

Injunction Granted to Hotel to Enforce Noise By-Law

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28 October 2020

Potential harm to a hotel's online reputation for providing a quiet night's sleep may be sufficient grounds to obtain an injunction to restrain a noisy neighbour. In *JJ's Hospitality v. Kal Tire*, 2020 ONSC 6198 (CanLII), a hotel in Northern Ontario obtained such an order restraining an adjacent business from servicing commercial vehicles after business hours.

The Hotel had been operating in Sault Ste. Marie since 1974 on a major throughfare connecting to the TransCanada Highway. In 2019, the adjacent commercial property was leased by a business that repairs and replaces tires for retail and commercial customers, including tractor trailers and large construction vehicles. The property's landlord apparently spent over \$1,000,000 to make the premises suitable for the tire business's needs, and the municipality issued occupancy permits for the business to operate.

Litigation ensued shortly thereafter. The Hotel argued that the noise from the tire business contravened the municipal by-laws and *Environmental Protection Act*, R.S.O. 1990, c. E.19 (EPA). The Hotel sought an injunction pursuant to section 440 of the *Municipal Act, 2001*, S.O. 2001, c. 25, which states:

If any by-law of a municipality or by-law of a local board of a municipality under this or any other Act is contravened, in addition to any other remedy and to any penalty imposed by the by-law, the contravention may be restrained by application at the instance of a taxpayer or the municipality or local board.

The Hotel filed audio and video of very loud pneumatic noises emanating from the tire business and tractor trailers waiting to enter into the business premises after hours. The Hotel also filed a video interview with an unnamed Hotel guest who complained of loud sounds coming from the tire business that disturbed his stay in the Hotel.

The tire business responded by arguing that they had undertaken considerable effort to work with the Hotel and municipality to ensure that their operations were compliant with the local by-laws. The Hotel and the tire business each filed reports from engineers in support of their positions.

The Court assessed the evidence filed and found that the operation of the tire business appeared to contravene section s. 9(1) of the EPA in so far as its commercial vehicle operations emitted a "contaminant" (sound) into the natural environment that may have the effect of interfering with the Hotel's normal conduct of business. The tire business's commercial vehicle operations therefore contravened the municipal by-law which prohibited the use of business premises which did not comply with the EPA.

The Court then applied the test for an injunction established by the Supreme Court of Canada in *R.J.R.-MacDonald Inc. v. Canada (Attorney General)*, 1994 CanLII 117 (SCC), [1994] 1 SCR 311 at para 43:

First, a preliminary assessment must be made of the merits of the case to ensure that there is a serious question to be tried. Secondly, it must be determined whether the applicant would suffer irreparable harm if the application were refused. Finally, an assessment must be made as to which of the parties would suffer greater harm from the granting or refusal of the remedy pending a decision on the merits.

The Court had little difficulty finding that a "serious issue" had been raised by the Hotel given the evidence suggesting that the tire business's operations may cause Hotel patrons to be disturbed, especially in their sleep. The Hotel argued that if the sleep disruption were reported in online reviews, the impact upon its business reputation would be serious.

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The Hotel also established that damage to its reputation for providing a quiet place to sleep met the definition of “irreparable harm” as described in *R.J.R.-MacDonald*. The Court was satisfied based on audio/video files and the unnamed complaint that the sound generated by commercial vehicle activities was very loud and would impose a negative noise impact on the Hotel’s customers. Were this sound level to occur at night, the Hotel’s online reputation would be affected.

The Court adopted the analysis from an earlier decision of the Ontario Superior Court of Justice in *Balmain Hotel Group L.P. v. 1547648 Ontario Ltd. (Ménage)*, 2009 CanLII 28199 (ON SC), where the Court stated: “A reputation for noisy rooms would no doubt deter persons from staying at the Hotel. This is particularly the case with the proliferation of websites that review hotels and include comments from persons who have stayed in them.”

Lastly, the Court balanced the interests of the two commercial parties by comparing the nature of the services offered by the Hotel and the neighbouring tire repair business. The Court noted that the Hotel was located in a business zone that contains many businesses which operate during the day and was on two major thoroughfares. Accordingly, the ambient sound that Hotel customers should reasonably expect to hear in their rooms would be different depending upon the time of day. In contrast, the tire business was open during the day and stated that it did not service commercial vehicles outside these hours. The Court found that the potential reputation damage of being a “loud hotel” at night outweighed any need for after hours commercial vehicle servicing by the tire business.

In the result, the Court issued an injunction prohibiting the tire business from servicing commercial vehicles on its premises between the hours of 8:00 p.m. and 9:00 a.m., seven days a week. The injunction obtained by the Hotel will remain in force until the eventual adjudication of the dispute at trial, or other resolution between the parties.

The decision demonstrates that in appropriate circumstances a private litigant may seek assistance from a Court enforce contraventions of local by-laws which cause serious harm to its business or reputation.

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