Securities Claim in Canada Under Canadian Securities, Mirror Image To Morrison Claims Under U.S. Securities Laws, Permitted To Proceed

February 22, 2012 by Louis M. Solomon

As a matter of international litigation practice, the changes wrought by the U.S. Supreme Court's decision in *Morrison* have been fundamental. In the Supreme Court *decision* in *Morrison v. National Australia Bank* (No. 08-1191), the Court held that Section 10(b) of the Securities Exchange Act of 1934 did not provide a private cause of action in "foreign-cubed" cases—cases where foreign plaintiffs sue foreign defendants for misconduct in connection with securities traded on foreign exchanges (hence "foreign cubed"). The Court rejected over 40 years of lower-court jurisprudence – which focused on where "conduct" and "effects" occurred or would be felt to determine the reach of Rule 10b-5. Instead the Supreme Court held that Section 10(b) reaches frauds only where "the purchase or sale is made in the United States, or involves a security listed on a domestic exchange"

In various blog postings, we have followed decisions in other jurisdictions to see whether non-U.S. jurisdictions are applying the same analysis under their own statutes as Morrison did under U.S. securities laws. A recent example of that is the judicial decision in Tajdin Abdula v. Canadian Solar Inc., 2011 ONSC 5105 (Super. Ct. of Justice Ontario 2011). In this case, the court addressed a motion to dismiss claims for negligent misrepresentation and statutory causes of action based on an alleged failure of jurisdiction. Although the plaintiff and at least certain of the defendants resided in Canada, its principal place of business is China, "where the majority of its senior executive officers reside and where the majority of its manufacturing operations occur". More important, as the court said, the plaintiff purchased a total of 2000 shares of Canadian Solar between January 21 and May 4, 2010. These purchases were conducted by the plaintiff logging into an account with BMO Investor Line using his home computer. The Court explained:

"The shares of Canadian Solar are traded only on the NASDAQ Exchange. Each of the plaintiff's purchases resulted in the issue of Confirmation Notice by BMO InvestorLine from an office in Toronto. Each of the Confirmation Notices contained the following wording: AS AGENTS, WE CONFIRM THE FOLLOWING BUY FORYOUR ACCOUNT OVER THE COUNTER– U.S.A."

Despite the facts similarity to *Morrison*, the Court declined to dismiss the securities law claims brought under the Canadian Securities Act, despite the defendants' argument that because the shares are traded exclusively on the NASDAQ Exchange the disclosure obligations "were governed by the requirements of NASDAQ". The defendant issuer "has significant connections to Ontario". The Court continued:

"a company which chooses to be incorporated in Canada, have its principal office in Ontario and carry on business in Ontario must also expect to be required comply with Canadian and Ontario laws. The disclosure obligation on a company whose shares are publicly traded is not restricted to filings with a stock exchange".

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