

CASE:

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(Cite as: Attorney General v. Maritime Harbours Society , 2001 NSSC127)

ATTORNEY GENERAL OF CANADA

Plaintiff

v.

**MARINESERVE.MG.INC. a body corporate and
MARITIME HARBOURS SOCIETY, an incorporated society**

Defendants

JUSTICE A. DAVID MacADAM

HALIFAX, NS

S.H. 173182

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HEARD: September 19 and October 9, 2001 (in Chambers)

DECISION: October 11, 2001 **WRITTEN RELEASE:** October 16, 2001

SUBJECT: Injunctions - Mandatory Injunctions - *Mareva* Injunction - Prohibitive Injunctions

SUMMARY: Plaintiff seeks an injunction to prevent Defendant, Marine Harbours Society (MHS), from paying Marineserve.MG.Inc. (Marineserve), from funds advanced by it to MHS to assist in funding expenses of the Port of Digby.

HELD: To the extent it asks for a freeze on the use of these funds until MHS provides an accounting as to how earlier payments were applied to expenses of the Port, this would be a mandatory and/or *Mareva* injunction, and in neither case has the plaintiff met the onus of establishing a “*strong prima facie case*” or that it is “*clearly in the right.*”

Plaintiff’s claim for an injunction against Marineserve requiring it to produce

records as to how the previous payments received from MHS were disbursed, is dismissed on the basis the Plaintiff has not established a “*serious issue to be tried*”, in respect to the allegation Marineserve has committed the “*tort of inducing a breach of contract.*”

An injunction granted, subject to Plaintiff providing an undertaking as to damages, freezing disbursement of any of the remainder of the funds held by MHS of monies received from the Plaintiff, on the basis the three step test in *R.J.R. MacDonald v. Canada (Attorney General)*, [1994] 15 S.C.R. 311, has been met, namely, there is a serious issue to be tried, a risk of irreparable harm to the Plaintiff and the balance of convenience favours some form of injunctive relief.

The injunction granted is restricted to the issue of requiring MHS to agree to provide records of how the next payment will be disbursed toward operations of Port. Since the reasonableness of expenses was not part of the breach alleged by Plaintiff, the injunction does not require MHS to establish the reasonableness of expenses.

If MHS unable, because actual disbursements would be made by Marineserve, or is unwilling to undertake to provide an accounting for monies taken from the funds advanced by the Plaintiff, then the injunction may be discharged if it provides a bond with surety.

THIS INFORMATION SHEET DOES NOT FORM PART OF THE COURT'S DECISION. QUOTES MUST BE FROM THE DECISION, NOT THIS COVER SHEET