Application for an interim injunction: Manufactured urgency is not a 9-1-1 emergency

April 2, 2025

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On March 3, 2025, Superior Court Justice Nancy Bonsaint dismissed an application for an interim interlocutory injunction that would allow Les Entreprises de la Batterie inc. to use a property it did not own for major construction work on its building.

The judgment serves as a reminder that a party cannot manufacture a sense of urgency and then use that to support its application for an interim injunction.

Summary of facts

The Plaintiff, Les Entreprises de la Batterie inc., owns a building that has been under construction since March 2021, in order to convert it into a hotel that will serve as an extension to the hotel the Plaintiff currently operates.[1]

The Defendant owns a hotel and a piece of property adjacent to the building under construction. The property is used as a parking lot for his hotel guests.[2]

Construction work on the Plaintiff's building was initially carried out in two separate phases, from March to November 2021[3] and from August 23, 2022, to July 2024.[4] During those phases, the Parties reached various agreements whereby the Plaintiff could use one (1) of the Defendant's parking spaces, in exchange for compensation.[5]

On February 14, 2025, the Plaintiff informed the Defendant that it planned to begin a new phase of construction (Phase 3) on February 28, 2025.[6] The Plaintiff also informed the Defendant that, as part of the new phase of construction, the Plaintiff would need to use half of the Defendant's parking lot, that is, six (6) parking spaces, and that the entrance to the parking lot would have to be relocated for more than two (2) years.[7] Additionally, the Plaintiff pointed out that it would need

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access to the Defendant's entire parking lot for a few days in the spring of 2025.[8] The Plaintiff alleged that construction work on its building had to begin urgently on February 28, 2025.[9]

The Defendant objected to having to tolerate such a major disruption for an additional two (2) years, given that he had endured the inconveniences caused by the Plaintiff's construction work for over four (4) years now, without being offered any form of compensation that would be considered fair or reasonable in the circumstances.

On February 27, 2025, the Plaintiff brought anoriginating application before Justice Bonsaint, seeking orders for an interim interlocutory injunction, an interlocutory injunction and a permanent injunction, as well as for a declaration of abuse of process and damages, which was amended on February 28, 2025.[10]

At the interim interlocutory injunction stage, the Plaintiff asked the Court to issue a temporary order granting the Plaintiff access to the Defendant's six (6) parking spaces so it could continue setting up its construction site.[11] The Plaintiff also sought reimbursement of the professional fees incurred in applying for the injunction.

The Plaintiff alleged that the hotel expansion was [TRANSLATION] "a large-scale project with costs in the tens of millions of dollars".[12] The Plaintiff further alleged that [TRANSLATION] "there is an urgent need for the construction work required to repurpose the building and turn it into a hotel to continue, without being interrupted by the Defendant's actions".[13] The Plaintiff argued that halting construction work on its building would result in delays, significantly disrupting the timeline of the project, which was planned over the next two (2) years. Furthermore, it would lead to substantial additional costs associated with the various extras charged by the contractors it had hired to carry out the conversion and construction work.[14]

Needless to say, the Defendant opposed the application for an interim interlocutory injunction, arguing in particularthat the facts alleged by the Plaintiff failed to meet the urgency test.[15]

Those are the facts that Justice Bonsaint took into account when rendering her decision.

The criteria for granting interim interlocutory injunctions

In her judgment, Justice Bonsaint reviewed the legal principles governing interim interlocutory injunction applications. We will do the same below.

The criteria for granting an interim interlocutory injunction are as follows:

Urgency
Serious issue to be tried or strong *prima facie* case
Serious or irreparable harm
Balance of convenience[16]

It is a discretionary and exceptional remedy that should only be granted sparingly and under strict conditions.[17]

The urgency criterion

Urgency is [TRANSLATION] "of paramount importance"[18] in determining whether an interim interlocutory injunction should be granted. If the urgency test is not met, the application simply cannot be allowed.[19] Courts often describe the level of urgency required as being akin to [TRANSLATION] "a 9-1-1 emergency".[20]

Interim interlocutory injunctions should only be granted in cases of [TRANSLATION] "extreme

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urgency".[21]

For a court to find that the urgency test is met, the urgency must not result from a delay in bringing legal action. It must be [TRANSLATION] "immediate and apparent"—not the product of the plaintiff's own lack of diligence.[22] In other words, [TRANSLATION] "the alleged urgency must be real—not manufactured by the person asserting it".[23]

Upon reviewing the case, Justice Bonsaint noted that the Defendant had been made aware only on January 31, 2025, that the Plaintiff would need access to his property for construction work.[24] Prior to January 2025, the Plaintiff had not informed the Defendant of its true intentions regarding the work.[25] It was not until February 14, 2025, that the Plaintiff officially informed the Defendant of the nature of the access required for the third phase of the project, namely, the use of at least half of the Defendant's property from February 28, 2025, to March 31, 2027.[26]

Further to the Defendant's contestation, Justice Bonsaint noted that the Plaintiff had known for several months that the third phase of the work would begin in early 2025.[27] She found that the Plaintiff [TRANSLATION] "had not treated the issue of accessing the parking lot as one requiring urgent resolution".[28]

The Plaintiff tried to justify its failure to be proactive, arguing that it had been unable to inform the Defendant of its space requirements before 2025 because the project timeline was still unknown at the time.[29]

However, Justice Bonsaint found that such explanations simply did not excuse the Plaintiff's delay in filing its application for an interim interlocutory injunction against the Defendant.[30]

On the contrary, the supporting documents that the Plaintiff had submitted with its letter dated February 14, 2025, such as a plan of the Defendant's parking lot and the preliminary project timeline, included references to "2024".[31]

Given the above, Justice Bonsaint could only conclude that the Plaintiff had known for several months that construction work on its building was scheduled to begin in 2025.[32]

On that point, Justice Bonsaint was clear: [TRANSLATION] "The Court understands that preliminary construction timelines may be subject to change, but there is nothing to suggest that construction needed to begin 'urgently' on February 28, 2025. . . . the Plaintiff should have taken action as early as January 2025".[33]

The Plaintiff had been aware of the access issues involving the Defendant's property since the fall of 2024—and certainly since January 2025.[34] Those issues should have prompted discussions between the Parties' lawyers well before February 2025, and no later than January 2025.[35]

Discussions or attempts to settle the matter

The Plaintiff also argued that, at the interim interlocutory injunction stage, discussions or attempts to settle the matter could have a bearing in determining whether the urgency requirement was met.[36] Justice Bonsaint rejected that argument, given that no real negotiations had taken place, other than failed calls in November and December 2024, and again in January 2025, and that the Plaintiff had been aware of the access issues involving the Defendant's property since the fall of 2024—and certainly since January 2025.

Consequently, Justice Bonsaint dismissed the application for an interim interlocutory injunction, seeing as the Plaintiff had asked the Court to find that such an order, which would grant the Plaintiff

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access to half of the Defendant's parking lot for two (2) years, needed to be issued urgently, even though the Plaintiff itself had not considered the need to access the parking lot as being an urgent matter to be resolved before the third phase of construction began.[37]

Key takeaways

The urgency criterion is of paramount importance in determining whether an interim interlocutory injunction should be granted. That requirement must be met for the Court to allow such an application.

In assessing the facts and allegations related to an application for an interim interlocutory injunction, the Court must ensure that the urgency is real—akin to a 9-1-1 situation—and not manufactured by the party seeking the relief.

A delay attributable to the plaintiff cannot serve as a basis for granting an interim interlocutory injunction against the defendant.

Half-hearted attempts at settlement discussions or negotiations do not excuse the delay between a party becoming aware of the facts warranting an interim interlocutory injunction and the filing of the application.

Diligence is therefore essential in managing and mounting such cases, making it more likely that an interim interlocutory injunction will be granted.

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1. *Entreprises de la Batterie inc.* c. *Biron*, 2025 QCCS 608, paras. 1 and 10 (hereinafter the "Judgment").
2. Judgment, para. 4.
3. Judgment, para. 10.
4. Judgment, paras. 16 to 19.
5. Judgment, paras. 10 to 18.
6. Judgment, para. 27.
7. Judgment, paras. 3 and 27.
8. Judgment, para. 3.
9. Judgment, para. 2.
10. Judgment, para. 6.
11. Judgment, para. 7.
12. Judgment, para. 46.
13. Judgment, para. 47.
14. Judgment, para. 48.
15. Judgment, para. 8.
16. Judgment, paras. 35 and 37 to 39.
17. Judgment, para. 36.
18. Judgment, para. 41.
19. *Id*.
20. Judgment, paras. 41 and 43.
21. Judgment, para. 42.
22. Judgment, para. 42.
23. Judgment, para. 40.
24. Judgment, paras. 61 and 62.
25. Judgment, para. 62.
26. Judgment, paras. 64 and 65.
27. Judgment, para. 68.
28. *Id*.
29. Judgment, para. 74.
30. Judgment, para. 75.
31. Judgment, paras. 76 and 77.
32. Judgment, para. 82.
33. Judgment, para. 82.
34. Judgment, para. 84.
35. Judgment, para. 85.
36. Judgment, para. 83.
37. Judgment, para. 90.

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