

Federal Court of Appeal



Cour d'appel fédérale

Date: 20131121

Docket: A-125-13

Citation: 2013 FCA 272

**CORAM: EVANS J.A.
TRUDEL J.A.
WEBB J.A.**

BETWEEN:

VENNGO INC.

Appellant

and

**CONCIERGE CONNECTION INC. c.o.b. as
PERKOPOLIS, MORGAN C. MARLOWE and
RICHARD THOMAS JOYNT**

Respondents

Heard at Toronto, Ontario, on November 21, 2013.

Judgment delivered from the Bench at Toronto, Ontario, on November 21, 2013.

REASONS FOR JUDGMENT OF THE COURT BY:

TRUDEL J.A.

Federal Court of Appeal



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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Toronto, Ontario, on November 21, 2013).

TRUDEL J.A.

[1] Venngo Inc. is appealing the Order of Justice de Montigny wherein he dismissed Venngo's motion for summary judgment on its claims of infringement and depreciation of goodwill and ordered that the action against the respondents proceed to trial in accordance with Rule 215(3)(b) of the *Federal Courts Rules*, SOR/98-106 (2013 FC 300 [Reasons]).

[2] In a comprehensive set of reasons, Justice de Montigny explained that a Court shall grant a summary judgment if satisfied that there is no genuine issue for trial and that the onus rests on the party moving for summary judgment to demonstrate that all relevant issues can be decided on the evidence before the Court (Reasons at paragraphs 16-17). He found, however, that Venngo had failed to meet this burden and that there are at least three genuine issues for trial in relation to the claim for infringement, and at least one genuine issue with regard to the claim of depreciation of goodwill.

[3] The appellant contends that Justice de Montigny erred in finding that there are genuine issues for trial and in declining to rule on the challenge to the validity of the appellant's marks. His decision must stand, however, unless we are persuaded that the Judge committed palpable and overriding errors on all factual issues (*Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235). We note that the appellant raises no legal error on the part of the Judge. Appellate courts are reluctant to interfere in a Judge's exercise of discretion in refusing a motion for summary judgment.

[4] After careful consideration of the record and of counsel's written and oral submissions, we are of the view that our Court's intervention is not warranted. Consequently, this appeal will be dismissed with costs.

“Johanne Trudel”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-125-13

**APPEAL FROM AN ORDER OF THE HONOURABLE MR. JUSTICE de MONTIGNY
OF THE FEDERAL COURT, DATED MARCH 25, 2013 IN DOCKET NO. T-467-11.**

STYLE OF CAUSE: VENNGO INC. v. CONCIERGE
CONNECTION INC. C.O.B. AS
PERKOPOLIS, MORGAN C.
MARLOWE AND RICHARD
THOMAS JOYNT

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: NOVEMBER 21, 2013

REASONS FOR JUDGMENT OF THE COURT BY: EVANS J.A.
TRUDEL J.A.
WEBB J.A.

DELIVERED FROM THE BENCH BY:
TRUDEL J.A.

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