IN FACT AND IN LAW

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Damage Insurance

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A DECISION "OF INTEREST" FROM THE COURT OF APPEAL OF QUÉBEC

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THE NOTION OF INSURABLE INTEREST IS FUNDAMENTAL TO INSURANCE LAW AS IT IS AT THE VERY HEART OF THE VALIDITY OF THIS CONTRACT. THE LACK OF INSURABLE INTEREST LEADS TO THE NULLITY OF THE INSURANCE POLICY AND JUSTIFIES THE INSURER'S REFUSAL TO INDEMNIFY ITS INSURED[1].

In a decision rendered on March 2, 2012, the Court of Appeal upheld a judgment of the Superior Court[2], where an insurer refused to indemnify the insured, raising its lack of interest in the property[3]. The Court held that a debtor had sufficient interest to insure the property subject to an instalment sales contract.

FACTS

In March 2002, the plaintiff *9111-1963 Québec Inc.* ("**9111**") purchased equipment pursuant to an instalment sales contract. It insured this property with *Temple Insurance Company* ("**Temple**").

In August 2002, 9111 stopped making the monthly payments required under the sales contract. The sellers seized the property before judgment and stored it elsewhere. The seizure was followed a few days later by the filing of a motion to recover the property, which the sellers discontinued a few years later.

On February 13, 2004, a suspicious fire broke out where the insured property was being stored, thereby damaging it. 9111 sent its insurer a notice of loss on the same date. It was admitted that the insured and its representatives had nothing to do with the fire.

Temple then retroactively cancelled the insurance policy that had been issued and refused to indemnify 9111, arguing that it did not have an insurable interest in the property as 9111 never acquired ownership and was not in possession of the goods at the time of the fire.

AN INSURANCE POLICY RIGHTFULLY CANCELLED

The issue can be summarized as follows:

- Was Temple well-founded in retroactively cancelling the insurance policy and refusing the claim based on 9111's lack of insurable interest in the destroyed property?

A LIBERAL INTERPRETATION OF INSURABLE INTEREST

The Court of Appeal analyzes the relevant provisions of the *Civil Code of Québec* with respect to insurable interest[4] as well as those pertaining to instalment sales contracts[5]. Note that article 1746 C.c.Q. provides that an instalment sales contract transfers to the buyer the risk of loss of the property whereas article 1748 C.c.Q. provides that the seller may cancel the contract when the buyer fails to pay the sale price.

The Court also held that the instalment sales contract provided that 9111 had the obligation to contract an insurance policy on the property and that the sellers could take out insurance if 9111 failed to do so.

[1] Art. 2484 C.c.Q.

[2] *9111-1963 Québec Inc. v. Compagnie d'assurances Temple Inc.*, 2010 QCCS 4074 (Jean-Pierre Chrétien, J.).

[3] *Compagnie d'assurance Temple v. 9111-1963 Québec inc.*, 2012 QCCA 450 (Duval Hesler, C.J. and Pelletier and Vézina, JJ.).

[4] Art. 2414, 2463, 2481, 2483 and 2485 C.c.Q.

[5] Art. 1746 and 1748 C.c.Q.

The bench applied the Supreme Court of Canada decision in *Kosmopoulos* v. *Constitution Insurance Co.*[6], a landmark case that established the broad and flexible interpretation of the notion of insurable interest[7]: the moral certainty of advantage or benefit from the property or the prejudice from its destruction is sufficient enough to establish an insurable interest.

In the present case, the fact that the nature of the legal relationship between the parties and that 9111 was still indebted toward the sellers as well as the possibility for 9111 to suffer a direct and immediate prejudice as a result of the loss of the property, were considered sufficient to establish an insurable interest:

> " [2] In the present case, Respondent 9111 was contractually bound to insure the property and its debt towards the Seller, under the instalment sale agreement (...). It was thus in a position to extract an advantage from the existence of the property and to suffer a direct prejudice as a result of the equipment's damage or destruction."

With respect to the argument based on the seizure before judgment by the sellers, the Court confirms that it is only a protective measure, not a final judgment transferring ownership of the property. Therefore, the temporary dispossession of the property did not affect 9111's insurable interest.

CONCLUSION

By holding that the notion of insurable interest should be given a broad interpretation, the Court of Appeal confirmed the importance of assessing the insured's economic interest in the property. This position was also adopted by the Superior Court in a recent judgment recognizing the insurable interest of the debtor of a hypothecary loan[8].

This decision also shows that physical possession of the insured property is not essential to prove an insurable interest. We believe that this decision could support the thesis that under certain circumstances a good faith possessor who may be susceptible to suffer damages as a result of its loss, may have an insurable interest in such a good[9]. To our knowledge, this issue has never been specifically examined by a court.

[6] [1987] 1 S.C.R. 2.

[7] The position adopted by the Supreme Court was reiterated by the Court of Appeal of Québec in *Industrielle-Alliance (L') compagnie d'assurance générale* v. *Crédit Ford du Canada Ltée*, [1997] R.R.A. 280 (C.A.).

[8] *St-Laurent* v. *Promutuel de l'Est, société mutuelle d'assurances générales*, 2012 QCCS 1353 (CanLII).

[9] Didier Lluelles, *Précis des assurances terrestres*, Montreal, 5th edition, Les Éditions Thémis, 2009, p. 165 and 166.

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