IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Pacific Coast Terminals Co. Ltd. v. ILWU - Canada,* 2023 BCSC 1432

Date: 20230712
Docket: S234934
Registry: Vancouver

Between:

Pacific Coast Terminals Co. Ltd.

Plaintiff

And

International Longshore and Warehouse Union - Canada, ILWU, Local 500, Jane Doe, John Doe, and Other Unknown Persons

Defendants

Before: The Honourable Justice Thomas

Oral Reasons for Judgment

In Chambers

Counsel for the Plaintiff:	R.D. Copeland A. Nicholl M.C. Hamata G.L. Berron-Styan
Counsel for International Longshore and Warehouse Union Local 500:	D. Cieloszczyk
Counsel for International Longshore and Warehouse Union - Canada:	A. Kalinowska C. Batstone
Place and Date of Hearing:	Vancouver, B.C. July 12, 2023
Place and Date of Judgment:	Vancouver, B.C. July 12, 2023

2023 BCSC 1432 (CanLII)

[1] **THE COURT:** This is an application for an injunction by Pacific Coast Terminals Co. Ltd. ("PCT"). The factual basis is set out under part 2 of the notice of application. PCT operates a bulk shipping terminal located at 2300 Columbia Street in Port Moody, British Columbia. The terminal receives goods from across Western Canada and stores them until they are ready to be loaded directly onto ships for export around the world.

2023 BCSC 1432 (CanLII)

[2] PCT is a member of the British Columbia Maritime Employers Association ("BCMEA"), and the International Longshore and Warehouse Union - Canada ("ILWU-Canada"), are parties to an industry collective agreement for longshoring work on Canada's west coast. ILWU Local 500 is a member of ILWU-Canada and has members working under the collective agreement, including at the terminal for PCT.

[3] The bargaining between the BCMEA and ILWU-Canada for the renewal of the industry collective agreement has been ongoing for several months. To date, the parties have not been successful in reaching a new collective agreement. Since July 1, 2023, at 8:00 a.m., members of ILWU-Canada have been engaged in a strike under the *Canada Labour Code*. Since the strike began, there has been picketing activity in support of the strike by members of ILWU-Canada, including those from ILWU Local 500 at and around the terminal (the "picketers").

[4] There is a map contained in tab 2 of the application record at Exhibit A. This map illustrates that during the picketing cars have been lined up on both sides of Columbia Street from point C to point A on both sides of the street. Members have then been picketing and impeding traffic into the terminal by slow walking and in some instances turning with their backs facing cars.

[5] Essentially, the applicant says the blocking of management and cleaners from entering and exiting the terminal is unlawful conduct. With respect to the cleaners, they have been stopped on several occasions, and on one occasion the picket captain advised the managers that the cleaners were not permitted to access the terminal because they were not essential workers. On another occasion, the

cleaners decided that they did not wish to enter the terminal. It appears the cleaners had been intimidated from entering the terminal by the picketers.

[6] Management has been blocked from entering or exiting the terminal on numerous occasions. By "blocking" I mean their access to the terminal has been restricted in the sense that they have had to stop for 10 minutes and sometimes up to 40-plus minutes before they can enter the terminal. The blocking has forced cars to proceed through the terminal down Columbia Street between the parked cars one at a time while people walk slowly in front of the cars slowing them down. This means that the cars have to wait in line before they can either exit or enter the terminal. In some instances, the picketers have set up lawn chairs and sawhorses as physical barriers in the middle of the road and have stood in front and behind the barriers.

[7] In addition, there have been some interactions which indicate that some of the picketers were not members of the union but were people who were sympathetic to their cause that were joining them in their demonstration. In the affidavit of Mr. Westnakop at paras. 25-26, one such conversation occurred with a picketer who appeared to be Australian and a member of an affiliated union. This picketer stopped a manager who wanted to leave. The picketer said, “We are here from Australia, mate, and you will leave when we tell you you can leave.” When asked to repeat what he said, he repeated, “You will leave when we tell you to leave.” When the manager told the picketer that it was illegal for them to prevent him from leaving, he replied, “I do not care what is legal.”

[8] The affidavit of Mr. Smith documents an incident that occurred on July 10, 2023. Mr. Smith was stopped for a period of time from entering the port by the picketers. It took over 30 minutes for him to enter the facility. When he got through the picket line, he contacted one of the union’s president and left a voicemail in which:

a) he explained the picketers were significantly delaying and sometimes completely blocking people from entering or leaving the terminal. He

2023 BCSC 1432 (CanLII)

advised the delays were as much as 30 minutes and the picketing activity was completely unacceptable and illegal;

b) advised that the ILWU picket captain (on the picket line) advised Mr. Smith when he was trying to enter the terminal the union knew that they were blocking people contrary to the law. Mr. Smith was told that the union does not care that they are breaking the law, and that he could get an injunction if he didn't like it.

c) Mr. Smith requested that the unions instruct the picket captains and members about the scope of permissible conduct on the picket line and refrain from unlawful activity; and

d) Mr. Smith also advised there was a rental vehicle that needed to come into the terminal, and the picketers would have to let that vehicle in.

2023 BCSC 1432 (CanLII)

[9] Mr. Smith's voice mail was returned and he was advised the rental vehicle would be allowed into the terminal, but none of the other concerns raised were addressed.

[10] Subsequent to the voice mail, the managers were stopped for periods of time from leaving the terminal.

[11] I would like to stress that the picketers have not been violent. The applicant says the blocking and impeding of entry to the port by the picketers is the only unlawful activity that they are concerned about.

[12] Picketers are not permitted to physically obstruct ingress or egress from an employee's premises during a lawful strike. For this proposition, I will refer to *Gateway Casinos and Entertainment Limited v. British Columbia Government and Service Employees' Union*, 2018 BCSC 1700, at para. 29:

> [29] ... the law now seems settled in British Columbia that employers enjoy unrestricted access and egress to their premises during labour strikes and that a picket line that amounts to a functional blockade will not be permitted. In addition, the union, although it may attempt to persuade people not to

cross the picket line, may not stop vehicle or pedestrian traffic for the purpose of attempting to so persuade.

[13] I accept this is the law and conclude the picketers by impeding or delaying entry into the facility are acting in an unlawful manner.

2023 BCSC 1432 (CanLII)

[14] The applicant relies on *Supreme Court Civil Rules*, s. 39 of the *Law and Equity Act*, and the inherent jurisdiction of the court for the injunction.

[15] The *RJR-MacDonald* test states an interlocutory injunction may be granted if:

a) there is a serious question to be tried (lower standard), or if there is a strong prima facie case (higher standard);

b) irreparable harm will result where leave is not granted; and

c) if the balance of convenience favours the applicant.

[16] The lower standard of the *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311, 1994 CanLII 117 at para. 43 [*RJR-MacDonald*] test, that of a "serious question to be tried", has been applied in a number of similar cases involving strike activity where there has been *prima facie* unlawful activity.

[17] I agree with the applicant that in these circumstances the higher-threshold test requiring a strong *prima facie* case in order to grant an injunction is not required. I say this for three reasons; the proposed injunction:

a) is not attempting to restrain picketing in its entirety; it is just focusing on unlawful conduct associated with the picketing;

b) will not bring the action to a conclusion; and

c) does not amount to substantially all the relief that is being sought in the underlying action.

[18] Therefore, in my view the first part of the *RJR-MacDonald* test, whether there is a serious question to be tried, is relatively straightforward and requires only a

cursory review of the merits of the underlying action. My finding that the picketers have engaged in unlawful conduct is sufficient to satisfy this aspect of the test.

[19] Satisfaction of the second part of the test, whether irreparable harm will be suffered, is accomplished where a refusal to grant relief could so adversely affect the applicant's own interests that the harm could not be remedied if the eventual decision on the merits does not accord with the results of the interlocutory application. However, the law with respect to irreparable harm does not require substantial evidence that the harm that is occurring is irreparable.

[20] Where illegal picketing activity has been established on a *prima facie* basis, the courts are less concerned about irreparable harm. This was noted in *SWA Vancouver Limited Partnership v. Unite Here, Local 40*, 2019 BCSC 1806, at para. 47:

> [47] ... I agree that irreparable harm is quite a lesser concern in terms of whether the injunction should be granted. The [critical] point is that the Union has no right to impede ingress or egress to the Hotels' premises, period.

[21] I also rely on *Teal Cedar Products Ltd. v. Rainforest Flying Squad*, 2021 BCSC 605, at para. 39 where Justice Verhoeven notes:

> [39] Interference with a business as a going concern is regarded as amounting to irreparable harm: *Interfor v. Kern*, 2000 BCSC 1141 [*Kern*], at para. 33.

[22] In this case, the evidence of harm is that access is required to maintain the company's assets and the assets of the clients that are being stored in the terminal. If the client’s assets are damaged, there could be irreparable reputational damage suffered. As noted, the applicant is a port terminal. I am satisfied that impeding the ability of managers to access the terminal to maintain their assets and their client's assets satisfies, in these circumstances, the test for irreparable harm.

[23] It is true additional evidence could have been provided, and if this matter had proceeded as a trial undoubtedly would have been. In fact, the applicant sought leave at the end of the hearing to provide additional evidence on this issue.

2023 BCSC 1432 (CanLII)

However, I accept the applicant's submissions that the law does not require evidence of irreparable harm in these circumstances, and if that is not the case, the evidence that has been provided satisfies the low threshold necessary to satisfy this aspect of the test.

2023 BCSC 1432 (CanLII)

[24] I am strengthened in this view when I consider the third branch of the test, the balance of convenience. The balance of convenience analysis requires the court to consider which party will suffer greater harm from the grant or refusal of the injunction. Interlocutory injunctions are regularly granted where union members engage in unlawful activity on the picket line, such as obstructing access to their employer's premises.

[25] In this case, there is no prejudice to the respondents in granting the interlocutory injunction sought. The respondents can fully participate in legal picketing activities, the only effective branch of the injunction would be to prohibit unlawful activity. Conversely, I have found that prejudice exists to the applicant on the basis of unlawful activity; and also by the affidavit evidence presented which indicates that the managers cannot access the terminal in an unimpeded fashion.

[26] Therefore, I am of the view that injunctive relief in these circumstances is appropriate.

[27] The respondents take issue with proposed orders 1 and 3-6 of the injunctive relief. Proposed order 1 states:

> The defendants and all other persons having knowledge of the order and each of them by themselves, their servants or agents or otherwise must not physically prevent, impede, restrain, delay, or in any way interfere or counsel others to interfere with any individual or motor vehicle seeking access to, from, or within the Pacific Coast Terminals Co. Ltd., which is located at 2300 Columbia Street, Port Moody, British Columbia, until the trial or disposition of this action or further order of the court.

[28] The respondents say this order is unnecessarily broad and would have no end date in the sense that it could continue indefinitely. They propose that the order

2023 BCSC 1432 (CanLII)

be amended to state the injunction would lapse or cease if there was a resolution of the labour dispute or strike activity.

[29] The applicant, although amenable to limiting the scope of the order, has concerns that the respondents could simply stop the strike and then start the strike again and essentially defeat the order. He proposes that the order be amended to include:

> Until earlier trial of the action, further order of the court, or final resolution of the dispute through ratification of a new agreement or legislation from parliament.

[30] In my view, the applicant's position places an appropriate constraint on the order, and I would amend the draft order to include that language.

[31] The real issue that has been disputed in this application by the respondents are the proposed orders 3-6, which are essentially enforcement orders. The respondents say that they do not believe that the applicant has met the test set out in *RJR-MacDonald*, but if they have satisfied the test for the injunction, they would be happy to consent with a prohibition that they engage in lawful picketing, and that they refrain from impeding traffic.

[32] The law with respect to enforcement orders is set out in *Canadian Forest Products Ltd. v. Funk*, 2005 CarswellBC 3496 (B.C.S.C.) at paras. 37-40 [*Canadian Forest Products*]. In that case, at para. 39, the court reviews the guideline or set of criteria that is typically followed by the courts to grant an enforcement order. It is as follows:

> (1) While s. 127 of the *Criminal Code* is available in this province as a means of enforcing an order of this court, it is not a practical alternative in disputes of this nature in light of the present policies of the R.C.M.P. and the Vancouver City Police.
>
> (2) Those policies, designed to ensure that the police are regarded as impartial in any civil dispute, are supported by sufficient logic to dictate against an outright clash between the court and the law enforcement agencies which direct the police.
>
> (3) Rule 56 procedures should be considered as the first alternative where there is apparent disobedience of an order of this court in a civil proceeding.

2023 BCSC 1432 (CanLII)

> Those procedures allow for the "measured response" in civil disputes which is emphasized by the law enforcement authorities.
>
> (4) Enforcement orders, such as the one set out above, containing arrest and detention provisions should be included in the original injunction order only in unusual situations. The court will continue to expect its orders to be obeyed with or without such a provision. When those orders are not obeyed, proceedings for contempt of court are the appropriate remedy.
>
> (5) *Prima facie* proof of the breach of an order of this court should normally be a condition precedent to the granting of an enforcement order, as it is to the issuance of a Rule 56(5) warrant.
>
> (6) Large numbers of potential contemnors, flagrant disregard of an injunction, events occurring in a remote geographical area, identification difficulties and other such problems may dictate against Rule 56 procedures and in favour of an enforcement order in a given situation.

[33] In providing an enforcement order in *Canadian Forest Products* at para. 40 it was noted:

> I have concluded that an enforcement order is necessary in these circumstances because:
>
> > (1) there has already been conduct by the protestors in breach of February 21st order.
> >
> > (2) there are a large number of potential contemnors, and there is difficulty identifying them.
> >
> > (3) without an enforcement clause, the RCMP will not assist the company enforcing the order, and
> >
> > (4) I consider there is some risk of violence in the present situation.

[34] The respondent says there are no special circumstances that would warrant an enforcement order.

[35] The applicant's proposed enforcement order states as follows:

> 3. Any police officer with the Port Moody police department or the appropriate police authority in the jurisdiction in question, preferably the police, to arrest and remove from and around the terminal any person who the police have reasonable and probable grounds to believe is physically preventing, impeding, delaying, restraining, or in any way interfering or counselling others to interfere with any individual or motor vehicle seeking access to, from, or within the terminal.
>
> 4. Any police officer with the police to arrest and remove any person who has knowledge of this order and who the police have reasonable and probable grounds to believe is contravening or has contravened any provision of this order.

> 5. The police retain discretion as to the timing and manner of enforcement of the order, and specifically retain discretion as to the timing and manner of arrest and removal of any person pursuant to this order.
>
> 6. Any peace officer and any member of the police who arrests and removes any person pursuant to the order is hereby authorized to:
>
> > (a) release the person from arrest on the person agreeing in writing to obey the order;
> >
> > (b) release that person from arrest on that person agreeing in writing to obey this order and require that person to appear before this court at such place as may be directed by this court on a date to be fixed by this court;
> >
> > (c) bring that person forthwith before this court at Vancouver, British Columbia, or such other place as may be directed by this court;
> >
> > (d) retain that person in custody until such time as it is possible to bring that person before this court; and/or
> >
> > (e) otherwise take steps in accordance with part 16 of the *Criminal Code* RSC 1985, c 4-6.

2023 BCSC 1432 (CanLII)

[36] This order has been vetted by the police department, and they have advised the applicant they would not arrest any person in violation of the injunction without this enforcement order.

[37] The applicant says this order provides protection to the picketers that a prohibition order without an enforcement clause would have. They rely on para. 41 of *MacMillan Bloedel Ltd. v. Simpson*, [1996] 2 S.C.R. 1048, 137 D.L.R. (4th) 633 [*McMillan Bloedel*] which states:

> [41] The appellant Valerie Langer has questioned the appropriateness of including a provision authorizing the police to arrest and detain persons breaching the injunction. She argues that no authorization or direction from the court is necessary to enable the police to act. The respondent accepts that the authorization is superfluous, and states that it is included only because the police have requested such wording. No objection to this term was made before Hall J. and it is not suggested that it vitiates the order. In these circumstances, this Court need not consider it further. I observe only that the inclusion of police authorization appears to follow the Canadian practice of ensuring that orders which may affect members of the public clearly spell out the consequences of non-compliance. Members of the public need not take the word of the police that the arrest and detention of violators is authorized because this is clearly set out in the order signed by the judge. Viewed thus, the inclusion does no harm and may make the order fairer.

[38] I agree with the applicant that the proposed orders 3-6 provide appropriate and necessary constraints and instructions with respect to the enforcement of contempt of court orders. I think it is appropriate and in these circumstances, it is necessary that it be vetted by the police.

[39] However, in my view, the comments in *MacMillan Bloedel* are consistent with the current law in British Columbia, which is set out in *Canadian Forest Products*. *Canada Forest Products* requires an inquiry into whether special circumstances exist before an enforcement clause is attached to an injunction on a first-instant basis.

[40] The following facts are relevant to an inquiry into special circumstances:

a) the respondents are engaged in a concerted activity to impede access to the terminal. I am satisfied the law is well settled that this conduct is unlawful;

b) some of the picketers are not members of the applicant's union and are clearly difficult to identify. I also infer from the evidence provided about the Australian picketer that they are not necessarily constrained by the direction of union leaders. I also note that one of the union picket leaders was unable to identify many of the individuals who were picketing; and

c) the picket captains have acknowledged that they are blocking people contrary to law and that they do not care about breaking the law. When this was brought to the attention to the union’s leadership the union provided no response to this concern and the picketers continued to engage in unlawful conduct.

[41] In this case, the enforcement order:

a) has been vetted by the relevant police department;

b) provides wide discretion to the police to deal with non-compliance that contains informational requirements so that the picketers, whether members

2023 BCSC 1432 (CanLII)

of the union or not, will be advised of potential ramifications of their conduct; and

c) ensures that the tension concerns arising from contempt orders are minimized.

[44] Given the nature of the enforcement order and the special circumstances that I have just set out, in my view, the enforcement orders set out in paras. 3-6 are appropriate in the circumstances. I therefore grant revised draft order 1 and draft orders 2-8 contained in the notice of application.

[42] It has been a long afternoon and evening. I would like to thank counsel for their thoughtful submissions.

"Thomas J."

2023 BCSC 1432 (CanLII)