

CITATION: Premier Implementation Solutions Canada Inc. v. Unifor, Local 222,
2024 ONSC 445
OSHAWA COURT FILE NO.: CV-24-133-00
DATE: 20240119

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:)	
)	
Premier Implementation Solutions Canada Inc.)	James Renihan and Erika Anschuetz, for the
)	Plaintiff
)	
Plaintiff)	
)	
– and –)	
)	Anthony Dale, for the Defendant
Unifor, Local 222)	
)	
Defendant)	
)	
)	
)	
)	
)	HEARD: January 17, 2024

2024 ONSC 445 (CanLII)

ENDORSEMENT

CASULLO J.

Overview

- [1] Pursuant to sections 101 and 102 of the *Courts of Justice Act*, R.S.O. 1990, c. C43 (the “*Act*”), the moving party, Premier Implementation Solutions Canada Inc. (“Premier”), seeks by way of this urgent motion:
- (a) An order abridging the time for service of this motion upon the responding party, Unifor Local 222 (“Unifor”);
 - (b) An order validating service of this motion upon Unifor by email;
 - (c) An interim and/or interlocutory injunction prohibiting Unifor, its respective agents, servants and/or any person or persons acting under its instructions, or anyone aiding or assisting it or anyone to whom notice of the order shall come, from:

- (i) Hindering, delaying, interfering with, blocking or obstructing ingress to or egress from, the premises owned and operated by Del Monte Fresh Produce (Canada) Corp. at 940 Thornton Road South, Oshawa, Ontario, or any other premises owned or operated by Premier or Del Monte;
 - (ii) Obstructing or otherwise interfering with the employees, servants, agents, customers, suppliers and/or contractors of Premier and/or Del Monte, or with any other person seeking entrance to or exit from the premises; and
 - (iii) Engaging in intimidating or harassing behaviours toward the employees, servants, agents, customers, suppliers and/or contractors of Premier and/or Del Monte, or with any other person seeking entrance to or exit from the premises.
- (d) An order requiring the Sheriff of the Regional Municipality of Durham, with the assistance of the Durham Regional Police Service, as required, to enforce the terms of this order; and
- (e) Costs of the motion.

Service of the Motion

- [2] Section 102(6) of the *Act* provides that, subject to subsection (8), at least two days notice of a motion for an interim injunction shall be given.
- [3] Unifor was served with the Motion Record via email at approximately 1:00 p.m. on January 17, 2024, about the same time the court received materials for a 2:15 p.m. hearing. Mr. Dale attended the motion on Unifor's behalf but had no opportunity to prepare or serve a responding record.
- [4] When proper notice is not provided to a responding party, section 102(8) of the *Act* provides that an interim injunction may be granted when the following conditions are met:
- (a) the case is otherwise a proper one for the granting of an interim injunction;
 - (b) notice as required by subsection (6) could not be given because the delay necessary to do so would result in irreparable damage or injury, a breach of the peace or an interruption in an essential public service;
 - (c) reasonable notification, by telephone or otherwise, has been given to the persons to be affected or, where any of such persons are members of a labour organization, to an officer of that labour organization or to the person authorized under section 94 of the *Labour Relations Act, 1995* to accept service of process under

that Act on behalf of that labour organization or trade union, or where it is shown that such notice could not have been given; and

(d) proof of all material facts for the purpose of clauses (a), (b) and (c) is established by oral evidence.

- [5] At the outset of the hearing, Mr. Dale argued that the conditions set out in section 102(8) of the *Act* were not met and the motion must be adjourned to provide Unifor with proper notice. In particular, the proof of all material facts could not be established by oral evidence because Premier had not produced a witness to give oral evidence.
- [6] We stood the matter down for a short period to permit Premier an opportunity to produce a witness to give oral evidence. Mr. Damone Shumard, who had sworn an affidavit in support of the injunction motion, attended and was cross-examined. Following Mr. Shumard's cross-examination, I advised that I was satisfied the conditions in (a) – (c) of section 102(8) of the *Act* had been met, and the hearing proper commenced.

The Parties

- [7] Premier provides workforce and staffing solutions to various businesses. Del Monte is one such client. Premier provides workers, supervisors and other personnel to Del Monte's fresh produce picking and packaging facility on Thornton Road South in Oshawa ("the Premises").
- [8] Unifor is the exclusive bargaining agent for Premier's employees at the Premises, with the exception of managers, those who rank above managers, and recruitment and coordination staff.
- [9] Unifor and Premier are parties to a Collective Bargaining Agreement which expired on October 18, 2023. Negotiations surrounding the collective bargaining process have stalled, and Unifor began lawful strike action on January 13, 2024.

The Evidence

- [10] There are three vehicular entrances to the Premises. The north entrance connects to a loading dock and is used for shipping, the south entrance is connected to a different loading dock and is used for deliveries, and the middle entrance is connected to the parking lot and is used by employees to enter and exit the building. The only way to access the loading docks is through the north and south entrances – the employee entrance does not permit access. Thus, without access to the loading docks, Del Monte is unable to receive or ship goods.
- [11] Mr. Shumard is Premier's Senior Vice President. Mr. Shumard deposed that he arrived at the Premises at 9:30 a.m. on January 15, 2024. Two cars partially blocked access to the employee entrance, and Mr. Shumard was forced to drive over a curb to enter the employee parking lot. Once in the parking lot he saw a group of about ten protestors who had set up a tent and a number of burn buckets on the Premises.

- [12] From the front of the building he saw a U-Haul truck parked such that it completely blocked the south delivery entrance. Mr. Shumard's affidavit contained photographs depicting the blockage.
- [13] On January 16, 2024, at 7:00 a.m. Mr. Shumard returned to the Premises. Upon arrival he noted that the number of protestors had grown to about 25, five of whom were carrying signs.
- [14] The U-Haul truck was still completely blocking access to the delivery entrance. At the time he swore his affidavit the U-Haul truck had not been moved. Mr. Akram Kamal, General Manager for Del Monte, advised Mr. Shumard that Unifor had also blocked the shipping entrance.
- [15] Mr. Shumard made efforts to obtain police assistance. He called Durham Regional Police Service the afternoon of January 15, 2024, to advise that vehicles were blocking both entrances. No officers attended. Later that evening dispatch called to see whether assistance was still required. Mr. Shumard confirmed assistance was still needed. No officers attended.
- [16] However, at 9:06 pm on January 15, 2024, Sergeant Shadbick from Durham Regional Police Services called and advised Mr. Shumard that police would not attend the premises in the absence of violence or serious criminal activity. Sergeant Shadbick advised Mr. Shumard that without an injunction from the court the police were unable to assist.
- [17] Mr. Shumard deposed that Premier has made efforts to reduce the harm caused by the protestors' blockade. Specifically, by way of letter dated January 15, 2024, sent at 8:53 p.m., Unifor was advised that the blockades risked Del Monte's products spoiling, resulting in significant damage. The letter demanded that Unifor immediately remove obstructions from access points and permit free access to and from the Premises.
- [18] A second letter was sent to Unifor on January 16, 2024, advising that Premier would seek an injunction given that access to the Premises remained blocked.
- [19] At the time Mr. Shumard swore his affidavit, the blockades remained in place, and Unifor had not responded to Premier's letters.
- [20] Two other affiants swore affidavits on Premier's behalf – Akram Kamal, General Manager at Del Monte, and Richard DuPont, investigator for Xpera Risk Management & Investigation LP, who provided surveillance services on January 15 and 16, 2024.
- [21] Mr. Dale argues that because these deponents did not give oral evidence at the hearing, the only evidence before me was that of Mr. Shumard. However, the additional affidavits simply flesh out the evidence of Mr. Shumard, that the shipping and delivery entrances to Del Monte were blocked, and that fresh product that could not be shipped was at risk of spoiling. Mr. DuPont provided photographs of the blockage, trucks being denied access, tents, portable washrooms, wood piles and burn barrels. Mr. Kamal estimated that there was about \$350,000 worth of stock (bananas, pineapple, kiwi, broccoli, celery, grapes,

honeydew melon, cantaloupe, etc.) that could not be delivered due to the blockade. These additional details were confirmed by Mr. Shumard in cross-examination, which permits me to rely on the evidence contained in the affidavits.

- [22] Mr. Shumard confirmed that by the time of the hearing¹, the U-Haul truck had been moved somewhat. While Mr. Dale suggested to Mr. Shumard that access to the delivery entrance was now unimpeded, Mr. Shumard disagreed, and said there was not enough room to allow a delivery truck through.

Positions of the Parties

- [23] Premier is cognizant of the right to strike and takes no issue with the legal strike actions of Unifor. Accordingly, the relief Premier seeks is restricted to an order preventing the obstruction of the entrances to Del Monte, which it submits are illegal.

- [24] It is unclear whether Unifor takes the position that the actions of its members at Del Monte are legal. However, Unifor does make the following arguments:

1. It was well established that at common law that trade unions cannot be sued.
2. The injunction must fail because Premier failed to identify any individuals who have engaged in tortious or criminal conduct.
3. Premier is not an owner of the Premises, and such has no standing to seek an injunction – this was properly in Del Monte’s purview.

- [25] I will deal with these arguments in short order. Leach J. in *Windsor Salt v. Unifor*, 2023 ONSC 1431, facing the same jurisdiction argument by Mr. Dale, held that the law was not as clear and as settled as Mr. Dale suggested.

- [26] As the Court of Appeal held in *Public Service Alliance of Canada v. Canada (Attorney General)* (2002), 62 OR (3d) 682, at paras. 25-26:

[A]bsent clear contrary legislation, the legal status of trade unions to assert their rights in court, including common law rights, is now beyond question, at least in matters relating to their labour relations function and operations.

[W]hile variations exist among jurisdictions, the legal status accorded to trade unions derives not from specific provisions in any particular piece of legislation, but from the reality that, throughout Canada, the world of labour relations is governed by sophisticated

¹ At Mr. Dale’s request, we took a short recess to allow Mr. Shumard to leave the building and assess what was happening on the ground. Mr. Shumard went out only as far as he was comfortable, not wanting to enter the fray of picketers.

statutory machinery which requires that unions have sufficient legal personality to play their role in that world. Thus legislatures must be taken to have impliedly conferred on unions the legal status necessary for them to do so.

- [27] As did Leach J. in *Windsor Salt*, I find it unnecessary to make any finding in this regard given the exigent circumstances grounding this urgent motion.
- [28] The fact that Premier failed to identify and name any individuals who have engaged in tortious actions gave me pause. Mr. Dale presented this same argument in *Windsor Salt*. In that case, Leach J. granted Windsor Salt leave to amend its pleading to add a member of the union to the notice of action and notice of motion. Premier did not such relief.
- [29] In virtually every case referred to, individuals are named in addition to a union. However, I find comfort in the fact that in *Bank-Strox Renovation Inc. v. Laborers' International Union of North America, Local 183*, 2020 ONSC 4911, the injunction was granted in the name of the union only, although it was initially sought against a named individual as well.
- [30] Finally, I find that Premier had standing to bring this motion. While Premier does not own the Premises, its employees were carrying out work at the Premises. Premier is directly impacted by Unifor's actions, which in my view, provides Premier sufficient nexus to bring the injunction.

The Law

- [31] Section 102(3) of the *Act* requires the moving party to satisfy the court that reasonable efforts to obtain police assistance have been unsuccessful. In light of Mr. Shumard's evidence, I am satisfied that Premier has done so. Sergeant Shadbick specifically advised Mr. Shumard that in the absence of violence or serious criminal activity, there was nothing that Durham Regional Police Service could do to assist without an injunction from the court.
- [32] In order to successfully obtain an interim injunction, the moving party must establish the following three conditions as set out in *R.J.R.-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311, at p. 334:
- (a) The merits of the case demonstrate there is a serious issue to be tried;
 - (b) The moving party will suffer irreparable harm, which cannot be adequately compensated by damages; and
 - (c) The balance of convenience favours the granting of the injunction.

Serious Issue to be Tried

- [33] This is a low threshold requiring only a preliminary assessment of the merits of the underlying claim: *R.J.R.-MacDonald*, at pp. 337-338.
- [34] The right to picket does not include the right to break the law. Picketing is unlawful where it involves criminal or tortious conduct. As per the court in *Brookfield Properties v. Hoath et al.*, 2010 ONSC 6187, 5 CPC (7th) 393, at para. 36, “Picketing which constitutes obstruction of the lawful entry to and exit from premises is unlawful, constituting a nuisance.”
- [35] In this case, the picketers are engaging in tortious conduct by preventing delivery trucks from entering or exiting the Premises. No fresh produce can be delivered to the Premises where it can be processed and made ready for delivery. Worse, Del Monte is prevented from delivering the fresh produce that is ready to go to customers, which will inevitably lead to the product spoiling.
- [36] I am satisfied that there is a serious issue to be tried.

Irreparable Harm

- [37] In many cases, irreparable harm is established where obstruction of lawful entry and exit has created delay that is not the result of impermissible communications with those seeking ingress and egress, or a restriction on the free movement, liberty and security of individuals: see e.g., *Ideal Railings Ltd. v. Laborers’ International Union of North America*, 2013 ONSC 701, at paras. 21 and 23; and *Industrial Hardwood Products (1996) Ltd. v. International Wood and Allied Workers of Canada, Local 2693* (2001), 52 OR (3d) 694, at para. 25.
- [38] Here, access to the Premises has been blocked entirely since January 15, 2024.
- [39] The inability to receive or deliver time-sensitive products has specifically been identified as irreparable harm in the context of labour injunctions: see *Brookfield Properties*, at para. 56.
- [40] The produce that is currently housed at Del Monte, valued at approximately \$347,000, will soon expire. Del Monte’s inability to complete existing orders will cause losses that represent irreparable harm. Certainly financial, but Del Monte may also lose customers to other suppliers.
- [41] Premier too is subject to irreparable harm. In addition to potentially being held responsible for Del Monte’s losses, Premier may lose Del Monte as a client.
- [42] I am satisfied that if the injunction is not granted, irreparable harm will result to Premier, as well as Del Monte.

Balance of Convenience

- [43] The question of whether equity favours the granting of injunctive relief requires a consideration of the impact on both parties and non-parties if the injunction is granted or not granted.
- [44] Where it is established that picketers have engaged in tortious or unlawful conduct, the balance of convenience will favour the moving party: *Ideal Railings*, at para. 62.
- [45] As Leach J. held in *Windsor Salt*, at para. 30(a) (iv)(3):

[I] have found it difficult to see any meaningful inconvenience that would be experienced by those who would be restrained from further participation in unlawful nuisance, trespass and intimidation activity that has been occurring to date on the picket lines. In that regard, it should be emphasized that the injunctive relieve being requested does not seek to prevent lawful and constitutionally protected rights of proper picketing. Again, picketers have legitimate and constitutionally protected rights to freedom of expression that must be allowed to continue in a reasonable manner during the course of this labour dispute. However, those rights can be protected and facilitated by the granting of injunctive relieve that allows for reasonable periods of delayed entry and exit from the plaintiff's property while picketers attempt to communicate their views in a lawful and peaceful way, short of transgressing into unreasonable extended delay and/or complete obstruction of those trying to enter or leave the plaintiff's premises, improper intimidation in that regard, and/or trespass.

- [46] Not unlike Leach J., I am hard pressed to find any prejudice to Unifor and its representatives, whose actions amount to improper obstruction of those seeking lawful ingress and egress of the Premises.
- [47] I am satisfied that the balance of convenience favours the granting of the injunction. Unifor can continue to picket so long as it does so legally.

Conclusion

- [48] The relief sought in the notice of motion is granted, and shall remain in effect for four days pursuant to s. 102(5) of the *Act*. The draft Order, as amended, shall issue.
- [49] This matter was added to my docket on the day of the hearing on an emergency basis, and I am not available next week when the injunction expires. Accordingly, I will not seize myself in order that another judge may preside over the return of the motion.

Costs

- [50] As the successful party, Premier is presumptively entitled to its costs. The parties are encouraged to come to an agreement as to an appropriate award for costs. In the event they

are unable to do so, they may contact the trial co-ordinator to secure a short costs hearing before me.

- [51] At least 10 days before the date of the costs hearing, Premier shall serve written costs submissions not exceeding 3 pages, exclusive of costs outlines and any authorities. At least five days before the costs hearing, Unifor shall serve written costs submissions not exceeding 3 pages, exclusive of costs outlines and any authorities.
- [52] If neither side requests the costs hearing within 45 day of the date of the release of these reasons, costs will be deemed to have been settled.

The Honourable Justice Casullo

Released: January 19, 2024