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COURT OF APPEAL FOR ONTARIO

RE: **LECOURS LUMBER CO. LTD. (Plaintiff (Respondent)) – and – UNITED STEELWORKERS, LOCAL 1-2693, JOE HANLON, NATHALIE BELAIR AND BERT POULIN in their personal capacities and as representatives of the members of UNITED STEELWORKERS, LOCAL 1-2693 (Defendants (Appellants))**

BEFORE: **GOUDGE AND BORINS JJ.A. AND CUMMINGHAM A.C.J. (*Ad Hoc*)**

COUNSEL: **Stephen B. D. Wahl**
for the appellant

S. Margot Blight
for the respondent

HEARD: **November 15, 2006**

On appeal from two orders of Justice David Nadeau of the Superior Court of Justice dated February 10, 2006 and February 13, 2006.

E N D O R S E M E N T

[1] The appellants' primary argument is that the injunction should not have been granted because there was a protocol agreed to by the Union and the respondent which the police were successfully applying, so that reasonable efforts to obtain police assistance had been successful in ensuring that any obstruction to entry to the road leading to the respondent's work site had been agreed to.

[2] However the trial judge found that no such agreement was proven by the appellant. This finding of fact was one for which there was a clear evidentiary basis. The respondent flatly denied that it had made any such agreement. While there was also evidence to the opposite effect, it was undoubtedly open to the trial judge to make the finding he did. It does not represent palpable and overriding error, and absent that, it is not open to this court to retry his finding of fact.

[3] The trial judge thus proceeded on the basis that the Union imposed a one hour delay for each entering vehicle, and that the police were left to attempt to secure

compliance with that time limit. He concluded that this amounted to unlawful obstruction of access and in addition, requiring constant attendance by the police at this remote location was unreasonable. Thus excessive efforts to obtain police assistance had been undertaken and even then obstruction of lawful entry could not be prevented. In these circumstances we can see no error in the conclusion of the trial judge that s. 102(3) of the *Courts of Justice Act* was satisfied.

[4] Turning to the *R.J.R-MacDonald* factors, the appellant does not contest the "serious issue to be tried" consideration.

[5] As to irreparable harm, we see no basis to interfere with the finding of the trial judge. The Union was found to be inflicting unlawful conduct on the respondent, preventing it from carrying on its winter operations, which could not simply be made up once winter passed. This is not compensable in damages.

[6] Nor did the trial judge err in finding the balance of convenience to favour the respondent, given the conduct he found and the absence of an agreed protocol.

[7] The appellant also contests the scope of the order. However, that is a quintessential exercise of judicial discretion and no basis has been shown for us to interfere with it, particularly given the conclusion that requiring constant attendance of the police in this remote location was unreasonable and that this would have been necessary to apply an order sanctioning stopping that was more time limited than one hour.

[8] Lastly, the respondent is content that the order be modified to remove the Union as a party so that the order is only against Nathalie Belair in a representative capacity. The fact that the order was originally sought against her in her personal capacity caused the appellant no prejudice and the representative order should stand.

[9] Subject to the removal of the Union as a named party to the order, the appeal is dismissed.

[10] Each side asked for $15,000.00 in costs if successful. In the circumstances, costs are to the respondent fixed at $15,000.00 inclusive of disbursements and G.S.T.

"S.T. Goudge J.A."

"S. Borins J.A."

"Cunningham A.C.J." (*ad hoc*)