
INTERNATIONAL WOODWORKERS
OF AMERICA, LOCAL 1-405,
ARTHUR DAMSTROM and ELMER
ATWOOD

APPLICANTS;

1968
*Mar. 25
—

AND

FLANDERS INSTALLATIONS LTD. RESPONDENT.

MOTION FOR LEAVE TO APPEAL

Appeals—Interlocutory injunction—Motion for leave to appeal to Supreme Court of Canada—Application refused.

The applicant union was the legally certified bargaining agent for employees of Crestbrook Forest Industries Ltd. at the majority of its mills and logging operations. In the course of carrying on a legal strike against the company, the union picketed its property at Skookumchuck, British

*PRESENT: Cartwright C.J. and Martland and Hall JJ.

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Columbia, whereon a pulp mill was being constructed by Crestbrook through contractors and subcontractors including Flanders Installations Ltd. The employees of Flanders and those of its subcontractors refused to cross the picket line. Flanders commenced an action against the union and two of its officers, claiming damages and an injunction restraining the defendants from picketing the construction site. The Chambers judge, who was of opinion that Crestbrook's Skookumchuck property fell within the phrase "the employer's place of business, operations, or employment" in s. 3(1) of the *Trade-unions Act*, R.S.B.C. 1960, c. 384, dismissed the application for an interim injunction. On appeal, the Court of Appeal, Davey C.J.B.C. dissenting, allowed the appeal and granted an injunction until the trial of the action or further order. An application was made to this Court on behalf of the defendants for leave to appeal from the judgment of the Court of Appeal.

Held: The application for leave to appeal should be dismissed.

APPLICATION for leave to appeal from a judgment of the Court of Appeal for British Columbia¹, allowing an appeal from an order of Kirke Smith L.J.S.C. and granting an interlocutory injunction. Application dismissed.

Maurice Wright, Q.C., and *J. B. Varcoe*, for the applicants.

G. F. Henderson, Q.C., and *M. Bray*, contra.

At the conclusion of the argument of counsel for the applicants the following judgment was delivered.

THE CHIEF JUSTICE (orally for the Court):—Mr. Henderson, we do not find it necessary to call upon you.

It is only under exceptional circumstances that we grant leave to appeal to this Court from an interlocutory order. It is said that a point of law of general importance is raised but it is seldom found satisfactory to attempt to deal with such a point until the facts have been ascertained at a trial.

In this case the writ was issued on November 20, 1967; the application for an interlocutory injunction was disposed of by His Honour Judge Smith on November 24, 1967, and by the Court of Appeal on December 15, 1967. The order of the Court of Appeal contains the following paragraphs:

AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that either the Appellant or the Respondents be at liberty to apply to the Supreme Court of British Columbia.

¹ 68 C.L.L.C. para. 14,071.

AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that, without limiting the generality of the liberty to apply to the Supreme Court of British Columbia granted herein, the Respondents may apply to the Supreme Court of British Columbia to dissolve this injunction if the Appellant fails to proceed with diligence to bring the case to trial at the earliest date that is reasonably possible.

There is nothing in the material to indicate that diligence has been used to bring the action to trial. There appears to be no reason that the action should not be tried before, in the ordinary course, this appeal would be heard here, if leave were granted.

We are all of opinion that the application should be refused and it is accordingly dismissed with costs.

Application dismissed.

Solicitor for the applicants: John B. Varcoe, Trail.

Solicitors for the respondent: McMaster, Bray, Moir & Cameron, Vancouver.

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