

Federal Court



Cour fédérale

Date: 20170428

Docket: T-626-17

Citation: 2017 FC 520

[ENGLISH TRANSLATION]

Ottawa, Ontario, April 28, 2017

In the presence of Mr. Justice Gascon

BETWEEN:

TECHNOLOGIES H2CI INC.

Applicant

and

**ENVIRONMENT AND CLIMATE CHANGE
CANADA**

Respondent

ORDER

UPON motion of the applicant, Technologies H2CI Inc., pursuant to which it solicits, by way of an *ex parte* application, an interlocutory injunction ordering the respondent, Environment and Climate Change Canada, not to proceed with the dismantling of the House of the Future installed on the fourth floor of the Biosphère in Montréal;

UPON REVIEW of the applicant's Motion Record, and after having considered the written and oral submissions of counsel for the applicant;

CONSIDERING that the issuance of an *ex parte* interim injunction by the Court is regulated by section 374 of the *Federal Courts Rules*, SOR/98-106 [the Rules] and by case law;

CONSIDERING that an interim injunction constitutes an extraordinary and discretionary remedy in equity that requires special and compelling circumstances and obliges the applicant to demonstrate that:

1. It meets the three-stage test established by the Supreme Court of Canada in *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 SCR 311 [*MacDonald*].

This three-stage test requires that the applicant demonstrate to the Court that:

1) there is a serious issue to be determined; 2) it may suffer irreparable harm if the injunction is not issued; and 3) the balance of convenience is in its favour.

2. The test is conjunctive and each of its three branches must be satisfied (*Janssen Inc. v. Abbvie Corporation*, 2014 FCA 112 at para. 19). Thus, if the applicant fails to satisfy any of the branches of this three-stage test, its application for an injunction must be denied.

CONSIDERING that an interim injunction on an *ex parte* motion requires that in addition to meeting the three requirements of the test in *MacDonald*, the applicant must also demonstrate, either that there is an urgency to act and that no notice could be given to the respondent, or that providing notice would cause irreparable harm to the objective sought by the applicant;

CONSIDERING that no situation is more likely to lead to possible injustice and abuse of the powers of the Court than an application for an injunction on an *ex parte* motion without notice to the respondent, and that the applicant has the burden of demonstrating the existence of a situation warranting that it proceed without providing notice;

CONSIDERING that, if the applicant is unable to prove this urgent need, the Court will only consider an interim injunction insofar as the adverse party has received prior notice;

CONSIDERING that it is for the applicant to demonstrate, based on clear and compelling evidence, that the matter is urgent enough that no notice can be given to the respondent or that providing notice would irreparably harm the intended purpose of its application;

CONSIDERING the following particular factual circumstances:

1. In July 2015, the applicant entered into a partnership with the respondent giving the applicant permission to occupy and use all the space located on the fourth floor of the Biosphère to design and build a house featuring environmental technologies and an attached greenhouse. The project was known as the House of the Future.
2. Having obtained the funding required for the project, the applicant designed and started to build the House of the Future.
3. By way of a letter dated January 17, 2017, the respondent informed the applicant that it had decided to terminate the partnership given the applicant's failure to deliver the turnkey project on the agreed date and demanded that the applicant dismantle and

move the House of the Future. The respondent gave the applicant until April 15, 2017 to get this done.

4. On April 7, 2017, the applicant allegedly sent the respondent an email indicating that the applicant could not meet the April 15, 2017 deadline to dismantle and move the House of the Future and therefore asked the respondent for an extension. However, the affidavit filed by the applicant in support of its application does not contain this correspondence, nor does it explain what occurred between the respondent's initial request in January 2017 and the applicant's answer on April 7, 2017.
5. The respondent sent the applicant a letter dated April 12, 2017 indicating that it agreed to extend the deadline initially set for dismantling and moving the House of the Future providing it received an answer from the applicant before 2:00 p.m., April 19, 2017 regarding its implementation plan and a commitment that the dismantling and moving work would be completed by April 28, 2017 at 5:00 p.m.
6. In its April 12, 2017 letter, the respondent also informed the applicant that its delay in dismantling and moving the House of the Future was causing the respondent harm, and the situation had become critical. The respondent also informed the applicant that unless it received a proposal before the April 19, 2:00 p.m. deadline, the respondent would conclude that the applicant was abandoning its House of the Future without compensation or recourse and that its abandonment would result in a transfer of its full legal possession to the respondent.
7. On April 19, 2017, the applicant sent its answer, but only at 4:48 p.m., and it indicated that the applicant would need to have the deadline extended to May 5, 2017

- to complete the move. Furthermore, neither the timing nor the contents of the applicant's answer met the requirements set out in the respondent's April 12 letter.
8. Counsel for the respondent sent the applicant a letter dated April 24, 2017 indicating that the respondent had concluded from the applicant's late response on April 19 that the applicant had chosen to abandon its rights, titles and other interests in the House of the Future in favour of the federal government and that the respondent intended to dismantle the House of the Future to clear the premises "as quickly as possible."
 9. The applicant did not provide any other details regarding the expected date upon which the House of the Future would be dismantled by the respondent, and the applicant did not provide any indications regarding the steps that the respondent could have actually taken to dismantle it since the response dated April 24, 2017.
 10. Following the respondent's April 24, 2017 response, the applicant sent an email to the respondent and its counsel on April 25, 2017, indicating inter alia that it had no intention of abandoning the House of the Future to the federal government.
 11. Neither the respondent nor its counsel provided any other information or responses after April 25, 2017.

CONSIDERING that the applicant did not convince the Court that it met the requirements of section 374 of the Rules to obtain the injunction it demands without prior notice to the respondent and that it did not provide the evidence needed to demonstrate either that there was such an urgency to act that no notice could be given to the respondent or that providing notice would cause irreparable harm to the intended purpose of the application;

CONSIDERING that, given the exchanges between the respondent and its counsel until April 25 and the absence of evidence that there was danger in the dwelling or that the dismantling of the House of the Future by the respondent was imminent, the Court is not satisfied that the applicant discharged its burden regarding the urgency and need to proceed *ex parte* to apply for an interim injunction;

CONSIDERING that nothing in the Court's decision prevents the applicant, following notice to the respondent, from soliciting an interim or interlocutory injunction, according to the terms specified in its notice of motion;

CONSIDERING that, given its findings on the absence of sufficient evidence regarding to the need to proceed *ex parte*, it is not appropriate for the Court to rule on the criteria of the test in the *MacDonald* decision that the applicant will have to meet to obtain the interim injunction sought, especially since service to the respondent could lead the respondent to file a motion in response to the applicant's application;

THIS COURT'S JUDGMENT is that:

1. The applicant's motion for an *ex parte* interim injunction is dismissed, subject to the applicant's right to renew its application after having duly notified the respondent by serving the respondent its Motion Record.
2. The applicant is authorized to serve its Motion Record to the respondent, along with a copy of this order, sending all the foregoing by any means of service, including electronic service, to counsel for the respondent.

3. Costs in the cause.

“Denis Gascon”

Judge