

Les Constructions Lavacon Inc. c. Icanda Corporation, 2015 QCCS 4543

The Superior Court was called upon to answer the following question, can the court order a sub-contractor to continue executing its contract, by way of injunctive relief, particularly at the provisional stage?

FACTUAL BACKGROUND

On March 19, 2015, the Applicant, Les Constructions Lavacon Inc., enters into a contract with *La Coopérative d'habitation Griffin* ("Griffin") for the construction of a multi-residential complex project located in Griffintown, Montreal ("Project"). As is common in the construction industry, there was a timetable stipulated in the contract between Griffin and the Applicant.

Following the agreement with Griffin, the Applicant concluded various sub-contracts in order to carry out the project, among them is a sub-contract with Defendant, Icanda Corporation for the total amount of \$845 066,25 entered into on March 16th, 2015.

The work to be completed by Defendant is crucial to the advancement of the Project. Its contract included the installation of the Berlin walls as well as the installation of 137 piles and 8 *caissons*, which are essential for the foundation of the Project considering the nature of the land in this area of Montreal. The installation of the piles and caissons are not only in the first stages of the Project but their installation is fundamental for the foundation work to follow and the erection of the structure.

At the time of the provisional injunction, there was a balance of \$531 029,28 owing on the Defendant's contract, only 50 piles and 3 caissons had been installed and two-thirds of the Berlin walls had been installed, the rest of which were to follow as the excavation progressed.

In the month of September 2015, the relationship between the parties becomes envenomed. The trigger comes on September 14th, 2015, whereby Defendant advises the Applicant that they are in default of payment for the sum of \$42 544,78 in conformity with the relevant sections of the contract. The following day, the Applicant prepares a cheque in the amount of \$27 421,54 and asks Defendant to sign the usual documents, notably a release. In response, Defendant publishes a lien in the amount of \$42 544,78 bearing the date of the 14th of September which the Applicant's attorneys ask for the immediate cancellation. The relationship between the parties continues to deteriorate in the following days and on September 22, 2015, Defendant sends the Applicant a notice of termination, once again in conformity with the relevant sections of the contract, and ceases to do anymore work for the Project.

Finally, on September 30, the Applicant serves an injunction upon Defendant and the Honorable justice Gérard Dugré, J.S.C. is seized at the provisional stage.

THE PROVISIONAL STAGE

Although the Defendant contests the motion instituted by the Applicant on the grounds that the contract between the parties has validly been terminated, the Court must analyse the following question: can the Court order a sub-contractor to continue executing its contract and remobilize

its employees and necessary machinery which it has already removed, by way of a provisional injunction?

In order to answer the question, the Court must analyse the following criteria:

1. Is there a serious issue to be tried?
2. Will the applicant suffer irreparable harm if the injunction is not granted?
3. Which party will suffer the greater harm from granting or refusing the remedy pending a decision on the merits?
4. Is there urgency?

For the reasons hereinafter exposed, the Court concluded that the criteria is fulfilled and ordered Defendant to continue to execute their contract.

Is there urgency?

Considering that the work to be carried out by Defendant were in the first stages of construction and is pivotal to the elaboration of the rest of the Project, valued at over \$15 000 000,00, the Court concludes that there is urgency to grant injunctive relief at this stage for it cannot be remedied by a final judgment.

Is there a serious issue to be tried?

The Court believes that the application is neither vexatious nor frivolous and that there is in fact a serious issue to be tried notwithstanding the likeliness to succeed at trial. The Applicant submits that the Defendant did not have a right to terminate its contract because in the amount of \$42 544,78 being claimed, \$15 004,24 was not yet owed to Defendant.

In addition, the Honorable Dugré questions if the termination of a contract valued at over \$800 000,00, guaranteed by a bond, and whereby a supposed amount of approximately \$27 000,00 is owed to Defendant, while a sum of over \$300 000,00 has been paid, the whole in the context of a Project in the order of the \$15 000 000,00 is reasonable and in conformity with the legal obligation to act in good faith.

Will the applicant suffer irreparable harm if the injunction is not granted? Which party will suffer the greater harm from granting or refusing the remedy pending a decision on the merits?

The Court is of the opinion that the nature of the harm that is caused to Applicant every day is clearly irreparable and if Defendant does not continue to perform the work as scheduled and as stipulated in its contract it will create a situation that the final judgement will not be able to remedy. As such, the balance of inconveniences weighs in favour of the Applicant.

Moreover, the Court states that section 1601 and section 1590 of the *Quebec Civil Code* apply to the contract entered into between the parties, therefore allowing the Applicant the right to demand that the obligations be performed in full, properly and without delay.

According to the Court record, a safeguard order was rendered on December 14, 2015 however at this time it is not yet available.