IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
GENERAL DIVISION

Citation: *52182 Newfoundland and Labrador Limited v. Power*, 2026 NLSC 189
Date: January 14, 2026
Docket: 201301G1663

BETWEEN:

52182 NEWFOUNDLAND AND LABRADOR LIMITED	PLAINTIFF

AND:

MICHAEL POWER	FIRST DEFENDANT
POWER, BOLAND CHARTERED ACCOUNTANTS	SECOND DEFENDANT
10546 NFLD LIMITED	THIRD DEFENDANT
MFE HOLDINGS LIMITED	FOURTH DEFENDANT

Before: Justice Justin S.C. Mellor

Place of Hearing: St. John's, Newfoundland and Labrador

Date of Hearing: November 7, 2025

Summary:

This is an application for a stay of proceedings. The Plaintiff commenced an action in 2013 against the four Defendants alleging amongst other things: fraudulent conveyance of four parcels of land and improper billing for

professional services. The Plaintiff claims that the parties reached a settlement agreement, but the Defendants deny it. The Plaintiff commenced a 2nd Action to enforce the settlement agreement and have applied to stay the 1st Action.

Held: Application for a stay is denied. The Plaintiff did not establish irreparable harm or that the balance of convenience favoured it.

Appearances:

J. Michael Cabot	On behalf of the Plaintiff
David D. McKay, K.C.	On behalf of the Defendants

Authorities Cited:

CASES CONSIDERED: *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311; *W. (G.J.), Re*, 2003 ABQB 763; *MacPhail v. Desrosiers*, 1998 NSCA 5

STATUTES CONSIDERED: *Judicature Act*, R.S.N.L. 1990, c. J-4

RULES CONSIDERED: *Rules of the Supreme Court, 1986*, S.N.L. 1986, c. 42, Sch. D

REASONS FOR JUDGMENT

MELLOR, J.:

INTRODUCTION

[1] The Plaintiff commenced an action (1st Action) against the four Defendants in 2013. In 2025, it filed a second action (2nd Action) claiming that an enforceable settlement agreement was concluded on 27 October 2021.

[2] It now applies to stay the 1st Action whilst this Court determines if an enforceable settlement agreement was reached.

[3] After considering the facts of this Application and the law respecting stays of proceedings, I must deny the Application for the reasons that follow.

BACKGROUND

[4] This litigation has a long and torturous procedural history. It is not necessary to recite the entirety of it for the purposes of this decision.

[5] On 22 March 2013, the Plaintiff commenced an action against the four Defendants alleging amongst other things: fraudulent conveyance of four parcels of land, improper billing for professional services, and that the First Defendant breached its fiduciary duty to the Plaintiff.

[6] In 2013 and 2014, the Plaintiff filed three *lis pendens* relating to the disputed property.

[7] On 27 October 2021, a meeting was held at the Plaintiff's lawyer's offices. Present at the meeting was Michael Power, the First Defendant, and director of the Second, Third and Fourth Defendants, along with legal counsel for all four Defendants. The Plaintiff claims that at the meeting, the parties concluded a settlement agreement on all essential terms. Minutes of Settlement were transmitted to Defendants' counsel setting out the terms of the alleged settlement, but they were not signed by the Defendants.

[8] The Plaintiff denies that an enforceable settlement agreement was reached. It asserts that any essential terms of conditions were subject to the future agreement of

the parties and that there were potential terms and conditions that were vague and uncertain.

[9] On 8 April 2025, the Plaintiff commenced an action to enforce the alleged settlement agreement.

[10] On 25 October 2024, the Defendants applied for an order to vacate the three *lis pendens* registered by the Plaintiff.

[11] On 9 June 2025, the Plaintiff applied to stay the 1st Action while this Court determines whether there is an enforceable settlement agreement.

ANALYSIS

[12] Section 97 of the *Judicature Act*, R.S.N.L. 1990, c. J-4, provides this Court with authority to issue a stay of proceedings. That section states:

> Stay of proceedings
>
> 97. (1) The court may direct a stay of proceedings pending before it.
>
> (2) A person, whether or not that person is a party to the proceeding
>
> (a) who would have been entitled, if The Newfoundland Judicature Act, 1889 had not been enacted, to apply to the court to restrain the prosecution of the proceeding; or
>
> (b) who may be entitled to enforce an order, contrary to which proceedings may have been taken,
>
> may apply in a summary way for a stay of the proceedings either generally or where necessary for the purposes of justice, and the court shall make the order that may be just.

[13] In an application for a stay of proceeding, the onus is on the applicant to meet the three-part test in *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311. The test is as follows:

1. Is there a serious issue to be tried?
2. Will the party requesting the stay suffer irreparable harm if the stay is not granted?
3. Does the balance of convenience favour granting relief?

Is There a Serious Issue to be Tried?

[14] Determining whether there exists a serious issue to be tried requires a preliminary assessment of the merits of a case. As Justices Sopinka and Cory stated in *RJR-MacDonald*, at paras. 61 and 62: "The threshold is a low one" and requires a court to be satisfied that the application is neither "frivolous nor vexatious".

[15] In this Application, the Plaintiff argues that determining whether a settlement agreement exists is neither frivolous nor vexatious. Certainly, there is evidence in the affidavit of John Parsons establishing that settlement negotiations actually took place.

[16] The Defendants concede that the case is not vexatious, however, they argue that it is nonetheless "frivolous". To support that position, they point to the affidavit of John Parsons in which he indicates that negotiations between the parties continued beyond the date that the alleged settlement agreement was reached. Based on this evidence, the Defendants assert that the 2nd Action cannot possibly succeed.

[17] For a claim to be "frivolous", it must be plainly non-justiciable, irrational, or so insufficient on its face such that it has no reasonable prospect of success. As Justice Watson explained in *W. (G.J.), Re*, 2003 ABQB 763, at paras. 18 and 19:

> "Frivolous" is defined in the law, it seems to me, in relation to the simple absence of an air of reality to a position, or the simple lack of any threshold basis on which to put forward an argument. In other words, an argument is frivolous if in fact it simply has no chance or no reasonable chance of success.
>
> An argument does not have to be hilarious in order to be frivolous; it does not have to be offensive in order to be frivolous. It is the law, in my view, that the word "frivolous" connotes an argument which does not have a realistic prospect of success.
>
> [footnotes omitted]

[18] The underlying claim is supported by facts. There is evidence that negotiations occurred in an attempt to resolve the litigation. While there may be some inconsistencies in John Parsons' affidavit, those inconsistencies do not arise to the level of making the claim non-justiciable or establishing that there is no reasonable chance of success.

[19] Since this Application will not amount to a final determination of the case, it is unnecessary for this Court to do an extensive examination of the merits.

[20] Based on the evidence, I must conclude that there is a serious issue to be tried.

Irreparable Harm

[21] The next stage of the *RJR-MacDonald* test requires a court to consider if irreparable harm will occur if a stay is not issued. As Justices Cory and Sopinka explained in paragraphs 72 and 73, the question to be decided at this stage "… is whether a refusal to grant relief could so adversely affect the applicants' own interests that the harm could not be remedied if the eventual decision on the merits does not accord with the result of the interlocutory application." The Justices described irreparable harm as "… harm which either cannot be quantified in monetary terms or which cannot be cured, usually because one party cannot collect damages from the other."

[22] In this case, the Plaintiff claims that it intended to develop the parcels of land to sell them commercially, and that calculating damages for those losses will not be easy. The fact that there may be challenges with respect to quantification does not however equate to irreparable harm. No evidence was submitted explaining the precise nature of the quantification problem or why it is not possible to calculate lost profits on a development.

[23] It is also of note, that there is no evidence suggesting that the land in question is somehow unique or irreplaceable.

[24] The Plaintiff also claims that irreparable harm exists because it has concerns "about collecting against any future judgment". The Plaintiff argues that "[the] companies involved are a numbered company and a holding company and other than the land in dispute, the Plaintiff is uncertain what assets that exist or whether they are engaged in business."

[25] In support of this argument, the Plaintiff points to the Nova Scotia Court of Appeal's decision in *MacPhail v. Desrosiers*, 1998 NSCA 5, in which the Court granted a partial stay. That case affirms that the risk of non-payment in the event of success at trial can constitute irreparable harm. In *MacPhail*, there was affidavit evidence concerning the financial state of the respondent.

[26] No such evidence exists in this Application. The Affidavit of John Parsons states that he is "… unaware what, if any, assets the corporate defendants may hold to satisfy any money judgement". In the absence of evidence, this Court cannot simply assume that the Defendants are impecunious or that it will be impossible for the Plaintiff to enforce a future judgement. Uncertainty, as to whether a plaintiff will be able to enforce a judgment, is a common concern for many litigants. Uncertainty alone does not amount to irreparable harm.

[27] Even if there was evidence on this point, it may not be determinative of the Application. As Justices Sopinka and Cory stated in *RJR-MacDonald*, at para. 73: "The fact that one party may be impecunious does not automatically determine the

application in favour of the other party who will not ultimately be able to collect damages, although it may be a relevant consideration … .”

[28] Finally, I cannot accept the Plaintiff’s argument that determining the 1st Action will render the alleged settlement agreement nugatory. The question of the existence and enforceability of a settlement agreement is separate and distinct from the 1st Action. The Plaintiff could lose on the 1st Action but still succeed on proving that there is an enforceable settlement agreement, in which case the Plaintiff would be entitled to damages for a breach of contract.

[29] In conclusion, there is nothing suggesting that the land in dispute is unique or irreplaceable or that the Defendants are impecunious. There is simply no evidence to ground a finding of irreparable harm.

Balance of Convenience

[30] The final part of the test in *RJR-MacDonald*, requires “… an assessment … 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.” This is sometimes referred to as the “balance of inconvenience” test. (*RJR-MacDonald* , at para 53)

[31] The balance of inconvenience is determined by the factual context. The list of factors a court may consider is not closed and may include “… the nature of the relief sought and of the harm which the parties contend they will suffer, the nature of the legislation which is under attack, and where the public interest lies.” (*RJR-MacDonald,* at para. 100)

[32] In this case, the Plaintiff claims that it will suffer greater harm if a stay is not issued because it “will be deprived of the bargain that was reached”. It asserts that determining the existence of an enforceable settlement will not require any great commitment of legal resources.

[33] The Defendants argue that they will suffer considerable harm should a stay be issued. They point out that the Plaintiff commenced this litigation more than twelve years ago. During this time, the Defendants have not been able to develop the properties in dispute. They now fear losing the opportunity to develop the land whilst interest rates are low, and housing demand is high. They also point out that they are ready and willing to go to trial and to that end they have signed a certificate of readiness.

[34] As I indicated earlier, I do not accept the Plaintiff's argument that it will be deprived of the benefit of a settlement agreement if the merits of the claim are heard first. The outcome of the 1st Action does not determine the results of the 2nd Action.

[35] The balance of convenience favours the Defendants.

CONCLUSION

[36] I am not satisfied that a stay should be granted. The Plaintiff has not demonstrated irreparable harm, nor has it established that it will be more inconvenienced than the Defendants.

[37] My reasons for denying the stay should not be interpreted as a consideration of whether these two actions should be consolidated under Rule 18.01.

[38] The Defendants shall have their costs in accordance with Column 3 of the Scale of Costs in the Appendix of Rule 55 of *Rules of the Supreme Court, 1986*, S.N.L. 1986, c. 42, Sch. D.

JUSTIN S.C. MELLOR
Justice