IN FACT AND IN LAW

Life and Disability Insurance

November 2004

A Bank's Obligations Respecting Credit Insurance Management

By Evelyne Verrier

On September 7, 2004, the Superior Court issued its judgment in the case of 9000-7048 Québec Inc. *vs.* Banque Nationale du Canada[1] *(hereinafter, the "Bank"), allowing Plaintiff's action, wherein it claimed an amount of $191,429.66 representing the balance owing as at the date of death of one of its shareholders on an original loan of $250,000 made on June 14, 1994.*

The Facts

At the beginning of June 1994, Plaintiff, whose share capital was held equally by two shareholders, took steps to acquire an immovable for commercial purposes. On June 14, 1994, the Bank extended a $250,000 loan to Plaintiff provided the loan was secured by a movable hypothec on the equipment and that a life insurance on the two shareholders covered the amount of the loan.

On the same day, the branch director then in charge of commercial credit offered the Bank's insurance program to Plaintiff. He prepared an insurance application in the presence of Plaintiff's representative and obtained an authorization for pre-authorized deduction of the premiums.

The life insurance premiums for the two shareholders were deducted from Plaintiff's account during the period extending from November 1994 to March 1996 inclusively, at which time the total premiums then paid by Plaintiff were refunded through an automatic deposit in its account, without Plaintiff being notified thereof.

Upon the death of one of the shareholders, on November 1st, 1996, a representative of the Bank informed Plaintiff that the insurer had closed the life insurance file of the shareholders.

Indeed, the insurer required that a health declaration status be completed before approving or refusing the insurance application. Considering the amount of the insured commercial loan, the participants also had to undergo blood tests, which they refused to provide in autumn 1994.

The evidence offered by the parties revealed that, prior to November 1996, Plaintiff and its shareholders were informed of neither the insurer's decision as to the approval or refusal of the insurance proposal nor as to the closing of the insurance file and the subsequent refund of the premiums. It was also established that before the loss of life, which occurred in November 1996, Plaintiff was never provided with a copy of the insurance application signed on June 14, 1994.

Issues in Dispute

The Superior Court first addressed the issue of the nature of the Bank's obligations respecting its management of the life insurance guarantee offered under the group insurance policy.

The Court had then to decide whether the Bank had committed a fault in the performance of its mandate and the management of the group insurance policy.

The Judgment

With respect to the first issue in dispute, the Court ruled that when the Bank offered to its borrowers to participate in the guarantee offered under the group insurance policy issued in its favour, it had a management role to play under Section 258 of the *Regulation respecting the application of the Act respecting insurance*[2], which reads as follows:

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[1] S.C. Baie-Comeau, no. 655-05-000265-975, September 7, 2004

[2] R.R.Q. c.A-32, r.1

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"258. The policyholder of a group life insurance contract must be able to provide for the management of the master policy and for the collection and remittance of premiums."

The Court also ruled that the Bank acted as mandatary of its Plaintiff client when the latter chose to apply for mortgage loan insurance, which entailed compliance with Article 2138 of the *Civil Code of Québec*. Article 2138 reads as follows:

"2138. A mandatary is bound to fulfill the mandate he has accepted, and he shall act with prudence and diligence in performing it.

He shall also act honestly and faithfully in the best interests of the mandator, and avoid placing himself in a position that puts his own interest in conflict with that of his mandator."

In view of the circumstances of the case, the Superior Court ruled that by failing to follow-up on its borrower's insurance file between June 14,1994 and November 1, 1996, the Bank had committed a fault in the performance of its obligations as the borrower's mandatary.

Since a copy of the insurance application had never been provided to the participants, contrary to the provisions of Section 282 of the *Regulation respecting the application of the Act respecting insurance*[3], they were not held responsible for assuming that the life insurance was in force at the time of death, all the more so since the premiums had been deducted for nearly two years without any refund notice being provided to them.

In short, the Court was of the view that under the *Act respecting insurance*, the *Regulation respecting the application of the Act respecting insurance* and the *Civil Code of Québec*, it was the Bank's responsibility as the borrower's mandatary to follow-up on the insurance file.

Conclusion

This judgement confirms the judicial trend of penalizing failure by the policyholder to intervene in the course of managing the group insurance files of its borrowers or participants.

Even in the context of group insurance products where admissibility issues are ultimately decided by the insurer, the policyholder will have to implement standardized procedures to ensure proper management of the files and that a follow-up is performed where questionnaires pertaining to the health condition and evidence of insurability must be provided to the insurer as well as where premium refunds are made by the insurer without the policyholder being informed of the reasons of such refund.

In this manner, the implementation of appropriate measures will avoid unfortunate situations where participants erroneously believe they were insured.

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[3] R.R.Q. c.A-32, r.1

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