Date: 20020219
Docket: CA 177066

NOVA SCOTIA COURT OF APPEAL

[Cite as: Tardif v. Halifax Shipyard, 2002 NSCA 29]

BETWEEN:

FERN TARDIF, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 625, JAMES COSTELLO and INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 2330

Appellants/Applicants

\- and -

HALIFAX SHIPYARD, A DIVISION OF IRVING SHIPBUILDING INC.

Respondent

D E C I S I O N

Counsel: Gordon N. Forsyth for the applicants/appellants
Brian Johnston, Q.C. and Rebecca K. Saturley for the respondent

Application Heard: February 14, 2002

Decision Delivered: February 19, 2002

BEFORE THE HONOURABLE JUSTICE BATEMAN IN CHAMBERS

BATEMAN, J.A.: (in Chambers)

[1] The appellants, International Brotherhood of Electrical Workers (IBEW), Local 625 et al (the "applicants") seek stay of an order of Justice Arthur LeBlanc of the Supreme Court of Nova Scotia granting the respondent's application for leave to apply for a contempt order.

[2] James Costello, one of the appellants, is the Business Manager of Local 2330 of the IBEW, a Newfoundland local. Fern Tardif is the business manager and financial secretary of IBEW, Local 625.

[3] Halifax Shipyard ("Shipyard") obtained a $60-million contract to complete an off-shore drilling rig, the Eirik Raude Oil Rig, which contract would require employment of 1,200 employees, including 450 electricians, for a six-month period. The Shipyard has a contract with the Marine and Shipbuilding Workers Union, which includes electricians. It proposed to hire the required electricians through that Union. The IBEW claimed "jurisdiction" and refused to clear its members for work on the rig. The IBEW allegedly threatened to discipline any member who was prepared to accept work under the Shipyard contract. Shipyard sued the union for, among other things, interference with economic and contractual relations

[4] Several parties, in three separate applications, applied for an interim injunction restraining the IBEW and its agents from continuing to interfere with the hiring of electricians to work on the project. Those applying for an injunction were: Halifax Shipyard, a Division of Irving Shipbuilding Inc.; Brayne McGrath, a journeyman wireman electrician and a longstanding member of IBEW, Local 625; the Industrial Union of Marine and Shipbuilding Workers, Local No. 1 (Local 1); Blaise Young and Fred Pickrem. Messrs. Young and Pickrem are both members of Local 1 who work at Halifax Shipyard as unionized employees and are also members of the IBEW.

[5] Gruchy J. granted the interim injunction (decision reported as **Industrial Union of Marine and Shipbuilding Workers of Canada, Local 1 v. International Brotherhood of Electrical Workers, Local 625** (2001), 198 N.S.R. (2d) 60; N.S.J. No. 409 (Q.L.)(N.S.S.C.)), and in so doing found that:

> **[55]** All applicants herein have claimed that the respondents have directly interfered with their contractual relations. The Shipyard claims that IBEW, Local

625 has interfered with the contractual relationships between it and Local 1, a relationship which the Shipyard is both contractually and by statute obliged to honour. Brayne McGrath claims the respondents have interfered with his contract with Halifax Shipyard. Local 1 claims the respondents have interfered with its contract with Halifax Shipyard and with its contracts with its members. Blaise Young and Fred Pickrem similarly claim the respondents have interfered with their contracts with Local 1. The Shipyard claims the respondents have interfered or attempted to interfere with its contract for the completion of the Eirik Raude.

. . .

[57] There has been sufficient prima facie evidence placed before me whereby it may be concluded as follows:

(1) The respondents had knowledge of each of the various contracts under consideration and their terms.

(2) The respondents intended to procure a breach or other termination or hindrance of the contracts, with the exception of the contract which the Shipyard has between it and Ocean Rig 2 AS to complete the Oil Rig and with which the Shipyard claims the respondents intended to interfere.

(3) The respondents conduct directly persuaded or hindered (or is attempting to hinder) the parties from performing their contracts.

(4) All applicants have suffered damage.

[6] Shipyard says that Local 2330 of the IBEW based in Newfoundland has continued to interfere with its electrician members who seek work on the rig project in the same manner as did Local 625. This, says Shipyard, is in breach of the interim injunction. Shipyard applied for and has been granted leave to apply for a Contempt Order against Mr. Costello. The applicants have appealed the order granting leave. They now apply for a stay of that order pending the hearing of the appeal.

[7] The granting of a stay is an extraordinary remedy and generally requires the demonstration by the applicant of an arguable case and irreparable harm, not compensable by a monetary award.

[8] As noted by Freeman, J.A. in **Couglan v. Westminer Canada Limited** (1993), 125 N.S.R. (2d) 171 (p. 174):

> Stays deprive successful parties of their remedies, and they are not granted routinely in this province. They are equitable remedies and the party seeking the stay must satisfy the Court it is required in the interests of justice.

[9] In **Fulton Insurance Agencies Ltd. v. Purdy** (1990), 100 N.S.R. (2d) 341 (C.A.) Hallett, J.A., for this Court, set out the test. At para. 28:

> **[28]** In my opinion, stays of execution of judgment pending disposition of the appeal should only be granted if the appellant can either:
>
> **[29]** (1) satisfy the court on each of the following: (i) that there is an arguable issue raised on the appeal; (ii) that if the stay is not granted and the appeal is successful, the appellant will have suffered irreparable harm that is difficult to, or cannot be compensated for by a damage award. This involves not only the theoretical consideration whether the harm is susceptible of being compensated in damages but also whether if the successful party at trial has executed on the appellant's property, whether or not the appellant is successful on appeal will be able to collect, and (iii) that the appellant will suffer greater harm if the stay is not granted than the respondent would suffer if the stay is granted; the so called balance of convenience, or:
>
> **[30]** (2) failing to meet the primary test, satisfy the court that there are exceptional circumstances that would make it fit and just that the stay be granted in the case.

[10] The applicants rely upon the primary test and do not suggest that there are exceptional circumstances here.

[11] A party wishing to apply for a contempt order must first seek leave of the Court pursuant to **Civil Procedure Rule** 55.02:

> **55.02.** (1) An application shall not be made to the court for a contempt order unless the court on an ex parte application first grants leave to make the application. [E. 52/2(1)]
>
> (2) An application for an order granting leave under paragraph (1) shall be supported by an affidavit setting out,
>
> > (a) the name, address and description of the applicant;
> >
> > (b) the name, address and description of the person sought to be committed; and

(c) the facts in support of the grounds on which the contempt order is sought. [E. 52/2(2)]

(3) On the hearing of an application under paragraph (1), the court may,

(a) order a notice of application for a contempt order and any supporting affidavit to be served upon any person sought to be committed at least five (5) days before the hearing, or as the court otherwise orders; [E. 52/3(1)]

(b) dispense with service on any person of a notice of application and any supporting affidavit; [E. 52/3(4)]

(c) order service of a notice of application and any supporting affidavit to be made by substituted service as provided by rule 10.10.

(4) Unless the court otherwise orders, an order granting leave under paragraph (1) shall lapse unless notice of the application is personally served upon any person sought to be committed within twenty (20) days from the date of the granting of the order. [E. 52/3(2)]

[12] Counsel agreed before Justice LeBlanc that to grant leave to apply for a contempt order Shipyard need only satisfy the judge that there is an arguable case for contempt.

[13] Justice LeBlanc's decision reveals that he applied the test agreed to by the parties. He expressly considered whether the applicant Shipyard had demonstrated an arguable case on the necessary elements of the offence.

[14] The decision to grant leave to appeal is a discretionary one. In **Gateway Realty Ltd. v. Arton Holdings Ltd. and LaHave Developments Ltd.** (1990), 96 N.S.R. (2d) 82, Matthews, J.A. wrote, at p. 85:

[10] The approach an appeal court must adopt in considering a discretionary order made by a chambers judge has been stated by this Court in **Exco Corporation Limited v. Nova Scotia Savings and Loan et al.** (1983), 59 N.S.R. (2d) 331; 125 A.P.R. 331, wherein Chief Justice MacKeigan in delivering the unanimous judgment of the Court on an appeal concerning an interlocutory injunction stated at p. 333:

> "This Court is an appeal court which will not interfere with a discretionary order, especially an interlocutory one such as this that is now before us, unless wrong principles of law have been applied or patent injustice would result."

[15] The applicants have not satisfied me that there is an arguable issue that Justice LeBlanc applied wrong principles of law or that a patent injustice would result from his order granting leave to apply for a contempt order. They, therefore, fail on the first requirement of the **Fulton** test.

[16] Accordingly, the application for a stay is dismissed.

[17] Counsel are agreed that costs be in the cause. I so order and fix costs at $1500 inclusive of disbursements.

Bateman, J.A.