

Federal Court



Cour fédérale

**Date: 20110309**

**Docket: T-279-11**

**Citation: 2011 FC 281**

**Toronto, Ontario, March 9, 2011**

**PRESENT: The Honourable Mr. Justice Scott**

**BETWEEN:**

**HER MAJESTY THE QUEEN**

**and**

**KASON INDUSTRIES INC.**

**Accused.**

**REASONS FOR SENTENCE AND SENTENCE**

[1] The Accused has pleaded guilty to one count of an indictable offence of breaching paragraph 45(1)(c) of the *Competition Act*, RSC 1985 c. C-34, as amended (the Act).

[2] The Accused stands charged that between January 2005 and December 31, 2008, at the city or near the environs of Newnan, in the state of Georgia, United States and elsewhere in the United States did unlawfully conspire, combine, agree or arrange with Component Hardware Incorporated to prevent or lessen, unduly, competition in Toronto, Ontario and elsewhere in Canada in the sale and supply of commercial and institutional refrigeration and food service equipment components.

By agreeing to allocate customers contrary to paragraph 45(1)(c) of the *Competition Act*, Chapter 34, and which agreement had the effect of lessening competition in Canada and did thereby commit an indictable offence contrary to paragraph 45(1)(c) of the *Competition Act*.

[3] Pursuant to a plea of guilty and the agreed statement of facts, there will be a conviction registered. It is necessary to sentence the Accused. The substance of the charge is that the Accused's company did unlawfully conspire with an unrelated company, with lessening or preventing competition unduly in the supply of refrigeration equipment and parts.

[4] Counsel for the parties presented an agreed statement of facts which was supplemented by oral submissions. They have suggested a fine of \$250,000.00.

[5] On a conviction under section 45, the only penalty provided for a corporation is a fine not exceeding \$10 million. The sentence under the Act should protect the public interest in free competition and should serve as a general and specific deterrent.

[6] The Court relies on the following factors in deciding upon the sentence in this matter:

- a. In this case, the relevant section is section 45 of the "Conspiracy" section, and is the core of the criminal portion of the Act.
- b. The role of the Accused and its officers is a factor. In this case, the Accused's president was the party who entered into the agreement on behalf of the Accused and, therefore, one of the highest directing minds of the corporation was involved.
- c. The fine suggested here is in line in view of the representations I have heard this morning.

- d. The fine should also reflect the normal cost of investigations by the Crown. It is accepted by both the Crown and the Accused that in this case, there is a certain recovery of costs.
- e. The international context of this conspiracy cannot be overlooked. The fine should be sufficient to deter persons outside the country from engaging in actions which violate Canadian competition laws.

[7] The mitigating factors are:

1. A guilty plea is always a significant factor.
2. The accused has co-operated with the Crown.

[8] Relying on these principles and factors and, in particular, the need for general and specific deterrents, and considering all of the evidence, the Act and the submissions of counsel, in the Court's view, the amount of the fine suggested by counsel is reasonable under these specific circumstances that were presented.

**SENTENCE**

**THIS COURT, THEREFORE**, on a plea of guilty and on a review of the agreed statement of facts and oral submissions, I convict the Accused, Kason Industries Inc. and fine it \$250,000.00 to be payable over the next five years, with a minimum payment of \$50,000.00 payable within the next 30 days and the balance of \$200,000.00 payable into yearly instalments of \$50,000.00 over the next four years.

"André F.J. Scott"

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Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** T-279-11

**STYLE OF CAUSE:** HER MAJESTY THE QUEEN v. KASON INDUSTRIES  
INC.

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** March 8, 2011

**REASONS FOR SENTENCE  
AND SENTENCE BY:** SCOTT J.

**DATED:** March 9, 2011

**APPEARANCES:**

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