CITATION: Parkland Corporation v. 2700455 Ontario Inc., 2024 ONSC 6784
COURT FILE NO.: CV-24-00000170-0000
DATE: 2024 12 06

SUPERIOR COURT OF JUSTICE – ONTARIO
7755 Hurontario Street, Brampton ON L6W 4T6

RE: Parkland Corporation, Applicant

AND:

2700455 Ontario Inc., Lakhwinderpal Dhindsa, Paramathas Joseph, and Muraleetharan Sivaguru, Respondents

BEFORE: Justice Bloom

COUNSEL: B. Jones, for the Applicant, the Moving Party

B. Wilson and S. Bhangu for the Respondent, 2700455 Ontario Inc., the Responding Party

HEARD: November 21, 2024 by videoconference

E N D O R S E M E N T

I. INTRODUCTION

[1] The Applicant seeks an interlocutory injunction prohibiting the Respondent corporation (hereinafter "270") from selling fuels purchased from entities other than the Applicant, pending the adjudication of the Application.

II. UNDISPUTED FACTS

[2] A number of facts were not in dispute during oral argument.

[3] Commencing in 2020 and during the material period the Moving Party and Responding Party had a contractual relationship.

[4] The Moving Party provided the Responding Party Esso fuel on consignment and Esso branding, for the gas station the Responding Party operated in Hanover, Ontario.

[5] The Moving Party had the right to provide the Esso branding rights under a contract with, and acquired the Esso fuel under contract with, Imperial Oil.

[6] The material portion of the contract between the two litigants provided that 270 was to “sell only those grades or qualities of Motor Fuels as supplied under the terms of this Agreement [(the contract between the parties)]”.

[7] By late May of 2024, 270 was selling fuel other than that purchased from the Moving Party, at the gas station.

[8] By November of 2024, 270 was selling Esso fuel purchased from a competitor of the Moving Party, at the gas station.

III. ARGUMENTS OF THE PARTIES

A. Arguments of the Moving Party

[9] The Moving Party argues that the tripartite test for granting an interlocutory injunction applies to this matter; that the strength of one factor may compensate for the weakness of another; and that the overarching issue is whether the granting of the injunction is in the best interests of justice.

[10] The Moving Party contends that the first prong of the test, whether framed as establishing a serious issue or the higher strong *prima facie* case test, is satisfied. The Moving Party submits that the Responding Party's sale of fuel purchased from entities other than the Moving Party in contravention of their contractual relationship, proves this point.

[11] Second, the Moving Party argues that it will suffer irreparable harm, if the contractual breach is not enjoined pending trial of the application. That harm would result from damage to the Moving Party's business model, by encouraging other dealers with the same type of contractual relationship with the Moving Party to breach that obligation. The Moving Party submits that the business model, with its intellectual property, reputational, contractual, and property aspects requires enforceability to preserve it.

[12] Moreover, the Moving Party submits that the Responding Party's precarious financial condition would render damages unrecoverable, and, therefore, an ineffective remedy on the application.

[13] Third, the Moving Party submits that the balance of convenience favours it, since the Responding Party is only being asked on the motion to perform its contractual obligation, and the Moving Party has provided an undertaking as to damages.

B. Arguments of the Responding Party

[14] In oral argument the Responding Party contends that the Moving Party no longer has Imperial Oil's authorization to provide ESSO branding rights and ESSO fuel to the Responding Party as required under the contractual arrangement between the parties, and, accordingly, fails to meet its burden under all three prongs of the tripartite test for an interlocutory injunction.

[15] The Responding Party supports this argument by contending further that granting the injunction sought in these circumstances would leave it without fuel to sell; and by submitting that Parkland has not adduced on this motion documentation of its relationship with Imperial, a flaw that can be rectified by its being adduced on the application.

[16] Finally, the Responding Party submits that, if the injunction sought is not granted, it can earn revenue from the sale of fuel, and, therefore, be in a position to pay any damages awarded on the application.

IV. GOVERNING PRINCIPLES

[17] In Trop *v. Trop*, 2024 ONCA 855 at para. 3 Justice Roberts set out the test for determining whether to grant an interlocutory injunction:

> [3] The test for a stay is the same as for an interlocutory injunction. The moving party must satisfy the court that: 1) there is a serious issue to be tried on the appeal; 2) the moving party will suffer irreparable harm if the stay is not granted; and 3) the balance of convenience favours the stay: *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994], 1 S.C.R. 311, at p. 334. These criteria are not water-tight but rather involve interrelated considerations; the strength of one criterion may compensate for the weakness in another: *Pannone v. Peacock*, 2022 ONCA 520, at para. 8. The overarching consideration is whether the stay is in the interests of justice: *Fatahi-Ghandehari v. Wilson*, 2016 ONCA 921, at para. 19; *Pannone*, at para. 8.

[18] Where a mandatory interlocutory injunction is sought, rather than a prohibitory interlocutory injunction, the first element of the tripartite test requires the showing of a strong *prima facie* case. As explained in Paul M. Perell and John W. Morden, *The Law of Civil Procedure in Ontario* 5th ed (Toronto: LexisNexis Canada Inc., 2024) at paragraphs 3.32 to 3.35 that test requires the motion judge to be satisfied, after a thorough review of the evidence, that there is a strong likelihood of success at trial. In the same discussion the learned authors point out that the classification of an injunction as mandatory or prohibitory depends on the facts; the issue is whether the order sought is a request to prohibit a change of the *status quo.* If it is, the injunction sought is prohibitory, and the test is whether there is a serious issue to be tried, that is a viable claim.

V. ANALYSIS AND ORDER

[19] I am persuaded that the Moving Party has satisfied the tripartite test; and that the interlocutory injunction is to be granted.

[20] First, although I find that the injunction is prohibitory rather than mandatory, I am satisfied that the higher standard of a strong *prima facie* case has been established on the first prong of the test.

[21] There is no dispute that the Responding Party is selling fuels purchased from other sources than the Moving Party. The only response provided by the Responding Party to this evidence is the contention that the Moving Party no longer has Imperial Oil's authorization to provide ESSO branding rights and ESSO fuel as required under the contractual arrangement between the parties.

[22] That contention on the evidence before me turns on exhibit A to the affidavit of Maurice Chessman sworn or affirmed November 4, 2024. Mr. Chessman provided evidence in the affidavit that he was a Territory Manager for the Moving Party. In the affidavit and exhibit A, he also gave evidence that, if the contractual arrangement between the litigants were carried out, then Parkland would be authorized by Imperial Oil to provide ESSO branding to the Responding Party.

[23] This evidence was relied upon by the Responding Party in oral argument; the Responding Party acknowledged that this evidence rendered its argument somewhat circular. The Responding Party at the same time submitted that the

Moving Party could, on the hearing of the application, provide documents of its relationship with Imperial, which it had not adduced on the motion before me.

[24] The fact remains that, on the evidence before me, the Responding Party is clearly in violation of its contractual obligation to Parkland by selling fuels purchased from third parties; and cannot justify its violation by citing the negative consequences of that very violation for Parkland's relationship with Imperial. That argument is circular, and lacks logic and common sense.

[25] Accordingly, even the higher test of a strong *prima facie* case is met.

[26] I further find that the Moving Party has established the second element of the three part test, irreparable harm.

[27] In *Temagami (Municipality) v. Temagami Barge Limited*, 2024 ONCA 859 at para. 11 Justice Gomery described what constitutes irreparable harm:

> [11] Irreparable harm is "harm which either cannot be quantified in monetary terms or which cannot be cured, usually because one party cannot collect damages from the other": *RJR-MacDonald*, at p. 341. A permanent loss of market share may constitute irreparable harm. An applicant for a stay cannot, however, rely on speculative evidence about irreparable harm. Their evidence must establish that there is a high degree of probability that permanent and non-compensable harm will in fact occur: *Operation Dismantle Inc. v. Canada*, [1985] 1 S.C.R. 441, at p. 458; *Syntex Inc. v. Novopharm Ltd.* (1991), 36 C.P.R. (3d) 129, at p. 135 (F.C.A.), leave to appeal refused, [1991] S.C.C.A. No. 309.

[28] In the case before me, it is undisputed that the Responding Party was, before violating its contractual arrangement with Parkland, in financial difficulty and

unlikely to be able to pay a damages award. That point is set out in the affidavit of Mr. Chessman sworn or affirmed on August 16, 2024.

[29] In the same affidavit, Mr. Chessman states that the honouring of contractual agreements by its dealers in circumstances such as those before me is necessary for Parkland to preserve market share.

[30] Mr. Chessman's evidence establishes irreparable harm. The reasoning of Justice Centa in *Parkland Corporation v. 2615669 Ontario Inc.,* 2024 ONSC 3724 also supports this conclusion.

[31] *Lastly*, I am persuaded that the balance of convenience supports the case for an interlocutory injunction. Pending a decision on the merits, the Responding Party would only be ordered to refrain from violating its contractual obligation; however, denial of the injunction would imperil the business model and market share of Parkland without a remedy in damages.

[32] Accordingly, I grant the interlocutory injunction sought against the Responding Party, 270, prohibiting it from selling fuels purchased from sellers other than Parkland pending the adjudication of the application, and subject to variation of this relief by the judge hearing the application.

VI. COSTS

[33] I shall receive costs submissions in writing of no more than 3 pages, excluding a bill of costs. The Moving Party is to serve and file its submissions within 21 days; the Responding Party is to serve and file its submissions within 21 days of service of the Moving Party's submissions. There shall be no reply.

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Bloom, J.

DATE: December 6, 2024

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ENDORSEMENT

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Bloom J.

Released: December 6, 2024