

CITATION: Purolator Inc. v. John Doe et al. 2024 ONSC 7037

COURT FILE NO.: CV-24-00732332

DATE: 20241216

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

Stephen J. Moreau, Ryan D. White, Adrienne Telford for the Canadian Union of Postal Workers

HEARD: December 9, 2024

ENDORSEMENT

[1] On November 29, 2024 I issued an *ex parte* interim injunction restraining the respondents and others from picketing on the plaintiff's property at 90 Silver Star Boulevard in Scarborough, Ontario in a manner that blocked the ability of the plaintiff's vehicles to leave

the property in a timely manner.¹ On December 5, 2024 I issued further reasons arising out of a hearing that occurred with notice to the Canadian Union of Postal Workers (“CUPW”) in which I maintained the interim injunction.² These current reasons arise out of a hearing on December 9, 2024 to extend the injunction for a further 30 days.

- [2] I grant that extension for the reasons set out in my reasons of December 5, 2024.
- [3] The argument today was not materially different than the argument on December 1. Today was focussed more on some added nuances and updates than on anything new.
- [4] The respondent CUPW asks that I amend my order to remove paragraph 2 (b) which precluded the respondents from inducing breach of contract. CUPW argues that this provision leaves strikers uncertain about what they can or cannot do. By way of example, CUPW submits it would prevent union members from posting messages on social media encouraging people to boycott Purolator. I disagree and am not inclined to change the order.
- [5] Courts have long recognized that torts, including inducing breach of contract, are the appropriate mechanisms through which to regulate picketing.³ CUPW’s concern about posting on social media is misplaced. Advocating a boycott of someone does not amount to inducing breach of contract. As the Supreme Court of Canada described it in, *A.I.*

¹ Reported at *Purolator Inc. v. John Doe et al.* 2024 ONSC 6696

² Reported at *Purolator Inc. v. John Doe et al.* 2024 ONSC 6812.

³ *R.W.D.S.U., Local 558 v. Pepsi-Cola Canada Beverages (West) Ltd.*, 2002 SCC 8 (CanLII), [2002] 1 SCR 156 at paras. 73 and 103.

Enterprises Ltd. v. Bram Enterprises Ltd.,⁴ the tort of inducing breach of contract or intentional interference with economic relations creates a type of “parasitic” liability in three-party situations. It allows a plaintiff to sue a defendant for economic loss resulting from the defendant’s unlawful act against a third party. Liability to the plaintiff is based on (or parasitic upon) the defendant’s unlawful act against the third party. As the Court described it in para. 24 of *Bram Enterprises*:

An old case will serve as an example. The defendant, the master of a trading ship, fired its cannons at a canoe that was attempting to trade with its competitor, the plaintiffs’ trading ship, in order to prevent it from doing so. The defendant was held liable, Lord Kenyon being of the opinion that these facts supported an action: *Tarleton v. M’Gawley* (1793), Peake 270, 170 E.R. 153. The plaintiffs were able to recover damages for the economic injury resulting from the defendant’s wrongful conduct toward third parties (the occupants of the canoe) which had been committed with the intention of inflicting economic injury on the plaintiffs.

[6] In this example, the defendant fired on the canoe in order to prevent the occupants of the canoe from carrying on business with the plaintiff. That is the sort of conduct the tort is aimed at. It is not aimed at legitimate competition or free speech which includes trying to persuade people not to do business with one party.

[7] Second, CUPW asked me to narrow the scope of the order to the specific premises at issue and not to all Purolator premises in Ontario. CUPW submits that the degree of picketing that occurs and the degree of obstruction that is permissible turns on the individual facts of each case. For example, the Scarborough facility has a single entry and exit. Thus, if one

⁴ *A.I. Enterprises Ltd. v. Bram Enterprises Ltd.*, 2014 SCC 12 (CanLII), [2014] 1 SCR 177

blocked that single exit for 5 minutes per vehicle, with 78 vehicles leaving per day, one would create a delay of 390 minutes or 6.5 hours. Other Purolator facilities in Ontario may, however, have more than one exit. In those circumstances the delays would be decreased to 3.25 hours per day with 2 exits, and 1.62 hours with 4 exits. If the number of vehicles at the other facilities were smaller, the delays would be smaller still.

[8] Although that may well be the case, the principle underlying the order was not a specific period of time as such as on the concept of obstructing an exit of a third party which is impermissible as opposed to informational picketing which is permissible. Informational picketing as described in my earlier reasons remains permissible even in the face of the order. While perhaps not perfect, a province wide order of this nature makes for a preferable use of judicial and party resources than arguing a separate injunctions in umpteen different venues for each facility. Should the particularities of a particular facility make the order unjust, the parties can attend before me seek to vary the order.

[9] Finally the parties advised me of two other orders that had been issued in Montreal and Winnipeg with the former enjoining picketing much like my orders did and the latter dismissing Purolator's request for an injunction. Neither of those courts has had an opportunity to release reasons yet.

[10] In light of the foregoing I extend my earlier order for a further 30 days from today's date.

Date: December 16, 2024

Koehnen J.