

**IN THE SUPREME COURT OF NOVA SCOTIA**

**Citation:** Movie Gallery Canada, Inc. v. 9070-7720 Quebec Inc., 2005 NSSC 61

**Date:** 20050321

**Docket:** 242853

**Registry:** Sydney

**Between:**

Movie Gallery Canada, Inc.

Applicant

v.

9070-7720 Quebec Inc.

Respondent

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**Judge:** The Honourable Justice Frank Edwards

**Heard:** March 14, 18 & 21, 2005, in Sydney, Nova Scotia

**Written Release of  
Oral Decision:** March 24, 2005

**Subject:** Interlocutory injunctions - mandatory or prohibitive.

**Facts:** Respondent had signed lease with Applicant in August 2004 and agreed to do extensive renovations to the premises. When the cost of renovating to the Applicant's specifications became too expensive, Respondent, in October 2004, signed lease with Intervenor company. Respondent did not tell Applicant of second lease but led Applicant to believe it would obtain possession by March 1, 2005. On latter date, Applicant learned of Intervenor Company which by this time had invested significant money in the premises and was almost ready to open its retail operation. The Applicant applied for an interlocutory injunction.

**Issue:** Had Applicant met three part test for interlocutory injunction?

**Result:** No, application dismissed. Application was effectively seeking a mandatory injunction to dispossess Intervenor Company of possession. In such cases, Applicant must show “strong prima facie case” or that “it is clearly in the right”. Case turned on interpretation of clause in lease. Court unable to say that Applicant’s interpretation was “clearly in the right”.

Applicant also failed to demonstrate irreparable harm and, though moot, the balance of convenience favoured the status quo. The Intervenor Company had acted in good faith and had no knowledge of the Applicant’s brief until the Application was brought.

**Costs:** Costs awarded against Respondent – although successful in opposing the granting of an injunction, application was triggered by the Respondent’s deception. Applicant and Intervenor dragged into litigation which would not have occurred if the Respondent had been forthright.

**Cases Noted:** *RJR MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311 at 335-343;  
*Canada (Attorney General) Maritime Harbour Society* (2001) 197 N.S.R. (2d) 322;  
*Hardman v. Alexander*, 1998 Carswell NS 506 (NS.S.C.)  
*1252668 Ontario Inc. v. Wyndham Street Investments Inc.*, [1999] O.J. No. 3188 (S.C.J.), supplemental reasons [1999] O.J. No. 3443 (S.C.J.), leave to appeal granted [1999] O.J. No. 3937 (S.C.J.), appeal dismissed [1999] O.J. No. 5423 (C.A.)  
*John E. Dodge Holdings Ltd. v. 805062 Ontario Ltd.* 223 D.L.R. (4th) 541 (Ont.C.A.)

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