COURT OF APPEAL

CANADA
PROVINCE OF QUEBEC
MONTREAL SEAT

No: 500-09-031061-245
(500-17-127365-230)

DATE: November 21, 2025

CORAM: THE HONOURABLE MICHEL BEAUPRÉ, J.A.
SOPHIE LAVALLÉE, J.A.
PETER KALICHMAN, J.A.

ALIMENTS BVEGGIE INC.
APPELLANT/INCIDENTAL RESPONDENT – Plaintiff
v.

BEYOND MEAT INC.
RESPONDENT/INCIDENTAL APPELLANT – Defendant

JUDGMENT

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[1] Aliments Bveggie Inc. (**Bveggie**) appeals a judgment of the Superior Court (the honourable Paul Mayer), granting the Motion for Declinatory Exception and *Forum Non Conveniens* brought by Beyond Meat Inc. (**Beyond Meat**) and declaring that the courts of Los Angeles County, in the State of California, are "in a better position to decide the dispute."[1]

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[2] In 2020, Beyond Meat, a large publicly traded American company contracted with Bveggie, a mid-sized Quebec-based company, to have it manufacture, package, label, store and ship certain of its plant-based foods in Quebec. The parties signed a *Manufacturing and Supply Agreement* in 2020 (the **Agreement**). At that time, Bveggie

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1 *Aliments Bveggie Inc*. c. *Beyond Meat Inc*., 2024 QCCS 1681, para. 52.

was manufacturing Beyond Meat products at a plant in Laval. In 2021, it began manufacturing different Beyond Meat products from a plant in Anjou. In May 2023, Beyond Meat terminated its contractual arrangements with Bveggie prompting the latter to sue for damages, claiming approximately $130 M.

[3] Beyond Meat presented its Motion for Declaratory Exception and *Forum Non Conveniens* arguing that the Superior Court lacked jurisdiction since the Agreement contained a "complete" clause by which the parties undertook to submit their dispute to arbitration. In the alternative, Beyond Meat argued that the Superior Court should decline jurisdiction in favour of the courts of California. The judge rejected the first argument but accepted the second.

[4] With respect to the arbitration clause, the judge noted at the outset of his analysis that several questions of fact and law would need to be decided to determine whether the Agreement containing the clause applied to the dispute since, according to Bveggie, it only covered the operations of the Laval plant, which were not the subject of its lawsuit. In the judge's view, the issue of whether the clause applies must therefore be left to either the arbitrator or the court that will hear the dispute. The judge then analysed the clause itself and concluded that it was not "complete and conclusive" since the parties had not clearly excluded recourse to ordinary courts. He thus dismissed the first of Beyond Meat's arguments.

[5] However, his analysis of the second argument – that of *forum non conveniens* – led him to conclude that "the State of California is clearly more appropriate than Quebec to hear the matter." While he determined that several factors were neutral, he found that others, such as the principal location of Beyond Meat's assets being in the United States, the fact that the Agreement was deemed to have been executed in California and the likelihood of Bveggie having to take steps to have the judgment recognized in California if its action were to succeed, favoured having the dispute litigated before the courts of that state. Beyond those factors, the judge – citing paragraph 16(g) of the Agreement – considered the parties' acceptance that California "would be the venue of any litigation" to be the most significant in favour of that jurisdiction. He thus concluded that "the requirements of order and fairness require that the Court decline jurisdiction in favour of California."

[6] Bveggie appealed the judgment, claiming that the judge erred in accepting the *forum non conveniens* argument. Beyond Meat filed an incidental appeal, arguing that the judge erred by failing to suspend the litigation and referring it to arbitration in California in accordance with paragraph 11 of the Agreement.

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[7] A court must first conclude that it has jurisdiction before considering whether or not to decline it "if it considers that the authorities of another State are in a better position to

decide the dispute."[2] Accordingly, the Court's analysis will begin with the incidental appeal since the question of whether or not the Superior Court has jurisdiction must precede that of *forum non conveniens*, which has only a suppletive function.[3]

[8] Beyond Meat argues that the judge committed three related errors of law in determining that the arbitration clause was imperfect. The first error was in failing to apply the competence-competence principle according to which the question of the validity of the arbitration clause should have been left to the arbitrator to decide. The judge thus erred in determining himself that the clause was not a complete or perfect arbitration clause. Second, Beyond Meat contends that in concluding that the clause was incomplete, the judge failed to apply California law, according to which the clause would be held to be complete. Finally, Beyond Meat argues that even if the judge did not commit either of the first two errors, he nonetheless erred in concluding that according to Quebec law, the arbitration clause was incomplete.

[9] Before examining the first of these questions, it is helpful to reproduce paragraph 11 of the Agreement:

> 11. Dispute Resolution
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> (a) Negotiation. Any and all disputes arising out of or relating to this Agreement (each a "Dispute") will initially be resolved in good faith by representatives of both parties that have primary responsibility under this Agreement. If such parties cannot resolve such Dispute within a reasonable period of time, either party may request in writing to the other party (in accordance with the notice section of this Agreement) that the Dispute be submitted to the duly authorized representatives of both parties. Upon receipt of such request by the non-notifying party, the parties will have thirty (30) days to mutually agree in good faith to resolve the Dispute. <u>If the Dispute is not resolved within such thirty (30) day period (or such longer period as agreed by the parties), then either party will be free to exercise any and all rights under this Agreement or in equity or in law.</u> Notwithstanding anything to the contrary, either party may seek injunctive relief at any time as may be necessary to safeguard the property or other rights that are the subject matter of the Dispute. Any applicable statute of limitations will be suspended during the pendency of the Dispute resolution procedures of this Section.
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> (b) Arbitration. <u>For any Disputes that cannot be resolved in accordance with Section 11(a), the parties agree to resolve such Disputes (excluding any claims for injunctive or other equitable relief as provided below) by binding arbitration by JAMS, Inc. ("JAMS"), under the Optional Expedited Arbitration Procedures then in effect for JAMS, except as provided herein.</u> The arbitration will be conducted in Los Angeles County, California unless otherwise mutually agreed. Each party will be responsible for paying any JAMS filing, administrative, and arbitrator fees in accordance with JAMS rules, and the award rendered by the arbitrator may include costs or arbitration, reasonable attorneys' fees, and reasonable costs for expert

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2 Art. 3135 *C.C.Q.*; see also *Gerber Ciano Kelly Brady c. Multiver ltée*, 2021 QCCA 1630, para. 10.

3 *GreCon Dimter inc. v. J. R. Normand inc*., 2005 SCC 46, para. 48.

> and other witnesses. Any judgement on the award rendered by the arbitrator may be entered in any court of competent jurisdiction. Nothing in this section shall be deemed to prevent a party from seeking injunctive or other equitable relief from courts as may be necessary to prevent the actual or threatened confidentiality breaches or intellectual property infringement.
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> (Underlining added)

[10] In the judge's view, the fact that the parties agreed that if the dispute could not be resolved either would be "free to exercise any and all rights under the Agreement or in equity or in law", injected uncertainty and imprecision "in an otherwise complete clause". On this basis, he concluded that the clause was imperfect because it implied that recourse in law to ordinary courts remained open.

[11] The Court agrees with Beyond Meat that the judge should have left this question for the arbitrator to decide in application of the competence-competence principle.[4] The only circumstances in which this Court should depart from this principle would be if the issue to be decided involved a pure question of law or a question of fact requiring only a superficial consideration of the evidence. In *Rogers Wireless v. Muroff*, the Supreme Court writes:

> 11 […] when an arbitration clause exists, any challenges to the jurisdiction of the arbitrator must first be referred to the arbitrator. Courts should derogate from this general rule and decide the question first only where the challenge to the arbitrator's jurisdiction concerns a question of law alone. Where a question concerning jurisdiction of an arbitrator requires the admission and examination of factual proof, normally courts must refer such questions to arbitration. For questions of mixed law and fact, courts must also favour referral to arbitration, and the only exception occurs where answering questions of fact entails a superficial examination of the documentary proof in the record and where the court is convinced that the challenge is not a delaying tactic or will not prejudice the recourse to arbitration.[5]

[12] The question before the judge was one of contractual interpretation and was thus a mixed question of fact and law.[6] Precisely what the parties intended and whether or not there is truly a contradiction between paragraphs 11 a) and 11 b) of the Agreement, involve questions of evidence that should be left to the arbitrator.

[13] Bveggie argues that since Beyond Meat failed to indicate what evidence it might ultimately present regarding the interpretation of the clause, there is no reason to conclude that the arbitrator would be in a better position to rule on the question. The Court does not share this view. For the purposes of determining whether the question of

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4 *Dell Computer Corp. v. Union des consommateurs*, 2007 SCC 34; *Rogers Wireless Inc. v. Muroff*, 2007 SCC 35; *Eacom Timber Corporation v. Domtar inc*., 2014 QCCA 100, para. 11; *Cannatechnologie inc. c. Matica Enterprises Inc*., 2022 QCCA 758, para. 9.

5 2007 SCC 35, para. 11.

6 *Uniprix inc. v. Gestion Gosselin et Bérubé inc.*, 2017 SCC 43, para. 41.

jurisdiction should be left to the arbitrator, it was sufficient to conclude that there was ambiguity in the clause.

[14] Contrary to what the judge writes, the fact that the arbitration clause "is not precise" or is "ambiguous on its obligatory nature", does not in itself favour recourse to the ordinary courts. In fact, in *9369-1426 Québec inc. (Restaurant Bâton Rouge) c. Allianz Global Risks US Insurance Company*, the Court described this approach as being "inconsistent with contemporary jurisprudential developments."[7]

[15] Finally, it should be noted that the competence-competence principle is equally relevant to the question of whether or not the Agreement applies to the dispute. As the judge correctly noted, this question "requires more than a superficial analysis of the documentary evidence." Accordingly, it should also be left to the arbitrator.

[16] Given the Court's conclusion, there is no need to consider the principal appeal, or the other arguments raised in the incidental appeal.

FOR THESE REASONS, THE COURT :

[17] **DISMISSES** the appeal;

[18] **GRANTS** the incidental appeal;

[19] **STAYS** the proceedings in Superior Court file 500-17-127365-230;

[20] **REFERS** the dispute to arbitration;

[21] **WITH** judicial costs against the appellant/incidental respondent in first instance and appeal.

MICHEL BEAUPRÉ, J.A.

SOPHIE LAVALLÉE, J.A.

PETER KALICHMAN, J.A.

[7] 2021 QCCA 1594, para. 13.

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Date of hearing: October 30, 2025