Case Name:

Veolia Es Industrial Services Inc. v. Brulé

Veolia Es Industrial Services Inc.
v.
John Brulé, Clean Water Works Inc.

[**2012**] **S.C.C.A**. **No**. **229**

[2012] C.S.C.R. no 229

File No.: 34832

Supreme Court of Canada

Record created: May 17, 2012.
Record updated: October 4, 2012.

Appeal From:

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

Status:

Application for leave to appeal dismissed with costs (without reasons) October 4, 2012.

Catchwords:

Employment law -- Contract -- Restrictive covenant -- Former employee submitting a bid in competition with former employer -- Whether Court of Appeal erred in failing to set out the test for and differentiate between non-competition agreements that arise out of a sale of business and those that arise in the pure employment context -- Whether Court of Appeal erred in applying the more restrictive pure employment non-competition agreement enforceability analysis -- Whether Court of Appeal erred in failing to apply the case law necessary to interpret commercial sale of business contract -- Whether Court of Appeal failed to apply appropriate standard of review for a trial judge's finding of a fiduciary obligation breach.

Case Summary:

Mr. Brulé founded Veolia ES Industrial Services Inc. ("Veolia"), a business engaged in inspecting, cleaning and rehabilitating sewers. In 1999, Mr. Brulé sold Veolia to a group of shareholders and as part of the transaction, he entered into an employment agreement that obliged him to continue on as the company's president and chief operating officer until December 31, 2004. The agreement prohibited him from competing with Veolia's business for five years thereafter. Because certain irritants had developed in their employment relationship, the parties executed a new agreement on January 1, 2004, whereby Mr. Brulé agreed to remain an employee of Veolia for a three year period, subject to Veolia's right to terminate him for cause, or without cause upon payment of compensation until the end of his term. The non-competition clause prohibited Mr. Brulé from competing with Veolia for two years following termination for cause, or for two years commencing January 2007 after termination without cause or if Mr. Brulé left his employment. In July, 2004, Mr. Brulé gave notice that he was terminating in 180 days. Prior to his departure, Mr. Brulé took with him a binder containing information about municipal tenders. He later formed a new company that rehabilitated water mains but later decided to put a bid on a sewer project that had been publically tendered. In or about October of 2005, both Mr. Brulé and Veolia bid on this project. Mr. Brulé was the successful bidder. Veolia sued Mr. Brulé for breaching the non-competition covenant and for breach of his fiduciary duty. Mr. Brulé counter-claimed for compensation owing to him by Veolia.

Counsel:

Rodney M. Godard (Kirwin Partners LLP), for the motion.

Joseph Y. Obagi (Connolly Obagi LLP), contra.

Chronology:

1. Application for leave to appeal:

FILED: May 17, 2012.
SUBMITTED TO THE COURT: August 27, 2012.
DISMISSED WITH COSTS: October 4, 2012 (without reasons).
Before: LeBel, Abella and Cromwell JJ.

Procedural History:

Judgment at first instance: Applicant awarded $465,000 in damages; Respondent's counter-claim for $90,896.62

granted.
Ontario Superior Court of Justice, Roy J., October 27, 2010.

Judgment on appeal: Appeal allowed; Applicant's action dismissed.
Court of Appeal for Ontario, Doherty, Rosenberg and Hoy JJ.A., March 20, 2012.
2012 ONCA 173; [2012] O.J. No. 1183.

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