

Federal Court
of Appeal



Cour d'appel
fédérale

Date: 20110113

Docket: A-407-10

Citation: 2011 FCA 13

Present: SHARLOW J.A.

BETWEEN:

GROUPE WESTCO INC.

Appellant

and

NADEAU FERME AVICOLE LIMITÉE/NADEAU POULTRY FARM LIMITED

Respondent

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on January 13, 2011.

REASONS FOR ORDER BY:

SHARLOW J.A.

Federal Court
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REASONS FOR ORDER

SHARLOW J.A.

[1] The appellant Groupe Westco Inc. (“Westco”) has moved pursuant to Rules 3 and 8 of the *Federal Courts Rules*, SOR/98-106, for an order holding this appeal in abeyance until 30 days after the disposition of two related appeals, A-70-10 and A-133-10. Westco seeks in the alternative an order extending the deadline for filing the agreement as to the contents of the appeal books. The respondent Nadeau Ferme Avicole Limitée / Nadeau Poultry Farm Limited (“Nadeau”) opposes the motion.

[2] Rules 3 and 8 reads as follows:

3. These Rules shall be interpreted and

3. Les présentes règles sont interprétées et

applied so as to secure the just, most expeditious and least expensive determination of every proceeding on its merits.

appliquées de façon à permettre d'apporter une solution au litige qui soit juste et la plus expéditive et économique possible.

8. (1) On motion, the Court may extend or abridge a period provided by these Rules or fixed by an order.

8. (1) La Cour peut, sur requête, proroger ou abréger tout délai prévu par les présentes règles ou fixé par ordonnance.

(2) A motion for an extension of time may be brought before or after the end of the period sought to be extended.

(2) La requête visant la prorogation d'un délai peut être présentée avant ou après l'expiration du délai.

(3) Unless the Court directs otherwise, a motion to the Federal Court of Appeal for an extension of time shall be brought in accordance with rule 369.

(3) Sauf directives contraires de la Cour, la requête visant la prorogation d'un délai qui est présentée à la Cour d'appel fédérale doit l'être selon la règle 369.

[3] This appeal was filed on October 25, 2010. Westco has not taken the first step for its perfection, namely the filing of an agreement as to the contents of the appeal book. According to Rule 343(1), that step should have been taken within 30 days after the filing of the notice of appeal. However, the fact that Westco has not complied with Rule 343(1) does not preclude the Court from entertaining this motion.

[4] The appeal arises out of a proceeding before the Competition Tribunal. In early 2008, Nadeau was advised by Westco that it would cease to supply Nadeau with live chickens. In May of 2008, Nadeau applied to the Competition Tribunal for an order under section 75 of the *Competition Act*, R.S.C. 1985, c. 34, directing Westco to accept Nadeau as a customer and continue supplying it with live chickens. Nadeau also applied for interim relief. On June 26, 2008, the Competition Tribunal made an order granting Nadeau interim relief. That order required Westco to supply a certain number of live chickens to Nadeau for a specified period of time on the usual trade terms.

[5] Nadeau subsequently took the position that Westco was operating in contempt of the interim order and took further proceedings before the Competition Tribunal. Those proceedings resulted in an order of the Competition Tribunal dated January 22, 2010 declaring Westco to be in contempt of the interim order. Westco appealed that declaration (A-70-10). Westco then moved for an order or direction regarding the interpretation of the interim order. That motion was dismissed by order dated March 18, 2010. Westco appealed the order dismissing its interpretation motion (A-133-10). At the moment, Westco's appeals in A-70-10 and A-133-10 are scheduled to be heard on March 15, 2011.

[6] The matter of the sentencing of Westco for contempt of the interim order was the subject of further hearings before the Competition Tribunal in July of 2010. The sentence is set out in an order of the Competition Tribunal dated September 24, 2010. It imposes on Westco a fine of \$75,000 payable within 60 days of the order, and an obligation to pay Nadeau \$250,000 in costs. Westco has appealed the sentencing order, seeking to set it aside. That is the present appeal.

[7] Nadeau has cross-appealed the sentencing order, seeking an order requiring Westco to pay costs on a solicitor and own client basis, which Nadeau has claimed would entitle it to a further \$237,850.48. The Competition Tribunal had rejected Nadeau's request for costs on a solicitor and own client basis because it concluded that the amount claimed was not reasonable and would result in undue punishment for Westco.

[8] Westco wishes to postpone all of the steps required to perfect the sentence appeal and cross-appeal until 30 days after the disposition of its appeals in A-70-10 and A-133-10. Westco submits

that the requested order is warranted on the grounds of efficiency. Westco says that if its two appeals are not successful it will not pursue its sentence appeal, but if either appeal is successful, Westco will seek an order allowing the sentencing appeal and cross-appeal to proceed in a manner consistent with that success. Nadeau opposes the motion on the basis that the requested order is not authorized by Rule 8 or does not meet the test in Rule 8, or alternatively because it would result in prejudice to Nadeau.

[9] In my view, it is appropriate for Westco to cite Rule 8 in support of its motion, although it could also have cited paragraph 50(1)(b) of the *Federal Courts Act*. An order holding an appeal in abeyance pending the occurrence of a specified event is simply an order that relieves the parties of any obligation to take the steps required to perfect the appeal after that event has occurred. Such an order may be viewed as an order extending the time for taking a step required by the *Federal Courts Rules*, although the length of the extension of time is not described by reference to a specific date or number of days, but by reference to the date on which the anticipated future event occurs. It may also be viewed as an order for a stay of the appeal proceedings pursuant to paragraph 50(1)(b) of the *Federal Courts Act*, R.S.C. 1985, c. F-7, which may be granted if the Court in its discretion concludes that for any reason it is in the interest of justice that the proceedings be stayed.

[10] Nadeau correctly points out that, according to the jurisprudence relating to Rule 8, the Court generally is required to consider whether there is a justification for the delay, an intention of pursuing the matter sought to be delayed, an arguable case on the merits, and an absence of prejudice to any party opposing the delay. However, these factors as evolved from the case law do

not fetter the Court's discretion to grant an extension of time in any case where the interests of justice require it. This is well explained in one of the leading cases on point, *Grewal v. Canada (Minister of Employment and Immigration)*, [1985] 2 F.C. 263 (C.A.), at pages 277-278 (per Thurlow C.J., Mahoney J.A. concurring – Marceau J.A. agreed in the result but for different reasons):

But, in the end, whether or not the explanation justifies the necessary extension must depend on the facts of the particular case and it would, in my opinion, be wrong to attempt to lay down rules which would fetter a discretionary power which Parliament has not fettered.

[11] In my view, in light of Rule 3 and the fact that Westco could have relied on paragraph 50(1)(b) of the *Federal Courts Act* instead of Rule 8, this seems to me an appropriate case to assess the merits of Nadeau's motion on the basis of the Court's discretion to grant an extension of time where the interests of justice require it.

[12] In that regard, it is my view that there is considerable merit in Westco's submission that the motion should be granted in the interest of efficiency. If the parties are required to prepare for the sentencing appeal and cross-appeal before the other two appeals are completed, they necessarily will be required to address a number of possible outcomes of the other two appeals, some of which will not materialize. On the other hand, if Westco's motion is granted, the parties will be able to focus on their position in the sentencing appeal on the basis of the disposition of the other two appeals, which will make the appeal procedure more efficient for them and for the Court.

[13] Nadeau submits that it will suffer prejudice if Westco's motion is granted because it will cause Nadeau to be unduly delayed in pursuing its cross-appeal, and thus its claim for an increased costs award, in the event Westco's two appeals do not succeed. I am not persuaded that a delay in the opportunity to argue for an increased costs award can fairly be described as a prejudice, at least in the absence of some basis for concluding that the argument is likely to succeed. I assume that Nadeau's claim for an increased costs award can succeed only if the Court is persuaded that the costs award made by the Competition Tribunal is based on an error of law or is unreasonable based on the facts. I am in no position to assess the merits of Nadeau's position on these points. I conclude that any prejudice Nadeau might suffer if Westco's motion is granted is not sufficient to justify denying the motion.

[14] For these reasons, an order will be made granting Westco's motion for an order holding this appeal in abeyance for 30 days after the disposition of A-70-10 and A-133-10. As Westco has not sought costs on this motion, none will be awarded.

"K. Sharlow"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-407-10

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

MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR ORDER BY: Sharlow J.A.

DATED: January 13, 2011

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