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HOT FIRE CASES: THE GOODFELLOW CASE: "THE DORMANT FIRE", AND CAFÉ LUXOR CASE: "BETWEEN TWO FIRES"

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IN FEBRUARY AND MARCH 2010, THE SUPERIOR COURT RENDERED TWO INTERESTING DECISIONS IN CASES INVOLVING FIRES. WE WILL REVIEW THESE DECISIONS, WHICH HAVE A NUMBER OF FEATURES IN COMMON, INCLUDING THE CONSIDERABLE SUMS OF MONEY AT STAKE, THE LENGTHY TIME PERIOD BETWEEN THE LOSS AND THE TRIAL, AND THE NUMBER OF PERSONS INVOLVED IN THE CONDUCT OF EACH CASE.

THE GOODFELLOW CASE: "THE DORMANT FIRE"

On August 22, 1998, a major fire broke out in Goodfellow Inc.'s wood processing factory in Delson. All the neighbouring cities' firefighters were dispatched to the premises. The seat of the fire was located in a wood chips shelter and blazed up rapidly, causing more than $3,300,000 in damages.

Some 30 hours before the fire, three employees of Defendant 3301150 Canada Inc. performed oxycutting work for the expansion of the wood chips shelters and storage areas. This work was done about 30 meters from the shelter where the fire broke out.

Lumbermen's compensated its insured, Goodfellow, in the amount of $3,303,666.70. In 2000, Lumbermen's, subrogated in the rights of Goodfellow, instituted proceedings against 3301150 Canada Inc. ("3301150").[1]

Lumbermen's alleged that 3301150's employees were negligent in performing the oxycutting work, particularly for not complying with standard W117.2-94 by failing to conduct a preliminary inspection and by failing to install safety devices to prevent sparks from reaching combustible materials. Lumbermen's argued that the sparks from the oxycutting work got into the wood chips shelter through small cracks at the bottom of the plywood wall and that, through the process of pyrolysis, the fire smouldered for 30 hours before it broke oustpreading.

3301150 argued that it did not breach any of the accepted practices while performing the oxycutting. It argued that the source of the fire was an electrical problem, adding that because of the rain in the days prior to the fire, the layout of the premises, and the lengthy 30-hour delay between the work and the fire, the oxycutting work could not be a probable cause of the fire.

[1] *Lumbermen's v. 3301150 Canada Inc.*, 2010 QCCS 354; Lumbermen's was represented by Marie-Claude Cantin and Pierre Cantin

The number of people and the stakes involved were substantial. Twelve years elapsed between the date when proceedings were instituted and the trial, which lasted 17½ days and involved more than fifteen witnesses as well as eight expert witnesses.

In a detailed decision, Justice Chantal Masse found 3301150 liable and held that the oxycutting work was the probable cause of the fire. She concluded that the evidence showed a sufficient causal link between the welders' fault and the damages from the fire, without the necessity to resort to the presumption of fault, set out by the Supreme Court in *Morin* v. *Blais*[2]:

[Our translation]

"[289] Lastly, by eliminating the theory of a short circuit, which was not supported by the evidence, the remaining probable cause, i.e. the oxycutting work, which was supported by a sufficient body of facts and circumstances, "increasingly acquired credibility to the point where it became probable."

[290] The body of facts and circumstances, set out above, establishing that the oxycutting work caused the fire, is sufficient enough for the Court to decline the invitation of counsel for 3301150 that I should conclude, since the short-circuit hypothesis was rejected, that the cause of the fire was unknown.

[291] It is the combination of all these factors, the testimony of Leclerc, Roy and Dixon being particularly decisive, which lead me to conclude that the theory, which holds that the oxycutting work was the cause of the fire, had been proven on the basis of serious, precise and concordant presumptions.

[292] As Justice Crête so aptly stated in the Licata case: "what was reasonably anticipated, happened." The risk that standard W117.2-94 is intended to prevent materialized because the precautions specifically put in place to prevent these risks were not applied. I note, however, that I reach this conclusion without applying the presumption set out by the Supreme Court in *Morin* v. *Blais*, since the above-mentioned facts demonstrate a causal link without the need to resort to the presumption."

3301150 was therefore ordered to pay Lumbermen's the sum of $3,303,666.70, with interest from June 19, 2000, plus costs and experts' fees in the amount of $734,199.43.

In short, a dormant fire should not be underestimated – it can remain hidden for long periods of time and slip through the smallest cracks!

THE CAFÉ LUXOR CASE[3] "BETWEEN TWO FIRES"

On December 19, 1995, Couverture Provinciale Talbot Inc. ("CPT") conducted roofing work on the Café Luxor restaurant bar, located in premises in the Place Luxor building in Victoriaville.

Once the work was completed, Café Luxor's employees detected an unusual smell of tar in the kitchen. They questioned CPT's foreman about the smell, but were reassured that there was nothing to fear – the smell was caused by the fact that his employees had heated the torch more than usual during the work due to the cold weather.

However, the smell persisted in the following hours and spread into the restaurant. About five hours later, a thin stream of smoke appeared under a window. A Café Luxor employee called the fire station and firefighters arrived shortly thereafter.

Approximately 40 minutes after the start of the fire, there was an explosion on the roof of the kitchen.

[2] [1977] 1 S.C.R. 570, p. 580

[3] *General Accident Insurance Company et als.* v. the City of *Victoriaville et als.*, 2010 QCCS 1093, Notice of Appeal, 2010-04-12 (C.A.), 200-09-007017-103, 200-09-007015-107 and 200-09-007016-105

A chain of events followed which caused the fire chief to conclude, about three hours after the start of the fire, that the fire department had lost complete control of the fire over all of Place Luxor.

The Superior Court concluded that the fire originated in the roofing structure of Café Luxor, and there were sufficient precise, serious and concordant facts to conclude that it was caused by the work done by CPT using torches on the roof of the café.

But, that's not all! The Court made note of several mistakes by the firefighters while fighting the fire, particularly the lack of communication between the captain and the fire chief, and deficiencies in the strategy and operations while fighting the fire. This caused the fire to be pushed from the back to the front of the building. These mistakes were so critical that the Court concluded that the fire department had failed to respect accepted practices in fighting the fire.

The Court, after reconsidering the principles laid down in the *Laurentides Motels Ltd.* [4], *City of Pont-Viau* [5], *City of Forestville* [6] and *City of Montreal* [7] cases, found the city liable, for the fault of its fire department, and CPT for negligence in the performance of its work, and for reassuring Café Luxor's employees that all was well, when there was, in fact, an imminent danger.

The Court stated:

> [Our translation]
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> [136] "The firefighters therefore had an obligation of means. The courts must be careful not to impose unrealistic standards on firefighters in urgent and dangerous situations."

Considering that CPT's employees reassured Café Luxor's employees that there was no danger despite the persistent strong smell of tar after the work was completed, and that Café Luxor's employees acted properly in trusting CPT's representatives, who were experts in their field; and considering that CPT's representatives did not take the necessary precautions to ensure that their work was properly done and that the premises were safe and free of danger before leaving, the Court found CPT liable.

The fire department was also held liable on the basis that the fire was only at an early stage when the firefighters arrived at the scene. The firefighters contributed to the spread of the fire due to a lack of adequate investigation, a failure to properly ventilate, a failure to properly analyze and prepare a plan of action, a lack of proper guidance for the senior managers, and the use of improper firefighting techniques.

> [Our translation]
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> "[156] The actions of the city of Victoriaville's firefighters contributed to the spread of the fire rather than containing it.
>
> [157] The city of Victoriaville is responsible for the lack of organization and incompetency of its fire department employees.
>
> [158] It must be concluded from the evidence that, while distinct, the negligent acts of the defendants, CPT and the city of Victoriaville, contributed to a single harmful event, the destruction of the building by a fire caused, and made worse, by the defendants.
>
> [159] I find the defendants to be solidarily liable in equal proportion."

The city of Victoriaville and CPT were condemned solidarily, and not *in solidum*, to pay the amount of $1,175,000, plus interest, costs and expert fees. An appeal of this decision was filed on April 12, 2010. It will therefore be interesting to see how the Court of Appeal characterizes the liability of the fire department and roofer in these circumstances.

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[4] *Laurentides Motels Ltd.* v. *Ville de Beauport et Tremblay*, [1989] 1 S.C.R. 705

[5] *Cité de Pont-Viau* v. *Gauthier Mfg Ltd*, [1979] C.A. 77

[6] *Ville de Forestville* v. *Axa Boréal Assurances inc. et Als*, [2005] R.R.A. 283 (C.A.)

[7] *Ville de Montréal* v. *Chubb du Canada, compagnie d'assurance*, 2008 QCCA 2406

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