Federal Court  Cour fédérale

Date: 20220119

Docket: T-1978-21

Citation: 2022 FC 61

Ottawa, Ontario, January 19, 2022

PRESENT: Madam Justice Sadrehashemi

BETWEEN:

REUVEN INTERNATIONAL LIMITED

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

AMENDED ORDER AND REASONS

I. Overview

[1] The Applicant, Reuven International Limited ("Reuven"), is a licensed importer of meat products to Canada. In December 2021, three of its shipments of frozen cooked chicken wings from Hungary were found to be non-compliant with the *Safe Food for Canadians Act*, SC 2012, c 24 [*SFCA*] and the *Safe Food for Canadians Regulations*, SOR/2018-108 [*SFCR*] by the Canadian Food Inspection Agency [CFIA]. The CFIA rejected these shipments on the basis that

they were not “edible” due to the presence of feathers on the cooked chicken wings. The CFIA issued notices to Reuven to detain and remove or destroy the three shipments by March 2022. Further, by automatic operation of the *SFCR,* the Hungarian Ministry of Agriculture was notified that the two Hungarian establishments involved in the production of the non-compliant food products would be suspended (“Suspension Order”), preventing them from having any further products imported into Canada.

[2] In the underlying judicial review, Reuven challenged the CFIA’s decisions to find its shipments non-compliant with the *SFCA* and the *SFCR* and to issue a Suspension Order to Hungary affecting the two production establishments.

[3] Reuven asks this Court for an interlocutory injunction against the enforcement of several decisions of the CFIA until the underlying judicial review is decided. First, Reuven asks that the Suspension Order affecting the two Hungarian establishments be stayed. Second, Reuven asks that the enforcement of the CFIA orders to remove or destroy the shipments by March 1, 2022 and March 10, 2022 be stayed. Third, Reuven asks that any shipments that were rejected by the CFIA since December 23, 2021, on the basis of the Suspension Order, be re-examined as if the Suspension Order had not come into effect.

[4] For the reasons set out below, I am dismissing Reuven’s motion for an interlocutory injunction. I do not find that Reuven has demonstrated that it will face irreparable harm or that the balance of convenience lies in their favour.

II. Background Facts

[5] A large part of Reuven's business involves selling imported cooked chicken wings for major grocery stores, restaurant chains, and other food services. More than three quarters of Reuven's supply of imported cooked chicken wings come from two suppliers in Hungary, establishments HU 112 EK and HU 215 EK ("Suspended Establishments"). HU 112 EK is responsible for preparing the raw poultry wings, while HU 215 EK processes the poultry into cooked and seasoned chicken wings that are frozen and packaged for export.

A. *Legislative scheme*

[6] The *SFCA* and the *SFCR* require a foreign country to have a recognized inspection system in place and foreign exporters to have a system of production that is recognized under Part 7 of the *SFCR (SFCR*, ss 170-171). Importers of meat products can only import from countries and establishments that hold these recognitions (*SFCR*, s 167). Hungary has an inspection system recognized under Part 7 the *SFCR* and the Suspended Establishments had been recognized under Part 7 of the *SFCR*.

[7] Under this legislative scheme, meat products imported into Canada are subject to an inspection by the CFIA (*SFCA*, s 24). Where an inspector has reasonable grounds to believe the imported food product does not meet the legislative requirements under s 8 of the *SFCR*, including the requirement at issue in this case — whether the food is "edible" — they may order its detention and removal or destruction (*SFCA*, ss 25, 32).

[8] If a foreign establishment has three or more non-compliance findings under the *SFCA* or *SFCR* in a six-month period, the foreign ministry of the establishment's country is notified and

food products coming from that establishment are suspended from importation into Canada (*SFCR*, s 172(2)(b)(ii)). The suspension can be lifted when Canada is satisfied that appropriate corrective measures are in place at the suspended establishments (*SFCR*, s 172(5)(b)).

B. *Events leading to the CFIA non-compliance findings*

[9] From October to December 2021, three of Reuven's shipments from the Suspended Establishments were inspected by the CFIA and were found to contain defects in the form of feathers and pinfeathers attached to frozen cooked and seasoned chicken wings.

[10] The first of the shipments, M1394, arrived in Canada on October 19, 2021. The shipment consisted of two lots of two different kinds of cooked chicken wings. The first lot was identified for a visual inspection and the second lot was identified for a more extensive, physical inspection, i.e. an organoleptic inspection. The second lot's organoleptic inspection was conducted on October 27, 2021, where feathers and pinfeathers were found on the chicken skin in 27 out of the 34 randomly sampled boxes. As a result, the first lot's visual inspection was changed to an organoleptic inspection, which was conducted on November 2, 2021. Feathers and pinfeathers were found on the chicken skin in 27 out of the 32 randomly sampled boxes.

[11] The second shipment, M1408, also arrived in Canada on October 19, 2021, and was subject to a full organoleptic inspection as a result of the defects found in the first importation. The inspection took place on November 9, 2021, where feathers and pinfeathers were found in 38 out of the 47 sampled boxes.

[12] Almost a month after the inspections, the CFIA determined through internal consultations that while a certain amount of feathers and pinfeathers were acceptable in fresh and frozen raw poultry according to their Poultry Reexamination Program ("Poultry Policy"), the presence of feathers was not acceptable in ready-to-eat food because the product could not be re-worked prior to consumption. The CFIA concluded that these defects rendered shipments M1394 and M1408 non-compliant with s 10(3) of the *SFCA* and ss 8(1)(b), 125(1)(c) and 145(1)(b)(i) of the *SFCR*, which prohibit the importation of a food commodity unless it is "edible" — for these products, this requires the removal of feathers from the skin.

[13] On December 1, 2021, the CFIA issued Notices of Detention and Notices to Remove or Destroy Unlawful Imports to Reuven for shipments M1394 and M1408. According to the notices, Reuven has until March 1, 2022 to comply with the removal or destruction of the shipments.

[14] On October 30, 2021, another shipment, M414, arrived in Canada. It was identified for a full organoleptic inspection. Following the inspection on December 9, 2021, the CFIA again determined that the shipment was not compliant with the *SFCA* and *SFCR* for the same reasons as the other two shipments. Feathers and pinfeathers were found in 29 out of the 47 sampled boxes.

[15] On December 10, 2021, a Notice of Detention and Notice to Remove or Destroy Unlawful Imports was issued to Reuven for shipment M414. According to the notice, Reuven has until March 10, 2022 to comply with the removal or destruction of the shipment.

[16] Under s 172(2)(b)(i) of the *SFCR*, the Minister *must* suspend the recognition of a foreign establishment's system where, within a six-month period, there are three findings of non-compliance of imports. On December 23, 2021, the CFIA notified the Hungarian authorities of the suspension of the recognition of HU 112 EK and HU 215 EK ("Suspended Order") as a result of the three non-compliant shipments. Reuven learned of the Suspension Order on the following day, December 24, 2021.

C. *Steps taken before this Court*

[17] On December 27, 2021, Reuven made an application for judicial review challenging the CFIA decisions to find its three shipments non-compliant with the *SFCA* and *SFCR* and to issue the Notices of Detention and Notices to Remove or Destroy Unlawful Imports. Reuven also challenged the CFIA's decision to suspend recognition of the two establishments in Hungary responsible for the three shipments that were found to be non-compliant.

[18] The following day, on December 28, 2021, Reuven filed a Notice of Motion seeking an interlocutory injunction to stay the CFIA decisions finding three of their shipments non-compliant, and also sought a stay of the Suspension Order pertaining to the two establishments in Hungary. Reuven also requested that any shipments coming from the Suspended Establishments that arrived after December 23, 2021 be re-examined and not be refused sight unseen because of the Suspension Order.

[19] From December 24, 2021 until December 31, 2021, several of Reuven's shipments from the Suspended Establishments had arrived in Canada, and were rejected due to the Suspension Order.

[20] The motion for the interlocutory injunction was heard on January 5, 2022.

III. Preliminary issues

A. *Proper Respondent*

[21] At the oral hearing, Counsel for the Respondent indicated that the Respondent was improperly named as the Minister of Agriculture and Agri-Food and should be named the Attorney General of Canada. Counsel for Reuven stated no objection to this. It will be ordered amended with immediate effect to name the proper Respondent, the Attorney General of Canada.

B. *Admission of the further supplementary affidavit of Joseph Stott, sworn January 7, 2022*

[22] During the oral hearing, Counsel for the Respondent learned that evidence from the foreign ministry in Hungary had just become available and asked that they be permitted to provide this letter to the Court. I granted leave to the Respondent to provide this evidence by noon the following day, and for Reuven to be able to file responding submissions/evidence by the end of the day on January 7, 2022.

[23] The next day, Counsel for the Respondent provided an affidavit of Daniel Burgoyne, the National Manager of Food Imports at CFIA, as well as a letter from the Hungarian Ministry of

Agriculture, addressed to the CFIA, dated January 5, 2022, attached to the affidavit as an exhibit. The letter advised that the Hungarian Ministry had conducted an investigation into the Suspended Establishments and found that their production processes did not comply with Canadian requirements. The letter detailed the corrective measures taken to prevent the occurrence of further non-compliance and requested that the CFIA restore the recognition of the establishments in light of these corrective measures. The affidavit of Daniel Burgoyne described the communication between the CFIA and the Hungarian Ministry of Agriculture since the Suspension Order, and that the CFIA intended to engage in further discussions about the corrective measures referred to in the letter prior to making a decision to reinstate its recognition of the Suspended Establishments.

[24] In reply, Counsel for Reuven made submissions about the significance of the letter from the Hungarian Ministry of Agriculture, specifically in relation to the irreparable harm and balance of convenience criteria for an injunction. Reuven also filed a further supplementary affidavit, containing evidence from several of Reuven's executives who had recently purchased frozen cooked chicken wings at local grocery stores and had documented, through photos, the presence of feathers on these chicken wings.

[25] Counsel for Reuven noted that this evidence was being filed in response to the further statement in the letter from the Hungarian Ministry of Agriculture regarding the non-compliance of the Suspended Establishments with Canadian standards.

[26] Counsel for the Respondent objected to the further supplementary affidavit being entered into evidence on the basis that the information contained within it was not properly a reply to their additional evidence.

[27] I agree with the Respondent. The evidence in the new affidavit filed by Reuven is not a direct response to the new evidence; instead, it is seeking to respond to an issue, not specifically raised in the Respondent's new evidence, as to whether it is unusual to find feathers on cooked chicken wings.

[28] I will not consider Reuven's further supplementary affidavit, sworn on January 7, 2022. I note, however, that the issue addressed in this affidavit would not have affected my decision, as nothing in my decision turns on whether feathers in cooked chicken wings is an unusual occurrence.

C. *Standing of Reuven to challenge the Suspension Order*

[29] In response to Reuven's motion, the Respondent raised as a preliminary issue Reuven's standing to challenge the Suspension Order, arguing that without the standing to challenge the Suspension Order, Reuven's request for an interlocutory injunction must fail.

[30] The Respondent's position is that the Suspension Order is directed at the Hungarian authorities, affects two foreign establishments in that country and is not a decision that was directed at Reuven. The Respondent also argued that the Suspension Order does not affect

Reuven's legal rights, impose legal obligations on Reuven, or legally prejudice them; rather, they are affected in a purely commercial way.

[31] Reuven argued that the concern raised about its standing to challenge the Suspension Order is really a concern about available remedies, not standing. Reuven argued that because of the nature of the legislative scheme, the direct result of three findings of non-compliance in a six-month period was a suspension on imports from the foreign establishments in Hungary. If any of the three findings of non-compliance are found to be unreasonable and/or unfair in the underlying judicial review (where Reuven's standing to review these findings is not challenged), then necessarily the mandatory suspension on imports from the foreign establishments, that occurred as a result of these same findings, no longer can stand.

[32] The Respondent did not accept this position on remedy. The Respondent argued that it is not necessarily true that the Suspension Order must fall because a Court finds the non-compliance findings unreasonable or unfair. The Respondent emphasized that the section of the *SFCR* dealing with the recognition of foreign establishments is distinct from the non-compliance findings issued in relation to importers' shipments — it is about Canada's relationship with a foreign government, not a specific importer.

[33] Reuven argued in the alternative that even if the Court considered there to be a standing issue, they met the test for standing as the company could be found to be "directly affected" under section 18.1 of the *Federal Courts Act*, RSC 1985, c F-7.

[34] I am satisfied at this preliminary stage that the issue of standing needs further consideration and is not appropriate to be dealt with at this stage of the proceedings (*Apotex Inc. v Canada (Governor in Council)*, 2007 FCA 374 at para 13). As noted by Counsel for the Respondent, the provision relating to the suspension on importation from a foreign establishment is relatively new and has not been considered by a Court. Reuven has raised legitimate questions about the interaction of non-compliance findings against an importer and the requisite mandatory finding affecting the foreign establishments.

[35] Without deciding the issue of standing, I have proceeded to consider this injunction motion on an assumption that Reuven has standing to bring its underlying challenge, including its request to quash the Suspension Order.

IV. Issue

[36] The sole issue to be decided on this motion is whether the Applicant, Reuven, has met the test to obtain interlocutory injunctive relief.

V. Analysis

A. *Framework for interlocutory injunctions*

[37] The well-established test for an interlocutory injunction, set out in *RJR-MacDonald Inc. v Canada (Attorney General)*, [1994] 1 SCR 311 [*RJR-MacDonald*], requires those seeking injunctive relief to demonstrate that i) there is a serious issue to be tried; ii) a refusal to grant relief could irreparably harm the applicant's interests; and iii) the balance of convenience favours

granting the injunction. To succeed on a motion for an interlocutory injunction, a moving party needs to demonstrate all three elements of the test (*Janssen Inc. v Abbvie Corporation*, 2014 FCA 112 at para 14 [*Janssen*]). The three factors are not "watertight compartments" operating independently of each other; instead, motions judges are to take a flexible approach in considering the three factors, recognizing that in some cases the strength of one factor may compensate for a weakness of another (*Monsanto v Canada (Health)*, 2020 FC 1053 at para 50 [*Monsanto*]).

[38] The overall question that I need to decide is whether "granting the injunction would be just and equitable in all the circumstances of the case" (*Google Inc. v Equustek Solutions Inc.*, 2017 SCC 34 at para 1 [*Google Inc*]).

B. *Serious issue*

[39] The serious issue part of the test for interlocutory injunctive relief considers the merits of the underlying application for judicial review.

(1) Applicable threshold

[40] Generally, only a preliminary assessment of the merits is required. It is a low standard in which the motions judge assesses the merits, not for the purpose of making a definitive determination on the likelihood of success of the underlying application, but rather to determine whether the application is frivolous or vexatious. The serious issue to be tried factor can be satisfied even where the motions judge does not believe, on a preliminary assessment that the

applicant would be likely to succeed in the underlying application (*RJR-MacDonald* at 337-338). In *RJR-MacDonald* at 338, the Supreme Court of Canada cautioned that "a prolonged examination of the merits is generally neither necessary nor desirable."

[41] Depending on the nature of the relief sought on the injunction, there are certain circumstances in which a more extensive examination of the merits is warranted. There was some disagreement between the parties as to whether a heightened standard should be applied, given the nature of the relief being sought in the injunction. Reuven makes distinct remedial requests on its injunction motion. For each, I must determine which threshold for the assessment of the merits applies.

[42] First, Reuven is asking that the shipments that arrived in Canada since December 23, 2021, and were already rejected because of the Suspension Order, be re-examined as if the Suspension Order had not been issued. The Supreme Court of Canada in *R v Canadian Broadcasting Corporation*, 2018 SCC 5 [*CBC*] confirmed that where the interlocutory relief would result in directing the opposing party to "undertake a positive course of action, such as taking steps to restore the *status quo*," the moving party must demonstrate that the underlying application has "such merit that it is very likely to succeed at trial" (at paras 15, 17). Given the positive actions that would have to be taken by the inspectors at the CFIA in order to re-examine already rejected shipments, I find this request is appropriately considered a request for a mandatory injunction as opposed to a prohibitive one. Therefore, Reuven must demonstrate a "strong *prima facie* case" for this ground of relief (*CBC* at para 15).

[43] Reuven also requested that enforcement of the decisions to find the three shipments non-compliant, and the subsequent notices for their detention and removal or destruction, be stayed. Lastly, Reuven requested that the effect of the Suspension Order directed at the two establishments in Hungary be stayed, asking that future shipments not automatically be rejected but instead that they go through the normal processing as if the Suspension Order was not in effect.

[44] The Respondent argued that even if the relief sought were not requests for a mandatory injunction, an elevated standard, requiring a likelihood of success in the underlying application, should be applied to assess the merits because the relief being sought on the injunction amounted to the same relief Reuven would receive if it were successful on the underlying judicial review.

[45] The Supreme Court of Canada has held that this elevated threshold, where a more extensive review of the merits is required, is necessary "when the result of the interlocutory motion will in effect amount to a final determination of the action" (*RJR-MacDonald* at 338). I do not agree that this elevated standard applies here.

[46] The relief being sought on the underlying judicial review is principally a determination that the decisions to find the shipments non-compliant were unreasonable and/or unfair and therefore the mandatory Suspension Order that flowed from those decisions was not valid. The interlocutory injunction sought here would not provide a final determination on these issues. While it is true that Reuven seeks a stay from the effect of the Suspension Order, it would not be permanently overturned, which is what it seeks on the underlying judicial review. As noted by

Justice Grammond in *Telus Communications v Vidéotron Ltée*, 2021 FC 1127 [*Telus Communications*], "This is not a situation where, given time constraints, the case is unlikely to proceed on the merits and the interlocutory injunction 'will in effect amount to a final determination of the action': *RJR*, at 338 […] The mere fact that the relief sought on an interim basis is the same as that sought in the application is not sufficient to require more than a serious issue" (at para 34). Similarly, there has been no indication in this case that the underlying application is unlikely to be heard on its merits.

(2) Assessment of the merits

[47] As I will set out below, I do not find, at this stage, that Reuven has established the merits of their underlying application on the "strong *prima facie*" threshold. Counsel for Reuven took the position in its oral submissions that in the event that the Court thought that the "strong *prima facie"* threshold was not met for its request for a re-examination of shipments, the Court could decide to not grant this part of the relief (the mandatory injunction) and still consider the merits of the underlying application on a lower threshold with respect to the remaining relief sought. I agree with this approach.

[48] Reuven argues that the CFIA's decisions on the non-compliance of its three shipments were unreasonable because it ignored established criteria outlined in the applicable Poultry Policy. In doing so, Reuven asserts that the CFIA also breached Reuven's procedural fairness rights in departing from established policy on inspection, failing to advise Reuven of the content of the CFIA's internal deliberations and failing to provide Reuven with an opportunity to make submissions on the applicability of the Poultry Policy. Reuven further argues that the CFIA's

significant delay in issuing a decision on the first two shipments and lack of efforts to expedite its process in order to avoid a loss by Reuven brought into question the CFIA's lack of impartiality. Lastly, Reuven argues that the Suspension Order against one of the establishments, HU 112 EK, was irrational and arbitrary because as a raw processing plant, it was not responsible for the processing of the chicken into cooked form or its exportation.

[49] A central issue animating a number of grounds in the underlying judicial review is the applicability of the Poultry Policy to the importation of frozen *cooked* chicken. If the Poultry Policy had been applied to its shipments, as Reuven argues it should have been, it is Reuven's position that these shipments would not have been rejected for importation because the Poultry Policy allows for the presence of some number of feathers. The Respondent argues that the Poultry Policy does not apply because it is only applicable to frozen raw poultry, not frozen, ready-to-eat, cooked poultry.

[50] The core issue in dispute between the parties is whether the language of the Poultry Policy that refers to "fresh or frozen poultry carcasses and parts" includes cooked poultry. The Poultry Policy itself does not specifically exclude frozen cooked poultry from its application. The Respondent relies on the use of the terms "carcasses and parts" as meaning poultry that has not already been cooked.

[51] A determination of the central question at issue in the underlying judicial review involves a number of parts, including: statutory interpretation of the relevant provisions in the *SFCA* and *SFCR*, an examination of the language of the Poultry Policy, and possibly a review of past

practices at the CFIA with respect to cooked poultry. There is also a dispute between the parties as to whether it is unusual to find feathers on cooked chicken. Reuven does not accept the CFIA's evidence that this is highly unusual, which was the basis of the CFIA's explanation for the need for internal consultation and its delayed rejection of the first shipments at issue. This is an evidentiary issue that may also require further consideration in the underlying judicial review.

[52] I am satisfied that Reuven has raised arguable issues in the underlying application that meet the threshold of not being frivolous or vexatious. I am not, however, satisfied, given the remaining questions that I have outlined above, that Reuven has established a strong *prima facie* case at this stage. Accordingly, for the remainder of my assessment, I will not consider Reuven's request for a mandatory injunction—the re-examination of those shipments that have already been rejected post-December 23, 2021 on the basis of the Suspension Order.

C. *Irreparable harm*

[53] Irreparable harm has been defined 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" (*RJR-MacDonald* at 341; see also *Canada (Attorney General) v Oshkosh Defense Canada Inc.*, 2018 FCA 102 at para 24; *Janssen* at para 24). Irreparable harm is about the nature of the harm and not its scope or reach; as explained by Justice Gascon at paragraph 49 in *Letnes v Canada (Attorney General),* 2020 FC 636: "The irreparability of the harm is not measured by the pound."

[54] The moving party must demonstrate, on a balance of probabilities, that they will suffer irreparable harm between the date of the injunction application and the determination of their underlying judicial review application on the merits (*Evolution Technologies Inc v Human Care Canada Inc*, 2019 FCA 11 at paras 26, 29).

[55] Reuven's arguments about the irreparable harm that it will face as a business are centred on the impact of not being able to reliably fulfill the demands of its customers for imported cooked chicken wings. Reuven argues that the rejection of its shipments of cooked chicken wings, and the suspension of future imports from the two establishments in Hungary, where Reuven sources three-quarters of its cooked chicken wings, will result in it being "unable to rely on its main supplier of its most profitable product."

[56] Reuven argues that this inability to reliably source cooked chicken wings for its large customers in Canada in the immediate term will have a "devastating impact on Reuven's business in a way that cannot be quantified nor remedied." Reuven sets out the following harms in its written materials: i) a significant loss of profits, which would necessarily lead to a reduction of its workforce; ii) harm to its business strategy which has required investments over the past few years in order to convince customers to switch to imported cooked products; iii) a loss of its market share in the cooked chicken wing market; iv) a loss of business reputation for years in the future; and v) harm to Reuven's customers, other suppliers, Canadian importers relying on the Suspended Establishments and Canadian consumers whose access to cooked chicken wings will be interrupted.

[57] In oral submissions, Reuven's counsel did not raise this last set of harms that affect third parties (consumers, other importers, and Reuven's customers). Generally, harm to third parties is not considered in the irreparable harm analysis (*Richardson v Seventh-day Adventist Church*, 2021 FC 609 at para 40 [*Richardson*]; *Air Passengers Rights v Canada (Transportation Agency)*, 2020 FCA 92 at para 30). Reuven has not addressed why this general rule should not apply here.

[58] Reuven's counsel also acknowledged in oral submissions that the purely financial loss that flowed as a result of the CFIA decision to reject the products was quantifiable, and focused their submissions on the loss of market share and business reputation flowing from the non-compliance rejections of its chicken wing imports and, in particular, future rejections because of the Suspension Order.

[59] I do not find that Reuven has established that its claimed loss of market share and business reputation amount to irreparable harm in this case. I find that the claims are speculative and have not been shown to be unavoidable. Reuven is asking the Court to make a number of assumptions about its business relationships, operations and competitors' operations, and then to draw inferences about its future loss of market share and reputation based on these assumptions.

[60] A claim of irreparable harm cannot be sustained by speculation or bald assertions. As noted by Justice Mactavish in *Patry v Canada (Attorney General)*, 2011 FC 1032 at para 53, "[a]llegations of harm that are merely hypothetical will not suffice." Rather, the burden is on the moving party to show that irreparable harm will result: see *International Longshore and Warehouse Union, Canada v Canada (Attorney General)*, 2008 FCA 3 at paras 22-25; see also

United States Steel Corporation v Canada (Attorney General), 2010 FCA 200 at para 7; *Centre Ice Ltd v National Hockey League* (1994), 166 NR 44 (FCA) at 52. Justice Stratas described the nature of the required evidence to be "evidence at a convincing level of particularity that demonstrates a real probability that unavoidable irreparable harm will result unless a stay is granted" (*Glooscap Heritage Society v Canada (National Revenue)*, 2012 FCA 255 at para 31).

[61] Reuven learned of the Suspension Order on December 24, 2021. Fifteen shipments came from the two Suspended Establishments from December 24, 2021 until December 31, 2021. As of December 31, 2021, seven of those shipments were rejected because of the Suspension Order. As of the same date, Reuven expected that the further eight shipments from the two establishments would also be rejected due to the Suspension Order.

[62] Reuven has asserted in the affidavit of Joseph Stott, the Assistant Director of Purchasing at Reuven, that it "anticipates that, unless the stay is granted and CFIA processes the rejected shipments swiftly, its inventory for a number of key clients will begin to run out over the course of the first week of January 2022." Reuven has provided no particular information given about the quantity of orders expected for any particular customer. Instead, there is a general statement that Reuven will begin to be in default of its obligations beginning the first week of January and that this "include[s] major players such as Sobeys, Save on Foods, and Recipe Unlimited – owner of numerous restaurants including Swiss Chalet, St-Hubert, Montana's, East Side Mario's and many others…"

[63] The nature and extent of this default on its obligations to particular customers are not set out. There is no evidence of how much of an order any particular customer was expecting and on what date, they would be in default — only that they will begin to be in default the first week of January generally for some customers. The information provided is general in nature.

[64] Reuven is asking the Court to make a number of inferences without a solid evidentiary foundation. I accept that Reuven has begun to default on its obligations to supply cooked chicken wings to its major suppliers, though as set out above, the extent of this default has not been set out with particularity. I am also willing to accept, though the evidence was limited to assertions from Reuven staff, that because of problems with supply chains in recent years, Reuven has no buffer supply inventory of cooked chicken wings and accordingly, the imported products are required to be delivered to the customer soon after they arrive in Canada.

[65] The next steps required in the chain of analysis leading to a determination that Reuven will experience a loss of market share and business reputation are not supported by particularized evidence and rely on a number of assumptions. First, it is Reuven's position that it is unavoidable that it will default in its obligations to its customers, who normally rely on product from the Suspended Establishments, if the Suspension Order is in place. And second, Reuven claims that their customers "will quickly find new sources of supply to satisfy their unmet demand." Both of these claims are speculative.

[66] In relation to both the question of future default and ability to find alternative supply, Reuven has not adequately explained why it could not seek and obtain other suppliers to provide

chicken wings to its customers. During the oral hearing, counsel for Reuven explained that it would not be as simple as just swapping in another product as each customer had their wings prepared to its particular specifications (e.g.: “Houston Pizza seasoned chicken wings” and “Mr. Mike’s seasoned chicken wings”). There was no evidence provided about the nature of these specifications. There was no evidence provided in relation to the availability of other suppliers, either domestic or foreign, and how long it would take for another supplier to be in a position to prepare and supply the product according to these specifications.

[67] Moreover, Reuven has not led evidence to establish that their competitors would be in a better position to secure this supply than Reuven. Reuven claims that its customers can “quickly find new sources of supply” to meet the gap left by the Suspended Establishments. However, it is not clear why Reuven believes its competitors would be better placed to find replacement supply. Reuven’s competitors would be on equal footing in the sense that they too would have to find a foreign or domestic supplier who could provide wings tailored to the particular specifications of the customers. These competitors are also not able to source their chicken wings from the Suspended Establishments.

[68] Counsel for Reuven argued that the Respondent’s submissions on these types of possible mitigation strategies Reuven could take did not take into account “commercial realities.” I accept that there is a context in which these sorts of business relationships are built and maintained, and that there are numerous factors that affect the chances that various business strategies will succeed. However, the Court cannot fill in the gaps in the evidence and accept a number of unsupported inferences to create its own general idea as to how the commercial reality operates.

[69] Overall, I find that Reuven has not demonstrated with sufficient particularized evidence that it will suffer a loss in market share and reputation if the injunction is not granted.

[70] Moreover, even if I found that these claims were not speculative, I do not agree that these sorts of losses are impossible to quantify, as argued by Reuven. As noted recently by this Court in *Telus Communications* at para 81, "[s]uch an exercise always involves a comparison with a hypothetical world in which the unlawful conduct did not take place. By its own nature, this exercise involves a certain degree of approximation." Reuven has not adequately explained why these sorts of losses are incalculable, except by referring generally to *RJR-MacDonald* and that the Court's observation that permanent market loss or irrevocable damage to business reputation *could* constitute harm that cannot be quantified in monetary terms (at 341). Reuven has not established, that in this case, there is something about the nature of the particular harm it expects to face that makes it impossible to quantify.

[71] As noted above, the harm in relation to a loss in profits due to having the shipments rejected are quantifiable harms. I have already determined that I will not grant Reuven's request for a mandatory injunction, which required that the already rejected shipments post-December 23, 2021 be re-examined as if the Suspension Order had been stayed. Accordingly, to the extent that most, if not all, of the rejections of the imported product happened prior to hearing the injunction application, these are past harms that cannot be evaluated in determining whether there is irreparable harm, which is a forward-looking claim (*Richardson* at para 47).

[72] I do not have any information on any further shipments that Reuven is expecting to receive, if any, in January 2022 or whether Reuven has stopped any of those shipments in light of the Suspension Order. I was not provided with Reuven's typical import schedule and its scheduled deliveries to its customers.

[73] Reuven has also not demonstrated that these financial losses associated with the rejected shipments are unavoidable. As set out above, Reuven has not adequately explained why it could not fulfill the orders of its customers with products from another supplier. Counsel for Reuven also acknowledged at the oral hearing that the potential to re-export the rejected shipments to other countries without the same safety requirements might mitigate some of the financial loss. There was no specific evidence led on the nature of penalties and other costs associated with Reuven failing to fulfill its contractual obligations to its customers.

[74] Overall, I find that Reuven has not demonstrated that it will face non-speculative and unavoidable irreparable harm before the underlying judicial review is determined.

D. *Balance of convenience*

[75] The balance of convenience factor requires the Court to "identify the party which would suffer greater harm from the granting or refusal of the interlocutory injunction, pending a decision on the merits" (*CBC* at para 12). It is the moving party's onus to demonstrate that the balance of convenience lies in their favour (*Canada (Attorney General) v Bertrand*, 2021 FCA 103 at para 12).

[76] As noted by this Court in *Erhire v Canada (Minister of Public Safety and Emergency Preparedness)*, 2021 FC 941, the goal of injunctive relief is to "preserve the subject matter of the litigation so that effective relief will be available when the underlying litigation is ultimately heard on the merits: see Google Inc at para 24" (at para 48). There was no concern raised that Reuven would not be able to proceed with the underlying litigation if the injunction was not granted, whether due to business failure or any other reason. The principal harms raised relate to loss of market share and business reputation — claims that I have determined to be speculative and not unavoidable.

[77] The public interest concerns at stake raised by the Respondent relate to ensuring appropriate quality standards for imported meat products for consumption by people in Canada. I find that the balance of convenience favours the Respondent.

E. *Conclusion on whether relief is warranted*

[78] Taking together the factors described above (serious issue to be tried, irreparable harm and balance of convenience) and considering the overall question of whether it is just and equitable in all of the circumstances to grant injunctive relief (*Google Inc* at para 1), I am dismissing Reuven's motion for an interlocutory injunction. Overall, I find that there is a public interest in ensuring food safety and do not find that the evidence provided on this motion demonstrates that there is sufficient compelling and non-speculative evidence that Reuven will face irreparable harm prior to the hearing of the underlying judicial review if an injunction is not granted.

VI. Disposition and Costs

[79] For these reasons, Reuven's motion for an interlocutory injunction is dismissed. Both parties sought the costs of this motion. I do not see a reason to alter the usual practice of ordering the unsuccessful party to pay the costs of the motion. I award costs of this motion to the Respondent, the Attorney General of Canada.

[80] Finally, I would like to thank both counsel for their thoughtful and able submissions prepared in a short timeframe.

AMENDED ORDER IN T-1978-21

THIS COURT ORDERS that:

1. The Applicant's motion for an interlocutory injunction is dismissed.
2. The style of cause is amended so that the Attorney General of Canada is the Respondent.
3. Costs of this motion are awarded to the Respondent.

"Lobat Sadrehashemi"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1978-21
STYLE OF CAUSE:	REUVEN INTERNATIONAL LIMITED v ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE
DATE OF HEARING:	JANUARY 5, 2022
AMENDED ORDER AND REASONS:	SADREHASHEMI J.
DATED:	JANUARY 19, 2022

APPEARANCES:

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