IN FACT AND IN LAW

Damage Insurance Law

May 2004

Fire: The Lessee at Fault Has Full Liability!

By André René

Only a few words from the Court of Appeal settled the controversy generated by the judgment at first instance in the *Bourdages*[1] case concerning the liability of a lessee of leased premises in the event of a fire.

According to the interpretation given to article 1862 C.C.Q. by the Superior Court judge, the lessee, who had actually caused the fire, was liable only on a contractual basis for the fire that had started in the leased premises, and the tenant's contractual liability was limited solely to the damages caused to the premises.

Delivering its judgment from the bench, the Court of Appeal disposed of the issue in a single paragraph as follows:

> **[unofficial translation] "[2] Subject to the lessee's liability for the acts of a person whom it has allowed to enter the building, and for whom it would not otherwise be liable, article 1862 C.C.Q. does not operate so as to limit the liability of the lessee at fault to just the damages caused by the fire to the leased apartment. Consequently, under the Civil Code, the landlord is entitled to claim reparation from the other contracting party for the damages caused by that fault (art. 1458 C.C.Q.)"**

This decision of the Court of Appeal therefore complements an earlier Court of Appeal judgment rendered under the old Code in *Dubé* v. *Sogepar*[2].

In *Dubé* v. *Sogepar*, the person responsible for the fire was the lessee's companion. The lessee was not personally at fault; however, according to the law, the lessee must answer for the fault of his companion on the grounds that she let that person into the apartment. The Court of Appeal held that article 1862 C.C.Q. imposed a liability greater than the common law on the lessee for the fault of another. Given the privative nature of that liability, it must be narrowly interpreted, and in that case restricted solely to the damages caused to the leased premises. In all other cases, the Court of Appeal has stated that it was required to apply the "common law rules of liability" or the "general rules of liability". The lessee's companion was held liable for all damages, not just those caused to the leased premises.

Bourdages differs from the *Dubé* v. *Sogepar* case in that the lessee was actually at fault. The fault occurred in the leased premises but spread through building.

From the Court of Appeal decision, which referred only to article 1458 C.C.Q., one can conclude that if article 1862 C.C.Q. imposes liability on the lessee for the fault of a third party or a guest with respect to the leased premises, that article nonetheless does not affect the common law or the general rules of liability. Thus, article 1458 C.C.Q. provides for an action in contract against a person who defaults on its undertakings and who is hence liable for all damages caused to the other contracting party.

The Court of Appeal did not rule on the other issue before it, namely the alleged breaches of the *Building Code* as the cause of the fire having spread.

The judgment at first instance in the *Bourdages* case has not generally been followed by the courts, therefore the Court of Appeal decision eliminates any likelihood that *Bourdages* will be used as a precedent to limit the liability of a lessee personally at fault. This judgment should therefore be of interest to any insurer, regardless of whether it is the plaintiff or defendant in legal proceedings.

André René
(514) 877-2945
arene@lavery.qc.ca

LAVERY, DE BILLY
BARRISTERS AND SOLICITORS

[1] *Compagnie d'assurance Allianz du Canada et al* v. *Bourdages and anor*, [2002] R.R.A. 899.

[2] *Dubé* v. *Sogepar Inc.*, [1990] R.J.Q. 2138.

André René has been a member of the Québec Bar and specializes in Damage and General Insurance Law

You can contact any of the following members of the Damage Insurance Law group in relation with this bulletin.

At our Montréal Office

Edouard Baudry
Anne Bélanger
Jean Bélanger
Anthime Bergeron, Q.C.
Maryse Boucher
Marie-Claude Cantin
Michel Caron
Paul Cartier
Isabelle Casavant
Jean-Pierre Casavant
Louise Cérat
Louis Charette
Julie Cousineau
Daniel Alain Dagenais
Catherine Dumas
Nicolas Gagnon
Sébastien Guénette
Jean Hébert
Odette Jobin-Laberge
Bernard Larocque
Marie-Hélène Lemire
Jean-François Lepage
Anne-Marie Lévesque
Robert W. Mason
Pamela McGovern
Jacques Nols
J. Vincent O'Donnell, Q.C.
Jacques Perron
Dina Raphaël
André René
Ian Rose
Jean Saint-Onge
Vincent Thibeault
Evelyne Verrier
Richard Wagner

At our Québec City Office

Pierre Cantin
Philippe Cantin
Line Ouellet

At our Ottawa Office

Brian Elkin
Patricia Lawson
Alexandra LeBlanc
Mark Seebaran

Montréal
Suite 4000
1 Place Ville Marie
Montréal, Quebec
H3B 4M4

Telephone:
(514) 871-1522
Fax:
(514) 871-8977

Québec City
Suite 500
925 chemin Saint-Louis
Québec City, Quebec
G1S 1C1

Telephone:
(418) 688-5000
Fax:
(418) 688-3458

Laval
Suite 500
3080 boul. Le Carrefour
Laval, Quebec
H7T 2R5

Telephone:
(450) 978-8100
Fax:
(450) 978-8111

Ottawa
Suite 1810
360 Albert Street
Ottawa, Ontario
K1R 7X7

Telephone:
(613) 594-4936
Fax:
(613) 594-8783

Web Site
www.laverydebilly.com