

Fenêtres Magistral Windows inc. -vs- M. Sarto Blouin The Revocation of the Striking off of Registration is Effective Retroactively

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of Patrick Bourbeau



In this case, the plaintiff, Fenêtres Magistral Windows inc. ("Fenêtres Magistral") brings proceedings against Mr. Sarto Blouin regarding construction materials sold and delivered to Société en commandite Point Zéro ("Point Zéro"), of which Mr. Blouin is a special partner. Mr. Blouin is also President of the general partner. Fenêtres Magistral did not bring proceedings against Point Zéro or the general partner. In counter-claim, Mr. Blouin seeks \$3000 for damage to his reputation and extrajudicial fees.

On August 19, 2000, Mr. Blouin signs, on behalf of Point Zéro, a credit application with Fenêtres Magistral and, on September 19, 2000, delivers the credit application, along with the balance sheet of Point Zéro, to Fenêtres Magistral. Construction materials are delivered by Fenêtres Magistral on September 22, 2000 and, on the same day, the registration of

Point Zéro is stricken off *ex officio* by the Inspector General of Financial Institutions for failure by Point Zéro to file its annual declaration. Other construction materials are delivered on November 2, 2000. On December 1st, 2000 the striking off of the registration of Point Zéro is revoked. Fenêtres Magistral never received payment for the materials it delivered.

Fenêtres Magistral maintains that Mr. Blouin may be held personally responsible following the September 22, 2000 striking off of Point Zéro's registration. The Court notes that Mr. Blouin acted on behalf of Point Zéro when he signed the credit application and, further, that the invoices were established in the name of Point Zéro. Based on these facts, the Court concludes that "Mr. Blouin did not at any time enter into a contract on his own behalf".

The Court points out that Point Zéro's registration was in effect, both at the time of the credit application and that of the first purchase of merchandise. In addition, Section 57 of *An Act respecting the legal publicity of sole proprietorships, partnerships and legal persons* (R.S.Q. c. P-45) provides that upon revocation of the striking off of its registration, "the legal person constituted in Québec is deemed to have never been dissolved", which is tantamount to saying that such revocation brings about a retroactive effect.

The Court is of the opinion that Fenêtres Magistral possesses no acquired right to proceed against Mr. Blouin personally on the basis of the September 22, 2000 dissolution of the limited partnership. In fact, the first order was executed before such dissolution. As to the other invoices, the Court declares the following:

"The legislator wished to protect the acquired rights of third parties during the period of revocation. The Court cannot conclude that the plaintiff, who contracted with a limited partnership well identified in the credit application and in the invoices, would have acquired a right against Mr. Blouin personally. Rather, Section 57 confirms the plaintiff's right to proceed against the limited partnership Point Zéro, even for the second order filled subsequent to September 22, 2000". [TRANSLATION]





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