forum non conveniens* may play an important role in identifying a forum that is clearly more appropriate for disposing of the litigation and thus ensuring fairness to the parties and a more efficient process for resolving their dispute.

Discussion

Where each party resides and carries on business

[36] Silvercorp submits that this factor is neutral because while both parties reside in British Columbia, both carried on business in China at the material time. Mr. Huang submits that given the residence of both parties in this forum, this factor militates against Silvercorp's position. I agree with Silvercorp's submission that this factor is neutral.

Where the cause of action arose and where the loss or damage occurred

[37] The elements of the tort of false imprisonment are: that the plaintiff has been totally deprived of liberty; that this deprivation was against his will; and that it was caused by the defendant. The onus then shifts to the defendant to justify the detention, see *Kovacs v. Ontario Jockey Club* (1995), 126 D.L.R. (4th) 576 (O.C.J.). Mr. Huang asserts that, since Silvercorp is based in British Columbia, its actions in causing the detention occurred here and the cause of action therefore arose here.

[38] Silvercorp notes that the detention itself occurred in China. It submits that it follows that the cause of action arose in China. Further, it is clear that issues relating to the question of lawful authority for the detention relate to China and involve questions of Chinese law and the actions of Chinese officials.

[39] In my view this factor is neutral since there are aspects favouring or relating to each of the forums.

Juridical advantage to the plaintiff in this jurisdiction

[40] The juridical advantages to Mr. Huang of a proceeding in British Columbia are considerable. Mr. Huang seeks to sue Silvercorp in tort for false imprisonment; he can do so in British Columbia. He cannot sue Silvercorp for false imprisonment in China because there is no such tort in China. While there is a proceeding through

which he could obtain compensation for a wrongful conviction, he could not sue Silvercorp in tort. A jury trial is available in this jurisdiction; it is not in China. Pre-trial discovery is available in this jurisdiction; it is not available in China. There is no evidence that pre-trial discovery of documents is available in China. In a British Columbia proceeding, Mr. Huang would be able to call witnesses and cross-examine the witnesses called by Silvercorp. There is no evidence to suggest that he would have the ability to subpoena witnesses or to compel their attendance in China. Any cross-examination would be at the discretion of the court.

[41] In my view this factor strongly favours this jurisdiction as the most appropriate forum.

Juridical disadvantage to the defendant to proceeding in this jurisdiction

[42] The principal disadvantage to Silvercorp with respect to proceeding in this jurisdiction is that it will be a party. If the matter is to proceed in China, Silvercorp will not be a party. It will be out of the litigation and any concerns about the ability of a party to marshal a case, to call evidence, to compel attendance of witnesses, or to cross-examine, will not be Silvercorp's problem.

[43] In addition to that fundamental distinction, if the matter proceeds in British Columbia, Silvercorp will be at a disadvantage with respect to access to material evidence and witnesses. While both parties will face this difficulty with respect to procuring evidence in China, the burden is on Silvercorp with respect to the issue of lawful justification and so those difficulties will create a larger problem for Silvercorp. Silvercorp also submits that it would be impracticable or impossible for it to initiate third party proceedings if the matter were to proceed in British Columbia.

[44] For all these reasons, from Silvercorp's perspective, China is a more favourable forum.

The comparative convenience and expense for the parties and for their witnesses

[45] Silvercorp submits that this factor militates in favour of China. It submits that proceeding in British Columbia would impose on the defendant an unreasonable

burden to demonstrate lawful justification for the imprisonment on the basis of Chinese law and evidence located in China. In addition, the court and potentially the jury will also need to bear the difficult burden of interpreting and applying Chinese law based on expert opinion, including in addressing the validity of the criminal judgments.

[46] In addition, Silvercorp submits that this case will involve significant linguistic challenges, given that much of the physical evidence will be in Mandarin, necessitating translation, and the witnesses may not speak fluent English, again necessitating the use of interpreters. Silvercorp submits that this has the potential to create unnecessarily complicated proceedings where the trier of fact must assess evidence based on *viva voce* testimony through interpreters, possibly via video-conferencing, on the conclusions to be drawn from translated documents by reference to Chinese legal principles as explained by experts.

[47] Silvercorp submits that on the other hand, the plaintiff can commence a trial supervision proceeding in China through a litigation representative without the need to actually travel to China. Both parties would have the benefit of legal counsel and a decision-maker who are familiar with the language and the applicable law. Although Silvercorp refers to both parties in this context, in fact it would not be a party to the trial supervision proceeding in China.

[48] Mr. Huang submits that it is difficult to conceive of a greater comparative inconvenience than the fact that Mr. Huang is prohibited from travelling to the alternative forum to prosecute the claim. Counsel notes that Silvercorp's head office is located in British Columbia, thus it would clearly be convenient for Silvercorp to litigate the matter in this jurisdiction.

[49] Mr. Huang submits that although the alleged false imprisonment occurred in China, the core evidence, namely the extent of Silvercorp's involvement in the direction and encouragement of the imprisonment and prosecution of Mr. Huang, either directly or through its substantially owned subsidiary Henan, clearly rests at Silvercorp's head office here in British Columbia.

[50] If this court were to decline jurisdiction in order that the matter proceed in China, it would clearly be more convenient and less expensive for Silvercorp because it would no longer be a party. It would be far less convenient for Mr. Huang and he would not be able to sue Silvercorp in tort. There are material witnesses in each jurisdiction.

[51] In my view, on balance this factor favours Mr. Huang's positon.

The law to be applied

[52] Silvercorp submits that the law to be applied is the law of the place where the activity occurred, citing *Tolofson v. Jensen; Lucas (Litigation Guardian of) v. Gagnon*, [1994] 3 S.C.R. 1022 [*Tolofson*]. It submits that the alleged tort of false imprisonment occurred in China and, as Mr. Huang's alleged injuries flow from his experiences in China, China is clearly the location of the initial injury. Accordingly, Silvercorp submits, Chinese law must apply.

[53] Mr. Huang submits that the tortious activity occurred in British Columbia where Silvercorp is located since it was Silvercorp's decision to enlist and encourage the actions of the Luoyang PSB. Counsel submits that there is at least a serious question to be tried with respect to both the *situs* of the tort and the choice of law.

[54] Counsel notes, in addition, that the concept of the *situs* of the tort has no meaningful application in the present case. There is no tort of false imprisonment in China and therefore no Chinese law to apply. If the matter is to be litigated in China, Silvercorp will not be a party.

[55] Mr. Justice La Forest discussed the *lex loci delecti* rule as follows in *Tolofson* at 1049-50:

> From the general principle that a state has exclusive jurisdiction within its own territories and that other states must under principles of comity respect the exercise of its jurisdiction within its own territory, it seems axiomatic to me that, at least as a general rule, the law to be applied in torts is the law of the place where the activity occurred, i.e., the *lex loci delicti*. There are situations, of course, notably where an act occurs in one place but the consequences are directly felt elsewhere, when the issue of where the tort takes place itself

> raises thorny issues. In such a case, it may well be that the consequences would be held to constitute the wrong. Difficulties may also arise where the wrong directly arises out of some transnational or interprovincial activity. There territorial considerations may become muted; they may conflict and other considerations may play a determining role.

[56] I agree with the submission of Mr. Huang that there is a serious question to be tried in the present case as to which law is to be applied. As Madam Justice Ballance observed in *The Original Cakerie* at para. 55:

> [55] … It is neither desirable nor appropriate to make a final determination of which law applies on a chambers application of this kind.

The difficulty and cost of proving foreign law

[57] If the matter is litigated in British Columbia foreign law will have to be proved. This is a factor that favours Silvercorp's positon. However, in my view this is not a particularly strong factor. The proof of issues of foreign law is a not infrequent occurrence in the courts in this province.

Desirability of avoiding multiple proceedings and conflicting decisions in different courts

[58] Silvercorp submits that this factor militates in favour of China. It submits that there is no risk of a multiplicity of proceedings because the false imprisonment claims can continue in China while the defamation claims proceed in British Columbia. There is also no risk of conflicting decisions in different courts unless the matter proceeds in British Columbia, in which case there could potentially be conflicting judgments from courts in China and British Columbia on the plaintiff's criminal conviction. Silvercorp submits that proceeding with a defamation suit in British Columbia and a false imprisonment claim in China will not create a multiplicity of proceedings because the claims are entirely different.

[59] Mr. Huang submits that this factor militates against Silvercorp's position. If the court declines jurisdiction with respect to the false imprisonment claim, Mr. Huang will be left to litigate the defamation claim in British Columbia and pursue the process in China to seek recovery for the false imprisonment claim. There will inevitably be multiple proceedings.

[60] I agree with Mr. Huang's submission with respect to this factor. Silvercorp's position would entail proceedings in both China and British Columbia concerning essentially the same matter. A central feature of Mr. Huang's claim is that both the defamation and the false imprisonment were part of a larger campaign on the part of Silvercorp to silence its critics. One of the aspects of the defamation claim relates to the Alfredlittle Report which is the same document that gave rise to his imprisonment and therefore is central to the false imprisonment claim.

[61] In addition, Mr. Huang advances a claim for punitive damages. The issues relating to the false imprisonment would be relevant to such a claim and accordingly would be litigated in British Columbia in any event as part of the defamation claim. If Mr. Huang is sent to China to seek redress for the false imprisonment claim, there is a risk of different findings in different courts with respect to this issue. It will certainly entail a situation in which matters that are essentially the same are being litigated in different courts.

[62] In my view this factor strongly favours Mr. Huang's positon.

The enforceability of an eventual judgment

[63] Silvercorp has argued that there do not appear to be any issues relating to the enforceability of a judgment if Mr. Huang seeks compensation pursuant to the PRC State Compensation Law.

[64] Mr. Huang notes that a judgment relating to a British Columbia proceeding would be enforceable against Silvercorp in British Columbia. Counsel submits that Silvercorp has left unanswered in its expert testimony, the mechanisms for enforcement of a judgment brought pursuant to the trial supervision proceedings.

The fair and efficient working of the Canadian legal system as a whole

[65] I agree with the submission of both parties that this factor is not relevant because the other potential forum is outside Canada.

Disposition

[66] To return to the applicable test, it is clear that once territorial competence is established, the burden is on the defendant to establish that the alternative forum is the "clearly more appropriate forum". I have concluded that Silvercorp has not established that China is the clearly more appropriate forum in the present case. Rather, on balance, the relevant considerations favour Mr. Huang continuing in his choice of forum. Having considered the interests of the parties and the ends of justice, and having regard to the factors enumerated in s. 11(2) of the *CJPTA*, I have concluded that the court of China is not a more appropriate forum to hear the proceeding. In the result, the application is dismissed.

"Ross J."