



SUPERIOR COURT

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTRÉAL

No: 500-05-068192-010

DATE: 21 December 2001

By: THE HONOURABLE M^r JUSTICE MICHEL CÔTÉ, J.S.C.

SARA SAGMAN
Petitioner
v.
HYDRO-QUÉBEC
Respondent

JUDGMENT RENDERED ORALLY

[1] By her Amended Motion for Interlocutory Injunction, petitioner (SARA SAGMAN) is seeking to have respondent (HYDRO-QUÉBEC) “enjoined to reestablish the service at 62, des Bocages” in Laval and invoice same to her.

[2] The Motion for Interlocutory Injunction is presented in the framework of an action for accounting taken by five members of the Sagman family against HYDRO-QUÉBEC, SARA SAGMAN being one of them.

[3] HYDRO-QUÉBEC moves to dismiss, under art. 165 (4) C.C.P., arguing that the suit is unfounded in law, even if the facts alleged are true.

[4] The exception to dismiss is based: 1^o on the privative clause contained in s. 17 of the *Hydro-Québec Act* (R.S.Q., ch. H-5) which states *inter alia* that *no injunction may be granted against* HYDRO-QUÉBEC and that *article 33 of the Code of Civil Procedure does not apply to it* and 2^o on the exclusive jurisdiction of the *Régie de l’énergie* (RÉGIE), by virtue of *An Act respecting the Régie de l’énergie* [ACT] (S.Q. 1996, ch. 61).

[5] While it is often more practical to hear the merit of the interlocutory injunction and the exception to dismiss at one and the same time, nevertheless when a clear question of jurisdiction arises, there is no advantage in considering the merit before asserting whether jurisdiction exists to do so.

[6] Before having recourse to s. 17 of the *Hydro-Québec Act*, which, as argued by attorney for SARA SAGMAN, does not deprive this Court of its original jurisdiction in circumstances where HYDRO-QUÉBEC would act *ultra vires*, the very question of jurisdiction arises, in view of the exclusivity granted to the RÉGIE by law.

[7] Section 31 of the ACT gives the RÉGIE exclusive jurisdiction to, *inter alia*, examine any complaint filed by a consumer concerning ... a condition governing the supply ... of electric power.

[8] The conditions governing the supply of electric power are found in the *Règlement numéro 634 sur les conditions de fourniture d'électricité*^[1](REGULATION).

[9] It is by virtue of the REGULATION that HYDRO-QUÉBEC has interrupted the supply of electric power to 62, rue Des Bocages in Laval, where SARA SAGMAN resided with her parents and where her mother Carmina Arango was the subscriber of record with HYDRO-QUÉBEC.

[10] Such interruption took place on 23 July 2001 and Carmina Arango transferred the ownership of the residence to SARA SAGMAN on 25 July 2001, by a deed later registered sometime in August 2001.

[11] To receive service from HYDRO-QUÉBEC, SARA SAGMAN must require same in conformity with the REGULATION. If her application is denied or ignored, her recourse is a complaint to the RÉGIE which has, by law, exclusive jurisdiction over conditions governing the supply of electric power.

[12] The recourse that the law places squarely before the RÉGIE is an administrative law recourse which is not interchangeable with the extraordinary remedy of injunction.

[13] To argue, as it was on behalf of SARA SAGMAN, that she cannot be a complainant before the RÉGIE, because she has yet to become a subscriber to HYDRO-QUÉBEC services, is pure sophistry; it does not change the forum where jurisdiction lies.

WHEREFORE the Court :

GRANTS the exception to dismiss (*Requête en irrecevabilité*) moved by respondent HYDRO-QUÉBEC.

DISMISSES the Amended Motion for Interlocutory Injunction moved by petitioner SARA SAGMAN.

The whole, with costs.

J.S.C.

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Date of hearing: 21 December 2001

^[1] 128 G.O.Q., *Partie 2*, pp. 2998 et sq.