STEINBERG'S LIMITÉE ....APPLICANT;

1967 *Nov. 27 Dec. 18

AND

COMITÉ PARITAIRE DE L'ALIMENTATION AU DÉTAIL, RÉGION DE MONTRÉAL .... RESPONDENT;

AND

STEINBERG'S EMPLOYEES ASSOCIATION, RETAIL CLERKS INTERNATIONAL UNION, LOCAL 486 MIS-EN-CAUSE;

AND

THE ATTORNEY GENERAL FOR THE PROVINCE OF QUEBEC ..... MIS-EN-CAUSE.

MOTION FOR STAY OF EXECUTION OF INJUNCTION

Jurisdiction—Supreme Court of Canada—Injunction—Stay of execution pending appeal—Whether it should be granted—Supreme Court Act, R.S.C. 1952, c. 259, s. 44.

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*PRESENT: Cartwright C.J. and Fauteux, Abbott, Martland, Judson, Ritchie, Hall, Spence and Pigeon JJ.

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STEINBERG'S LTÉE v. COMITÉ PARITAIRE DE L'ALIMENTATION AU DÉTAIL, RÉGION DE MONTRÉAL *et al.*

The trial judge had refused to grant an injunction, the effect of which was to compel the appellant company to abide by the terms of a decree providing, among other things, for the closing of retail food stores on certain days and during certain hours. The Court of Appeal directed that the injunction should issue. The appellant company inscribed an appeal to this Court from that judgment and, after having unsuccessfully applied to the Court of Appeal for a stay of execution, applied to this Court for an order staying the operation of the injunction.

Held: The application for a stay of execution should be dismissed.

Assuming, without deciding, that this Court had jurisdiction to grant the stay of execution, and assuming that, should its appeal be successful, the appellant company would have no legal means to recover the monies which it had lost, the stay of execution ought not to be granted in the circumstances of this case as otherwise the appellant company would have an unfair advantage over its competitors.

Juridiction—Cour suprême du Canada—Injonction—Suspension durant l'appel—Doit-elle être accordée—Loi sur la Cour suprême, S.R.C. 1952, c. 259, art. 44.

Le juge de première instance a refusé d'accorder une injonction dont l'effet aurait été de contraindre la compagnie appelante à se conformer aux termes d'un décret ordonnant, entre autres choses, la fermeture des établissements commerciaux où se fait la vente au détail de produits alimentaires, à certains jours et durant certaines heures. La Cour d'Appel a ordonné que l'injonction soit émise. La compagnie appelante a inscrit un appel devant cette Cour de ce jugement et, la suspension de l'injonction lui ayant été refusée par la Cour d'Appel, elle a présenté à cette Cour une requête pour faire suspendre la mise en vigueur de l'injonction.

Arrêt: La requête pour suspendre l'injonction doit être rejetée.

Assumant, sans le décider, que cette Cour a juridiction pour accorder la suspension de l'injonction, et assumant que si la compagnie appelante réussit dans son appel elle n'aura aucun moyen légal pour se faire rembourser les argents qu'elle aura perdus, la suspension de l'injonction ne doit pas être accordée dans les circonstances de cette cause parce qu'autrement la compagnie appelante obtiendrait un avantage injuste sur ses concurrents.

REQUÊTE pour suspendre une injonction durant l'appel. Requête rejetée.

APPLICATION for a stay of execution of an injunction pending the appeal. Application dismissed.

C. A. Geoffrion, Q.C., and *P. Lamontagne,* for the applicant.

C. Tellier, for the Comité Paritaire.

L. E. Bélanger, Q.C., for the Attorney General of Quebec.

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Pierre Langlois, for the Employees Association.

The judgment of the Court was delivered by

THE CHIEF JUSTICE:—This is an application for an Order staying the operation of an Injunction granted by the Court of Queen's Bench (Appeal Side), the effect of which, so far as the applicant is concerned, is to compel it to close its stores except during the hours of

1.00 p.m. to 6.00 p.m. on Mondays
9.00 a.m. to 6.00 p.m. on Tuesdays and Wednesdays
9.00 a.m. to 9.00 p.m. on Thursdays and Fridays
9.00 a.m. to 5.00 p.m. on Saturdays.

The application was argued on November 27 and 28, 1967, and judgment was reserved. On December 18, 1967, judgment was given as follows:

The Court is unanimously of opinion that this application should be dismissed. It is ordered that the appeal be set down for the sittings of the Court commencing on January 23, 1968 and that the hearing of the appeal be expedited. The motion is dismissed and the costs of the motion are reserved to be dealt with by the Court which hears the appeal. Reasons for judgment will be delivered at a later date.

Reasons are now being delivered.

The judge of first instance held that the Injunction should be refused on the ground that articles 3.02, 3.05, 3.06 and 3.07 of Section III of the *Decree Respecting the Retail Food Trade* published in the Quebec Official Gazette of May 15, 1965, were beyond the powers conferred on the Lieutenant-Governor in Council by the *Collective Agreement Act,* that they were not severable and that consequently the Decree was *ultra vires* in toto.

The Court of Queen's Bench (Appeal Side) held by a majority that the Order in question was valid and directed that the Injunction should issue. Tremblay C. J. P. Q., with whom Salvas J. agreed, dissenting, was of opinion that the Decree was invalid for reasons expressed differently from those of the judge of first instance.

In support of the application for a stay it was argued that compliance with the Order will cause a loss to the applicant of approximately $10,000 a week and that if this Court, when the appeal is heard on the merits, should allow the appeal, there would be no way in which the applicant could recover the monies which it had lost. For

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the purposes of this application I will assume, without deciding, that the applicant is right in its submission that such a loss could not be recovered; this would seem to follow from the judgment of Fauteux J. speaking for the Court in *La Ville Saint-Laurent v. Marien*[1], particularly at p. 586.

Counsel for the respondent objected to the granting of the Order sought on three grounds.

First, it was contended that the main appeal of the applicant is not properly before this Court as (i) it does not appear that more than $10,000 is involved in the appeal and (ii) an order for an Injunction made in the Province of Quebec is an order made in the exercise of judicial discretion within the meaning of s. 44 of the *Supreme Court Act* which deprives the Court of jurisdiction. As to (i), the uncontradicted affidavit evidence filed on behalf of the applicant states that the loss which it will suffer if the injunction is maintained will greatly exceed $10,000. As to (ii), it is my view that the order sought to be appealed was not one made in the exercise of judicial discretion within the meaning of s. 44. The order is not attacked on the ground that any discretion was wrongly exercised but on the ground that the Decree under which it purported to be made was invalid. However, all the Members of the Court were of opinion that, if leave to appeal were necessary because otherwise the appeal would not lie by reason of the terms of s. 44, the case was one in which leave to appeal should be granted *nunc pro tunc* if it were applied for Mr. Bélanger, on being asked by the Court, said that he would have no objection to leave being granted. Mr. Geoffrion applied for leave and leave to appeal *nunc pro tunc* was granted. Further consideration has brought me to the view that such leave was unnecessary.

The second objection raised by the respondent is that this Court has no jurisdiction to grant the stay asked for, that if jurisdiction to grant such a stay exists it is in either the Court of Queen's Bench (Appeal Side) or in the Superior Court. In this case an application for a stay was made to the Court of Queen's Bench but that Court in a unanimous judgment ruled that it had no power to grant a stay pending the disposition of the appeal to this Court.

[1] [1962] S.C.R. 580.

The question whether the Court of Queen's Bench was right in so deciding is not before us and I express no opinion in regard to it.

The question whether this Court has jurisdiction to grant the stay asked for was fully and ably argued but it becomes unnecessary to express an opinion upon it, because, assuming without deciding that we have jurisdiction, it is the view of all the Members of the Court that the stay ought not to be granted.

The third ground on which counsel for the respondent objected to the granting of the order was that in all the circumstances of the case the Court ought not to grant a stay. I agree with this submission. It is true that if the appellant's appeal is successful it will have suffered a financial loss for which, as indicated above, I am assuming that it will have no legal redress; on the other hand, if its appeal should fail the granting of the stay would have brought about the result that it would have obtained an unfair advantage over all of its competitors in the area covered by the Decree who have seen fit to obey the order which the judgment of the Court of Queen's Bench now in appeal has held to be valid. Balancing these two possibilities against each other I am of opinion that the stay should be refused.

These are my reasons for disposing of the application as was done on December 18, 1967.

Application dismissed.

Attorneys for the applicant: Geoffrion & Prud'homme, Montreal.

Attorneys for the Comité Paritaire: Blain, Piché, Bergeron, Godbout & Emery, Montreal.

Attorneys for the Attorney-General of Quebec: Ahern, Bélanger, de Brabant & Nuss, Montreal.

Attorneys for the Employees Association: Cutler, Lamer, Bellemare, Robert, Desaulniers, Proulx & Sylvestre, Montreal.