IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *O'Melveny & Myers LLP v. Tilt Holdings Inc.,* 2021 BCSC 124

Date: 202102001
Docket: S203380
Registry: Vancouver

Between:

O'Melveny & Myers LLP

Plaintiff

And

Tilt Holdings Inc.

Defendant

Before: The Honourable Madam Justice Francis

Reasons for Judgment

Counsel for the Plaintiff:	D. Edinger J. Baker
Counsel for the Defendant:	R. Fleming I. Zegrean
Place and Date of Trial/Hearing:	Vancouver, B.C. December 3 – 4, 2020
Place and Date of Judgment:	Vancouver, B.C. February 1, 2021

[1] The plaintiff, O'Melveny & Myers LLP ("OMM"), is a United States law firm that provided legal services to the defendant cannabis company, TILT Holdings Ltd. ("TILT"). The plaintiff has sued the defendant for approximately $3.2 million USD in unpaid legal fees. The defendant has brought this application seeking a stay of the action on the basis that this Court ought to decline jurisdiction.

[2] TILT does not deny that this Court has territorial competence regarding the subject matter of the action. As a result, this application proceeded solely on the

basis of the doctrine of *forum non conveniens*. TILT submits that California is clearly the more convenient forum to hear this dispute.

[3] For the reasons that follow, I have determined that California is clearly the more appropriate forum for the resolution of this dispute and I have stayed this proceeding.

I. BACKGROUND FACTS

[4] OMM is a limited liability partnership registered under the laws of the state of California. It has offices across the U.S., including in Los Angeles, San Francisco, and New York.

[5] TILT was formed in 2018 by way of a merger of four companies that operate in the emerging North American legal marijuana market. A TILT press release from December 6, 2018 described TILT as "the formation of one of the cannabis industry's most comprehensive platforms providing technology-driven solutions through the entire cannabis ecosystem." The four companies that merged to form TILT included three U.S. companies (Baker Technologies Inc. ("Baker"), Sea Hunter Holdings Ltd., and Briteside Holdings LLC) and one Canadian company (Sante Veritas Holdings Inc.).

[6] TILT was incorporated in Nevada in June 2018 and was continued into British Columbia in November 2018. TILT is listed on the Canadian Securities Exchange and its registered and records office is at McCarthy Tétrault in Vancouver.

[7] While TILT is a British Columbia company, its headquarters are in Phoenix, Arizona. TILT has offices and operations throughout the United States, including in Nevada, Arizona, Massachusetts, Pennsylvania, and California. TILT's bank accounts are in Massachusetts. TILT does not presently have any operations or assets in British Columbia.

[8] The working relationship between OMM and TILT began in May 2018. At that time, Geoff Hamm, the co-founder and COO of Baker (who later became Vice President of Corporate Development for TILT), approached Brophy Christiansen, a partner at OMM, about OMM representing Baker in a threatened lawsuit.

[9] On behalf of Baker, Mr. Hamm executed a May 25, 2018 engagement letter with OMM (the “Baker Engagement Letter”). That letter sets out the terms of the retainer and is restricted to OMM’s representation of Baker in a single lawsuit. The Baker Engagement Letter is the only written retainer agreement between OMM and any of TILT’s predecessor companies. There has never been a written retainer agreement between TILT and OMM.

[10] In June 2018, representatives of TILT began discussions with Mr. Christiansen about the possibility of OMM acting for TILT with respect to its many planned mergers and acquisitions.

[11] TILT had a very aggressive acquisition plan based on their objective to be the first company to dominate all aspects of the cannabis market. OMM was prepared to service TILT’s considerable legal needs in this regard. Over time, OMM became the only law firm providing legal services to TILT with respect to mergers and acquisitions. Between July 2018 and July 2019, OMM represented TILT in 35 separate matters. Most of the legal work done by OMM for TILT was performed by lawyers in OMM’s Bay Area and Los Angeles offices.

[12] Mr. Hamm was OMM’s primary contact at TILT and its predecessor companies. OMM invoices were delivered exclusively to Mr. Hamm via email; they were never addressed to TILT and were never sent to a TILT office.

[13] By late summer or early fall of 2019, Mr. Hamm was no longer working at TILT and the relationship between OMM and TILT had deteriorated due to TILT’s non-payment of OMM invoices. Text messages were exchanged in early September 2019 between Mr. Christiansen and Tim Condor, the newly appointed COO of TILT, about the outstanding invoices. On October 2, 2019, OMM sent a demand letter to TILT with respect to these unpaid invoices, which amounted to $3,178,247.82 USD (the “Claimed Legal Fees”).

[14] On October 18, 2019, OMM initiated an arbitration proceeding against TILT in California to resolve the dispute about the Claimed Legal Fees, invoking a mandatory arbitration clause in the Baker Engagement Letter. While the Baker Engagement Letter did not on its face appear to apply to legal services provided by OMM to TILT, Mr. Christiansen has deposed that he understood that the scope of the legal services contemplated in the Baker Engagement Letter had been

expanded to include work OMM did for TILT. Therefore, Mr. Christiansen believed that TILT was bound by the arbitration clause in the Baker Engagement Letter. TILT successfully applied to have the arbitration dismissed on the basis that the Baker Engagement letter did not bind TILT, and therefore TILT was not required to participate in mandatory arbitration.

[15] On March 19, 2020, OMM commenced this action to collect the Claimed Legal Fees.

[16] On August 11, 2020 TILT commenced proceedings in the Superior Court of the State of California against OMM and Mr. Christiansen (the "California Action"). The California Action deals with many of the same matters that are raised in this case. TILT makes allegations against OMM that include professional negligence, breach of fiduciary duty, unjust enrichment, and unfair competition.

[17] On September 18, 2020, OMM filed a motion for a stay of the California Action pending the disposition of this action. The San Francisco Superior Court subsequently issued an interim stay.

II. MATTERS AT ISSUE IN THIS ACTION

[18] The plaintiff's notice of civil claim seeks payment of the Claimed Legal Fees. OMM pleads that TILT owes the Claimed Legal Fees pursuant to a retainer agreement. OMM also pleads unjust enrichment and seeks payment of the Claimed Legal Fees on the basis of *quantum meruit*.

[19] In the response to civil claim, TILT raises a number of defences including:

a) TILT denies that there is a retainer agreement and pleads that OMM is limited to asserting a *quantum meruit* claim for payment of legal fees;

b) TILT was unaware of, and did not authorize, most of the work OMM did because of collusion between Mr. Hamm and Mr. Christiansen to prevent the nature and scale of OMM's work from coming to TILT's attention;

c) Some of the plaintiff's work did not meet the professional standards required of lawyers in the state of California and caused losses for

TILT; and

d) TILT has already paid legal fees well in excess of any benefit TILT received from OMM.

[20] Both parties made submissions about a prospective counterclaim in this action by TILT against OMM for solicitor's negligence, as well as third-party claims against Mr. Hamm and certain OMM lawyers. None of these pleadings have been filed pending the outcome of this application because, according to counsel for the defendant, TILT does not wish to take further steps that would constitute attornment to the jurisdiction and jeopardize its ability to argue *forum non conveniens* at this hearing.

III. FORUM NON CONVENIENS

[21] In British Columbia, territorial competence must be determined exclusively by reference to the rules set out in the *Court Jurisdiction and Proceedings Transfer Act*, S.B.C. 2003, c. 28 [*CJPTA*]. Because TILT is a British Columbia company, it falls under s. 10(h) of the *CJPTA* and a real and substantial connection is presumed to exist between British Columbia and the facts on which this proceeding is based. As such, the defendant has conceded that this Court has territorial competence, or jurisdiction *simpliciter,* over this proceeding, and the only dispute I have been asked to adjudicate involves the application of the doctrine of *forum non conveniens*.

[22] The doctrine of *forum non conveniens* has been codified in s. 11 of the *CJPTA*:

> **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,
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> (b) the law to be applied to issues in the proceeding,
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> (c) the desirability of avoiding multiplicity of legal proceedings,
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> (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.

[23] The factors set out in s. 11 are mandatory but not exhaustive: *The Original Cakerie Ltd. v. Renaud*, 2013 BCSC 755 at para. 52.

[24] While the variety of relevant factors may lend itself to a "checklist" approach, the jurisprudence is clear that the test for *forum non conveniens* should not involve a tallying up of the score on the factors in s. 11 (a)-(f). Rather, this Court must consider all of the evidence and ask itself whether an alternative forum emerges as clearly more appropriate than British Columbia: *Breeden v. Black*, 2012 SCC 17 at para. 37.

[25] The "clearly more appropriate" standard finds its genesis in *Amchem Products Incorporated. v. British Columbia (Workers' Compensation Board*), [1993] 1 S.C.R. 897. In that decision, Justice Sopinka held that a defendant seeking to persuade a court to decline jurisdiction has the burden of proving that there is another forum which is clearly more appropriate. The word "clearly" does not denote a standard of proof higher than the civil standard. Rather, it means that the existence of a more appropriate forum must be clearly established to displace the forum selected by the plaintiff: at 921.

[26] The Supreme Court of Canada again considered *forum non conveniens* in *Club Resorts Ltd. v. Van Breda,* 2012 SCC 17 [*Van Breda*]. At para. 104, Justice LeBel noted that the doctrine of *forum non conveniens* "tempers the consequences" of a strict application of the rules governing the assumption of jurisdiction. Whereas the test for territorial competence is strict, categorical, and objective, the doctrine of *forum non conveniens* is "based on a recognition that a common law court retains a residual power to decline to exercise its jurisdiction in appropriate, but limited, circumstances in order to assure fairness to the parties and the efficient resolution of the dispute": at para. 104.

[27] Fairness and the efficiency of the court process are the fundamental considerations in a *forum non conveniens* application. This is mandated in the language of s. 11(1) of the *CJPTA*, which requires the court to consider the interests of the parties to a proceeding and the ends of justice in deciding whether to decline to exercise its territorial competence. As LeBel J. noted in *Van Breda*,

the purpose of the doctrine is, in the context of individual cases, to "ensure that both parties are treated fairly and that the process for resolving their litigation is efficient": at para. 105.

[28] In *Van Breda*, LeBel J. expressly considered the meaning of the word "clearly" in the context of the "clearly more appropriate forum" test. At para. 109 he held:

> [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. [Emphasis added.]

[29] The animating factors of the *forum non conveniens* test – fairness and efficiency – inform the interpretation of the meaning of "clearly more appropriate". The key question is whether, on a civil standard, the defendant has met the burden of proving that another forum exists that is in a better position to dispose fairly and efficiently of the litigation.

[30] As such, I will consider each of the factors under s. 11(1) in the context of the mandatory considerations of fairness and efficiency.

A. The comparative convenience and expense for the parties and their witnesses in litigating in the court or any alternative forum

[31] When considering comparative convenience and expense, it is of little importance that the plaintiff and its witnesses are for the most part located in California and not in British Columbia. The plaintiff, having chosen to litigate in a foreign jurisdiction, has chosen to accept the expense and inconvenience associated with advancing its case in B.C. In such circumstances, the only

relevant consideration is the comparative convenience and expense for the defendant as between the plaintiff's choice of forum and an alternative forum: *Hydro Aluminium Rolled Products GMbH v. MFC Bancorp Ltd.,* 2020 BCCA 295 at para. 25.

[32] TILT's materials filed in support of this application include a proposed list of witnesses. The list includes 25 witnesses: 5 current employees of TILT, 10 lawyers employed by OMM, and 10 non-party witnesses. Since OMM has represented that it is prepared to incur the cost of its lawyers attending trial in B.C., the comparative cost and inconvenience with respect to the attendance of those individuals is not a significant factor. The remaining witnesses and their locations are as follows:

Current Employees of TILT

Name	Role	Location
Joel Milton	TILT senior VP of Business Development	Denver, Colorado
Christopher Frost	TILT VP of Procurement	Boston, Massachusetts
Mark Scatterday	TILT CEO	Phoenix, Arizona
Tim Condor	TILT President and COO	Reno, Nevada
Mashall Horowitz	TILT General counsel	Los Angeles, California

Non-Party Witnesses

Geoff Hamm	Formerly of TILT	Bay Area, California
Christopher Hagenbuch	Former counsel at OMM	Bay Area, California
Alex Coleman	Former CEO of TILT	Florida
David Caloia	Former CFO of TILT	Boston, Massachsetts
Virginia Harris	Former associate at OMM	Bay Area, California

Amanda Bradley	Former counsel at OMM	Bay Area, California
Jordan Geotas	Principal at Jupiter	Phoenix, Arizona
Justin Junda	Formerly of TILT	Montana
Josh Schneiderman	Counsel for Jupiter	Los Angeles, California
Ryan Lowther	Former outside counsel for Blackbird	San Francisco, California

[33] In argument, TILT's counsel noted that this list does not include the experts who will need to be called to give evidence of California law should California law be determined to apply in this case.

[34] Not all of TILT's proposed witnesses are of equal importance to its defence. The defendant's primary defence to OMM's claim is that Mr. Christiansen and Mr. Hamm colluded to prevent the nature and scale of OMM's work from coming to the attention of TILT. TILT alleges that Mr. Hamm did not make the company aware of the accumulating invoices and that TILT did not authorize the significant legal fees incurred every month. TILT submits that, as a result of the collusion between Mr. Christiansen and Mr. Hamm, it should not be liable for payment of the Claimed Legal Fees. Given this defence, Mr. Hamm and Mr. Christiansen are important witnesses in this case. Mr. Hamm resides in California.

[35] TILT also pleads that OMM lawyers were negligent in the work they performed for TILT in its acquisition of an Arizona company called Jupiter Research. The defendant says that OMM lawyers, without instructions, accepted a change to the deal documents during the final negotiation of TILT's acquisition of Jupiter. The allegedly unauthorized change resulted in losses to TILT. As a result, TILT argues that it should not be liable for all of the Claimed Legal Fees. The two OMM lawyers involved in the alleged negligent acts are Christopher Hagenbuch and Virginia Harris. Mr. Hagenbuch and Ms. Harris reside in California.

[36] Seven of the fifteen non-OMM witnesses TILT wishes to call reside in California, and the rest reside in other U.S. states. None of the witnesses reside in British Columbia. The fact that the largest portion of the defendant's witnesses

reside in California is a factor that weighs in favour of California from the perspective of cost and convenience to the defendant and its witnesses.

[37] TILT argues that, in addition to considering the comparative convenience and expense of bringing the defendant's witnesses to trial, I should also consider the compellability of certain non-party witnesses who reside in California. Specifically, Mr. Hamm, Mr. Hagenbuch, and Ms. Harris (the "California Non-Party Witnesses") are central witnesses to the defences raised by TILT. Mr. Hamm no longer works for TILT, and neither Mr. Hagenbuch nor Ms. Harris continue to work for OMM. Their cooperation therefore cannot be assumed on the basis that they are presently employed by one of the parties.

[38] There is no evidence one way or another about whether the California Non-Party Witnesses would, or would not, voluntarily participate in this action should they be asked to do so. OMM argues that the court should not assume non-cooperation, as there are many reasons why a witness might willingly give evidence even if not required by law to do so. This may be true. However, in considering whether California offers a more just and convenient forum for resolving this dispute, it is appropriate to consider what mechanisms are available should important witnesses be non-cooperative.

[39] Donald Putterman is a California lawyer who swore an affidavit deposing as to the process in California for securing the evidence of non-party witnesses. According to him, witnesses who reside in California can be compelled by subpoena to provide both deposition and trial testimony at a California proceeding without the intervention of the court or the need for a court order.

[40] The process for compelling the California Non-Party Witnesses to give evidence in a British Columbia proceeding is more complex. In order to compel a non-cooperative out of jurisdiction witness to give evidence in British Columbia, it is necessary to employ the letters rogatory process contemplated in Rule 7-8(11) of the *Supreme Court Civil Rules,* B.C. Reg. 168/2009. That process would involve the British Columbia Supreme Court, by way of a letter of request, seeking the assistance of the California Court in securing the evidence of a witness. Should the California Court agree to comply with the letter of request, the witnesses would be compelled to attend a deposition. At the deposition, the witnesses would be

examined and cross-examined under oath before a court reporter and the record of the examination would be tendered as evidence at the trial.

[41] TILT describes the process under Rule 7-8(11) as complicated, unwieldy, and poorly suited to uncooperative witnesses. I do not entirely agree. Rule 7-8(10) expressly addresses circumstances in which out of jurisdiction witnesses are uncooperative. This Court regularly issues letters of request to the courts of other jurisdictions, and regularly hears applications to comply with letters of request from the courts of other jurisdictions. The process is an ordinary part of the work of this Court and is neither complicated nor unwieldy.

[42] Nevertheless, I must compare the process for obtaining the evidence of the California Non-Party Witnesses in the two jurisdictions. There can be no question that the process for compelling these witnesses to give evidence would be less cumbersome and less expensive in California than it would be in British Columbia. If the California Non-Party Witnesses do not voluntarily attend court in British Columbia, applications will be required before the courts of both jurisdictions. By contrast, the California process does not require any court intervention whatsoever to compel the California Non-Party Witnesses to give evidence.

[43] Further, should the California Action proceed, TILT would have a right both to depose the California Non-Party Witnesses and to compel their live attendance at trial. In British Columbia, should TILT be successful in having a letter of request granted by the California Court, they would at best be entitled to a single recorded deposition that would be tendered as evidence at trial.

[44] Live testimony remains preferable to pre-trial deposition for a number of reasons. Some of these reasons were enumerated by Justice Harris in *Byer v. Mills,* 2011 BCSC 158 at Appendix A, and they include:

a) Where the deposition is of a defence witness, the defence evidence is taken before the plaintiff has led any evidence at all. This complicates what is otherwise an orderly framework for the receipt of evidence by the court. For example, taking defence evidence first gives rise to the risk that the defence evidence is not properly responsive to the plaintiff's case.

b) A deposition complicates the process for objections. At a deposition, the judge is unable to rule on objections in real time, risking a witness spending time answering improper questions. Also, if a question is objectionable but subject to being reframed on the instruction of the court, this opportunity is lost at a deposition.

c) The trial judge has an important role to play in controlling the trial process, including in some cases controlling the conduct of a cross-examination. Taking evidence by deposition eliminates the opportunity for the court to play this role.

[45] As such, if the evidence of the California Non-Party Witnesses is taken in accordance with Rule 7-8(11), there is a risk of the evidence being less responsive to the issues and less helpful to the fact finder than if the evidence had been taken in court before the trial judge.

[46] OMM argues that remote testimony is increasingly accepted by the court, and that acceptance has only accelerated since the COVID-19 pandemic. It is true that this Court is often amenable to having witnesses testify via remote video conferencing, enabling witnesses who are unable to travel or to attend court to give evidence at trial. However, testimony by remote video conferencing is not the same as a deposition, where the evidence of the witness is taken before someone other than the trial judge. The frailties of deposition evidence, as identified by Harris J. in *Byer*, do not arise when a witness testifies live via video technology, because the trial judge presides over the testimony. The court's acceptance of witnesses testifying at trial via remote video technology does not assist OMM's position, since the procedure contemplated under Rule 7-8(11) contemplates a foreign judicial authority or delegate presiding over the examination, not the British Columbia trial judge.

[47] Seth Aronson is a California lawyer who swore an affidavit on behalf of OMM speaking to California law. Mr. Aronson deposed that there is no mechanism in California to compel a non-resident witness to attend trial, even if the witness is a party. OMM argues that because of this, there will be challenges to compelling the attendance of non-party witnesses to the trial in the California Action, just as there are in this action.

[48] I must consider the compellability of witnesses in the context of the issues as pled. Some witnesses are such central participants in the events in issue that the matter could not be fairly adjudicated without their testimony.

[49] While there may be some witnesses residing outside California whose evidence is relevant, the individuals with the closest connection to the subject matter in dispute all reside in California. Specifically, based on the issues as they were framed in this application, the California Non-Party Witnesses are the most important witnesses to TILT's defence. Ensuring the ability to secure their evidence in the event that they are not cooperative is an important factor in ensuring a fair trial.

[50] California offers a procedure for obtaining the evidence of the California Non-Party Witnesses that is less expensive and less cumbersome than what British Columbia can provide. Further, a pre-recorded deposition offers fewer procedural protections than live evidence, and may result in an evidentiary record that is less responsive to the plaintiff's claim. This is a factor that weighs significantly in favour of California as the more appropriate forum.

B. The law to be applied to the issues in the proceeding

[51] Because OMM has sued TILT for payment for legal services provided for the most part in California by members of the California Bar, there is little dispute between the parties that the governing law is the law of California.

[52] This case is not complex. The laws of contract and *quantum meruit,* the two primary legal doctrines that govern this dispute, consist of straightforward common law concepts with which this Court is familiar. To the extent that there are specific nuances that apply to a lawsuit by a lawyer to recover fees under California law that make it different from a similar action under British Columbia law, expert evidence may be tendered.

[53] TILT's solicitor's negligence claim is also grounded in the common law. In either jurisdiction, a solicitor's negligence claim is likely going to require some expert evidence with respect to a lawyer's standard of care.

[54] This factor favours California, although it is not of great weight, due to the straightforward nature of the claims and defences and the similarities in the

common law between the two jurisdictions.

C. The desirability of avoiding multiplicity of legal proceedings and avoiding conflicting decisions in different courts

[55] The California Court has stayed the California action pending resolution of this application. There is therefore no real risk of conflicting or parallel proceedings.

D. Enforcement of an eventual judgment

[56] OMM says this factor weighs in favour of British Columbia because TILT is a British Columbia company. However, TILT does not have any assets in British Columbia. A monetary judgment of this Court would have to be enforced against TILT in the jurisdictions in which it has assets.

[57] I accept OMM's argument that, much like the cost of bringing OMM's witnesses to B.C., if OMM has chosen to incur additional enforcement expenses outside B.C. should it be successful in this lawsuit, that is OMM's choice to make and should not weigh against their choice of forum.

[58] As such, I find that this factor is mostly neutral.

E. Fair and efficient working of the Canadian legal system as a whole

[59] In *Right Business Limited v. Affluent Public Limited*, 2011 BCSC 783, aff'd 2012 BCCA 375, at paras. 88 and 89, Justice Masuhara noted two factors that are relevant to the fair and efficient working of the Canadian legal system as a whole. First, the court may consider whether there is any juridical advantage to the plaintiff and disadvantage to the defendant in this jurisdiction. Second, the court may consider the public's interest in seeing the justice system work as efficiently as possible throughout the country.

[60] Neither of these factors are significantly engaged in this case. The only juridical advantage or disadvantage addressed by the parties was the defendant's concern about the compellability of witnesses, discussed above. This is not a case that engages the public's interest in the overall workings of the Canadian justice system. Therefore, I find that this factor is neutral.

F. Conclusion

[61] Many of the factors in this case are neutral or weigh modestly in favour of California as the more appropriate forum. However, one factor stands out and establishes California as clearly more appropriate. The California Non-Party Witnesses are central witnesses to TILT's defence; without their testimony, TILT would be at a significant disadvantage in making its case.

[62] Although there is a process in place for compelling the participation of the California Non-Party witnesses in British Columbia, that process entails risk and cost. Further, even upon successfully applying for a letter of request, and then successfully applying in California for recognition of the letter of request, TILT would still not have the opportunity to examine the California Non-Party Witnesses in open court. As discussed, there are good reasons why the default rule for trials is that witnesses should provide evidence by way of *viva voce* testimony before the trier of fact.

[63] Recognizing that all the factors in the *forum non conveniens* analysis must be considered in the context of the interests of the parties and the ends of justice, I find that TILT has successfully demonstrated that California is clearly the more appropriate forum. In this legal fee dispute brought by a California law firm with respect to legal services primarily provided in California by members of the California bar, the California Court can compel the attendance of the central witnesses, who reside in California. This will result in a trial that is fairer to both parties and more efficient than what this jurisdiction can provide.

[64] For these reasons, I grant TILT's application and stay the proceeding on the basis that this Court declines to exercise jurisdiction.

[65] In closing, I would like to express my gratitude to counsel for both parties to this application. The high level of cooperation between counsel allowed for an efficient hearing and the helpful and well organized submissions were of considerable assistance to the court.

"Madam Justice Francis"