

CITATION: Purolator Inc. v. John Doe et al. 2024 ONSC 6696

COURT FILE NO.: CV-24-00732332

DATE: 20241130

SUPERIOR COURT OF JUSTICE – ONTARIO

RE: PUROLATOR INC.

Plaintiff

AND:

JOHN DOE, JANE DOE, and OTHER PERSONS, NAMES UNKNOWN, who have been trespassing, picketing, or obstructing at or near the premises of the Plaintiff located at 90 Silver Star Boulevard in Toronto, Ontario

Defendants

BEFORE: Koehnen J.

COUNSEL: *Christopher J. Rae, Anastasia Reklitis, Adam Gilani* for the plaintiff

HEARD: November 29, 2024

ENDORSEMENT

[1] This is a motion for an *ex parte* interim injunction to restrain secondary picketing at the plaintiff's premises at 90 Silver Star Boulevard in Scarborough, Ontario.

[2] The matter came to my attention shortly before 5 PM on Friday, November 29, 2024. A hearing occurred between 5:30 PM and 7:30 PM at *the end* of which I granted an interim injunction with reasons to follow. These are those reasons.

Factual Background

- [3] The plaintiff, Purolator Inc. is a Canadian integrated freight, package and logistics provider – delivering packages to, from and within Canada. Purolator’s network includes hub facilities, located in key regional areas, as well as local pickup and delivery facilities, which vary in size and scope. Purolator’s pickup and delivery facilities include the location at 90 Silver Star Boulevard in Scarborough, Ontario (the “Facility”).
- [4] The Facility has a single entry/exit onto Silver Star Boulevard. Shortly before 8 AM on Friday, November 29, 2024 a group of picketers began blockading access to and exit from the Facility. The number of picketers varied between 17 and 21 throughout the course of the day. The picketers were approximately 10 to 15 feet south of Silver Star Boulevard on the driveway of the Facility. Many of the picketers were wearing bright yellow jackets with Canada Post logos and were carrying flags which indicated that they may be associated with the Canadian Union of Postal Workers (“CUPW”).
- [5] CUPW employees are currently engaged in a strike with Canada Post. Canada Post is also the majority shareholder of Purolator. Purolator employees are not, however, on strike. They are represented by a separate bargaining unit and a different union. Shortly after the blockade of the entrance began, Purolator employees approached the picketers and asked to speak with a picket captain. There did not appear to be one. The picketers advised the Purolator employees that they intended to stop each of the vehicles leaving the Facility for 15 minutes. The evidence before me at the hearing was that each Purolator vehicle was stopped from leaving for between 15 and 31 minutes.

- [6] Purolator then called Toronto Police Services for assistance. Police officers attended at approximately 8:25 AM and spoke with some of the picketers. The police advised Purolator that they had no grounds to remove the picketers and that they could not choose sides in a labour dispute. The Purolator employee engaged with the police and asked if that was the case even if the people blocking the exit were not Purolator employees. This did not change the view of the officers in attendance. The police then left.
- [7] Blocking the exit and entry to the Facility has a critical impact on Purolator. The evidence before me was that 78 vehicles leave the Facility that every day between 7:15 AM and 10 AM. There are additional deliveries to the facility between noon and 2 PM. On Friday, November 29, only 27 of the planned 78 vehicles were able to leave the Facility.
- [8] The facility is a hub for next day deliveries to hospitals, medical service providers, pharmaceutical providers, police departments, the passport office, car parts manufacturers, schools and individuals. Deliveries to hospitals, medical service providers, and pharmaceutical providers are especially critical because they operate on a just-in-time delivery system. By way of example, one of Purolator's main clients at the Facility is Johnson & Johnson Medical Technologies. Johnson & Johnson cleans and sterilizes surgical equipment and uses the Purolator Facility to deliver that equipment to hospitals throughout Canada for next day delivery. Medical instruments are delivered to hospitals for use on the day of delivery or the day following delivery. Purolator provides the same service for suppliers of medical devices such as orthopedic implants. Those implants are similarly delivered to hospitals for use on the day of delivery or the following day. As a

result, delays in the delivery of medical devices can have significant impacts on the ability of physicians to conduct surgery and the ability of patients to receive timely medical care.

- [9] Pharmaceutical products are subject to similar timelines. The Facility receives and ships product for specialty pharmacies that prepare compounded prescriptions, usually used for infusions. Infusions have stability limits governed by time and temperature. As a result, timely delivery is critical.
- [10] This is of course not to say that other deliveries such as those to automobile manufacturers, other businesses and individuals are not also critical. Those businesses also depend on timely delivery to function properly.
- [11] To be fair to the picketers, when Purolator approached them to explain that certain vehicles had to leave for medical drop-offs the picketers negotiated and allowed those trucks through. In the pressure of the moment, Purolator was, however, able to identify only four vehicles that contained medical products. Medical products are not delivered on designated vehicles but are dispersed throughout the fleet. While there was no evidence led before me on the point, I assume that is because each vehicle is designated for a particular geographical area as opposed to being dedicated to a particular business use across a potentially wider geographical area. The four vehicles with medical deliveries that Purolator was able to identify were allowed to leave at 9:59, 10:09, 10:33 and 11:38 AM. Those were still beyond the ordinary departure time of no later than 10 AM.

The Test for a Labour Injunction

- [12] Section 102 of the *Courts of Justice Act*¹ sets out particular rules for injunctions in labour disputes. The principal differences between an injunction granted under section 102 and a conventional injunction are that it must involve a labour dispute, there is a significantly greater reluctance to grant *ex parte* injunctions, a minimum of two days notice for an injunction is usually required, an interim injunction is applicable for only four days, and the court must be satisfied that the person seeking the injunction has made reasonable efforts to obtain police assistance to prevent any alleged danger of damage to property, injury to persons, obstruction of or interference with lawful entry or exit from premises..
- [13] In my view, section 102 of the *Courts of Justice Act* does not apply because, as noted earlier, there is no labour dispute between Purolator and the picketers.
- [14] The picketing at issue here is commonly known as secondary picketing. That is to say it is picketing by people who have no business or contractual relationship with the target of the picketing, where the target of the picketing is not a party to a labour dispute, and the premises of the target are not the place of business of the employer of the picketers.² The picketers here were not Purolator employees.

¹ Courts of Justice Act, R.S.O. 1990, c. C. 43

² Maple Leaf Sports & Entertainment Ltd. v. Pomeroy, [1999] O.J. No. 685 (Gen. Div.)

- [15] It is settled law that secondary picketing is not picketing in relation to a labour dispute for purposes of section 102 of the Courts of Justice Act.³
- [16] As Justice D. Brown (as he then was) explained in *CNR v. Chief Chris Plain*,⁴ although individuals of course have the right to freedom of expression regardless of whether they are involved in a labour dispute, that freedom does not extend to blockading the property of others (such as Purolator in this case).
- [17] The picketers are entitled to protest anywhere they are lawfully permitted to but they are not entitled to blockade Purolator's facilities, disrupt the delivery of shipments from Purolator's facilities, or restrict Purolator employees from being able to freely enter and exit Purolator's facilities. Illegal activity by picketers, such as blockading has frequently been enjoined by the courts.⁵ Picketers are not allowed to block entry or egress from the property of others, not even for a short time.

The Test for a Conventional Interim Injunction

- [18] The test for a conventional typical injunction requires the moving party to demonstrate:

³ *Maple Leaf Sports & Entertainment Ltd. v. Pomeroy*, [1999] O.J. No. 685 (Gen. Div.); *C.T.V. Television Network Ltd. v. Kostenuk*, [1972] 2 O.R. 653 (H.C.); *aff'd* [1972] 3 O.R. 338 (C.A.); *Hersees of Woodstock Ltd. v. Goldstein*, [1963] 2 O.R. 81 (C.A.); *Canadian Pacific Railway Company v. Gill et al*, 2013 ONSC 256 at para. 19.

⁴ *CNR v. Chief Chris Plain*, 2012 ONSC 7348 at para. 19.

⁵ *R.W.D.S.U., Local 558 v. Pepsi-Cola Canada Beverages (West) Ltd.*, 2002 SCC 8; *Industrial Hardwood Products (1996) Ltd. v. Industrial Wood and Allied Workers of Canada, Local 2693*, [2001] 52 O.R. (3d) 694 (Ont. C.A.) at 702; *Ogden Entertainment Services v. Retail, Wholesale/ Canada, Local 440*, [1998] O.J. No. 1769 (Ont. Gen. Div.) at paras. 17 and 18; *varied* [1998] O.J. no. 1824 (C.A.); *Canada Pacific Forest v. Holder*, [1990] O.J. No. 2397 (Ont. Gen. Div.); *Canada (Attorney General) v. Gillehan*, [1991] O.J. No. 2617 (Ont. Gen. Div.); *Canadian Pacific Railway Co. v. Gurbachan*, [2003] O.J. No. 6057 (Ont. Sup. Ct.)

- a. That there is a serious issue to be tried.
- b. That the moving party would suffer irreparable harm if the injunction is not granted.
- c. That the balance of convenience favours granting the injunction.
- d. That the moving party has provided an undertaking as to damages.

[19] The analysis of this four-part test requires a balancing of the factors. Each factor is not a standalone watertight compartment. Factors can be balanced against each other. Strength with respect to one factor can offset weakness with respect to another.

[20] On my view of the evidence, Purolator has met that test.

[21] With respect to a serious issue to be tried: as noted above, secondary picketers are not permitted to obstruct entry or exit from the property of others.⁶

[22] Blocking access to property can constitute wilful obstruction, interruption or interference with an owner's lawful use, enjoyment or operation of its facilities contrary to section 430 of the Criminal code.⁷

⁶ Fleming Door Products Ltd. v. Hazell, [2008] O.J. No. 3039 (S.C.J.) at para. 15; Ogden Entertainment Services v. Retail, Wholesale/ Canada, Local 440, [1998] O.J. No. 1769 (Ont. Gen. Div.) at paras. 17 and 26; varied [1998] O.J. no. 1824 (C.A); Ontario Power Generation Inc. v. Society of Energy Professionals, [2005] O.J. No. 5817 (S.C.J.) at paras. 36-44 and 47; CNR v. Chief Chris Plain, 2012 ONSC 7348 at para. 19.

⁷ Criminal Code, RSC 1985, c C-46, ss 423(1), 430(1) ; R.W.D.S.U., Local 558 v. Pepsi-Cola Canada Beverages (West) Ltd., 2002 SCC 8 at paras. 77 and 103; Aramark Canada Ltd. v. Keating, [2002] O.J. No. 3505 (Ont. S.C.J.) at paras. 30 and 35-37.

- [23] Blocking entry or exit to the property of another can also constitute nuisance.⁸
- [24] As a result, Purolator has demonstrated that there is at the very least, a serious issue to be tried.
- [25] With respect to irreparable harm: Where protesters engage in tortious or criminal actions, damages are not an adequate remedy. The remedy for intentional, unlawful conduct ought to be an order to cease and desist, not a lengthy action for damages.⁹
- [26] Courts have regularly found that blocking entry or exit to an owner's property constitutes irreparable harm to the owner.¹⁰
- [27] As a result, Purolator has demonstrated that it will suffer irreparable harm if the injunction is not granted.
- [28] The balance of convenience requires the court to determine which of the two parties will suffer greater harm if the injunction is granted or denied.
- [29] If the injunction is granted, the only "harm" the picketers will suffer is to be prohibited from engaging in conduct that is unlawful in the first place. If the injunction is not granted, Purolator will continue to be deprived of the free use of its property and its many customers

⁸ Brookfield Properties v. Hoath et al., 2010 ONSC 6187 at para. 32; Aramark Canada Ltd. v. Keating, [2002] O.J. No. 3505 (Ont. S.C.J.) at paras. 30 and 33-34; Ogden Entertainment Services v. Retail, Wholesale/ Canada, Local 440, [1998] O.J. No. 1769 (Ont. Gen. Div.) at paras. 22-24, varied [1998] O.J. no. 1824 (C.A).

⁹ Aramark Canada Ltd. v. Keating, [2002] O.J. No. 3505 (Ont. S.C.J.) at para. 44; Ideal Railings Ltd. v. Laborers' International Union of North America, 2013 ONSC 701 at paras. 57-58; Sobeys v. UFCW, Local 175, 2013 ONSC 1207 at paras. 33 and 35-38; Fleming Door Products Ltd. v. Hazell, [2008] O.J. No. 3039 (S.C.J.) at para. 18.

¹⁰ Vale v. USWA Local 6500 et al, 2010 ONSC 1774 at paras. 31-32; Hamilton (City) v. Loucks, 2003 CanLII 64221 at paras. 25-27; Sobeys v. UFCW, Local 175, 2013 ONSC 1207 at paras. 35-38.

will be deprived of timely delivery of products including products needed for immediate surgery or pharmaceutical infusions.

[30] In similar situations, other courts have noted that there is nothing inconvenient in being asked to stop conduct that one has no right to engage in to begin with. In those circumstances there is simply nothing to balance.¹¹

[31] The undertaking in damages is usually contained in an affidavit delivered by the moving party. Here, there were no affidavits because of the urgency of the motion. Instead, I heard *viva voce* evidence at the hearing. Although none of the witnesses was asked whether Purolator would provide an undertaking in damages, Purolator has stated in its factum that it “has given the usual undertaking as to damages.” Given this statement in its factum, I assume that the absence of a statement to this effect in the *viva voce* evidence was either an oversight or arose because none of the three witnesses I heard had the corporate authority to provide such an undertaking. I therefore order that Purolator provide such an undertaking as a condition of the continuation of the injunction.

¹¹ *Fleming Door Products Ltd. v. Hazell*, [2008] O.J. No. 3039 (S.C.J.) at para. 21; *Ontario Power Generation Inc. v. Society of Energy Professionals*, [2005] O.J. No. 5817 (S.C.J.) at para. 47; *Ideal Railings Ltd. v. Laborers’ International Union of North America*, 2013 ONSC 701 at para. 62; *Glasrock Products Inc. v. United Steelworkers, Local 1005*, 2011 ONSC 5021 at paras. 13-15; *Lower Lakes Towing Ltd v. United Steelworkers Local 1005*, 2011 ONSC 3668 at para. 9; *Ogden Entertainment Services v. Retail, Wholesale/ Canada, Local 440*, [1998] O.J. No. 1769 (Ont. Gen. Div.) at para. 30, varied [1998] O.J. no. 1824 (C.A)

Conclusion

[32] For the reasons set out above, I grant the injunction that Purolator requests. Given that this motion proceeded without notice to the respondents, as a condition of granting the injunction I ordered Purolator to provide immediate email notice of the order to the President of CUPW and to provide my email address to any counsel retained by CUPW or any other party seeking to vary or set aside the order to ensure that any potentially opposing parties had immediate access to the court over the course of the weekend.

Date: November 30, 2024

Koehnen J.