

Federal Court of Appeal



Cour d'appel fédérale

Date: 20130213

Docket: A-290-12

Citation: 2013 FCA 42

**CORAM: BLAIS C.J.
TRUDEL J.A.
MAINVILLE J.A.**

BETWEEN:

GROUPE WESTCO INC.

Appellant

and

**NADEAU FERME AVICOLE LIMITÉE/
NADEAU POULTRY FARM LIMITED**

Respondent

Heard at Ottawa, Ontario, on February 13, 2013.

Judgment delivered from the Bench at Ottawa, Ontario, on February 13, 2013.

REASONS FOR JUDGMENT OF THE COURT BY:

TRUDEL J.A.

Federal Court of Appeal



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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Ottawa, Ontario, on February 13, 2013)

TRUDEL J.A.

[1] Groupe Westco Inc. (Westco) is appealing from a decision of the Competition Tribunal (the Tribunal), dated May 18, 2012, in which the Tribunal dismissed Westco's application for an order allowing Westco to submit a request to enforce the undertaking in damages given by

Nadeau Poultry Farm Limited (Nadeau) in the context of the application for interim relief brought by Nadeau under section 104 of the *Competition Act*, R.S.C., 1985, c. C-34 (the Act).

[2] It is Westco's opinion that the Tribunal erred in law because it did not properly define the parameters of the legal test applicable in this matter, as discussed in *Gu v. Tai Foong International Ltd.*, [2003] O.J. No. 264, leave to appeal to S.C.C. refused, 29684 (November 13, 2003) [*Gu*], and *Vieweger Construction Co. v. Rush & Tompkins Construction Ltd.*, [1965] S.C.R. 195 [*Vieweger*]. More specifically, according to Westco, the Tribunal afforded too much weight to the fact that Westco had been found in contempt by the Tribunal in the matter opposing it to Nadeau and too little weight to the fact that Westco had complied with the sentencing order and paid Nadeau costs. The Tribunal should also have given weight to the fact that Westco had supplied Nadeau with a significant number of chickens at a lower profit and that Nadeau nonetheless exercised its right under section 36 of the Act to bring an action for compensation before the New Brunswick courts.

[3] If the Tribunal had assessed the positive and negative factors that emerge from the facts concerning the parties, it would have arrived at a different conclusion. According to Westco, the present order creates an unfair and inequitable situation between the parties and is contrary to the teachings of the Court of Appeal for Ontario in *Gu*. We disagree.

[4] We are not satisfied that the Tribunal made errors in fact and law warranting our intervention.

[5] Accordingly, the appeal will be dismissed with costs.

"Johanne Trudel"

J.A.

Certified true translation
Johanna Kratz, Translator

FEDERAL COURT OF APPEAL

SOLICITORS OF RECORD

DOCKET: A-290-12

STYLE OF CAUSE: Groupe Westco Inc. v. Nadeau
Poultry Farm Limited/Nadeau Ferme
Avicole Limitée

PLACE OF HEARING: Ottawa, Ontario

DATE OF HEARING: February 13, 2013

REASONS FOR JUDGMENT OF THE COURT BY: BLAIS C.J.
TRUDEL J.A.
MAINVILLE J.A.

DELIVERED FROM THE BENCH BY: TRUDEL J.A.

APPEARANCES:

Éric C. Lefebvre
Martha A. Healey

FOR THE APPELLANT

Leah Price
Andrea Marsland
Ron Folkes

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Norton Rose Canada LLP
Montréal, Quebec

FOR THE APPELLANT

Fogler, Rubinoff LLP
Toronto, Ontario

FOR THE RESPONDENT