

The Insurable Interest of Undivided Co-Owners

By Odette Jobin-Laberge



In a short judgement in the matter of *Unique, compagnie d'assurances générales vs. Axa assurances*¹, the Court of Appeal confirmed that the insurable interest of each undivided co-owner covers all of the insured property and not only the share which belongs to each co-owner. The insurable interest cannot be in the form of a percentage.

The result of this decision is to confirm the validity of the indemnity paid by cheque to the order of two co-owners jointly as well as to confirm that the two owners, both of whom are named in the policy, have an insurable interest in the entire immovable. It prevents the insurer of the immovable from suing the co-owner responsible for the loss.

Facts

Marcel and Serge Daoust were the co-owners of a building insured by Unique. Serge occupied part of the building as lessee and held a tenant's policy for his movables and liability, also issued by Unique and attached to the policy for the building.

The fire was caused by Serge's automobile. Through its subrogation, Unique attempted to recover part of the indemnity paid, namely the value of the portion of Marcel, the co-owner, from Serge's automobile insurer.

Judgement

The Court held that an insurer cannot separate the interest of the two co-owners and, accordingly, since Serge Daoust was not a third party to the policy covering the immovable, he could not be sued to reimburse the equivalent of the portion paid to his brother Marcel.

The Court added that, because of the family ties, subrogation was also prohibited (art. 2576 C.C.L.C.) even though the brothers did not live in the same building and it cited well-established case law in this respect³.

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¹ AZ 50159237 (C.A., REJB 2003-36924 (C.A.) confirming [2000] R.R.A. 712 (S.C.).

² The Court refers to a previous decision, *Moore-Dillon vs. Commercial Union* (S.C.) and [1987] R.R.A. 979 (C.A.) confirming the right of co-owners to an insurable interest for the whole and the right to full indemnification.

³ *Martel vs. Martel* [1999] R.R.A. 258 (C.A.) *Cie d'assurances générales vs. Chabot* [1999] R.R.A. 250 (C.A.) *Allstate Co. vs. General Accident Co. d'assurance* [2000] R.J.Q. (C.A.).



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