

April 2019

Decisions

**Commission des normes du travail v. Ellahi**, 10 October 2018, Court of Québec, EYB 2018-303555

**Claim for unpaid wages. Inability to enforce the judgment against the corporation, the employer; Claim to the director of the corporation; Claim limited to the period in which the defendant was a director. Uncertainty about legal fees and interest. Granted.**

The CNESST produced a document sent by the defendant which consists of a resignation letter dated May 31, 2014. The defendant explains in his letter to the CNESST that he handed this document to the Board and that the latter accepted his resignation. He wrote in his resignation letter that, although he was appointed to the Board on January 31, 2014, he never attended its meetings. However, his name appears for the first time in the REQ on July 8, 2014.

The only conclusion the court can draw from this evidence is that the defendant officially became a member of the corporation's Board as of July 8, 2014 after being informally a member for the period of January 31 to May 31, 2014.

Given the absence of the defendant at the hearing, the court has no evidence that the entries appearing on the REQ as of July 2014 are erroneous in his case. If this information was inaccurate, it was his responsibility to ask the Registrar to make the necessary corrections. As a result, CNESST's claim against the defendant is considered well-founded.

After the hearing, the CNESST wrote to the court asking it to make a partial judgment against the defendant and to reserve its jurisdiction for the part of the claim relating to the interests and legal costs granted in the judgment against the corporation. It explains that the majority of the case law considers that the court hearing an appeal under section 154 of the QBCA may order the directors to pay the interest and legal costs incurred in the appeal against the legal person, but that there is controversy about it.

When the proceeding is split, the court that renders judgment on the merits must decide on the whole claim. Since the court is then divested from the case, it cannot reserve its jurisdiction over part of the claim. In the circumstances, and given that the CNESST proceeds in this case by default, the portion of its claim that relates to interest and legal costs will also be granted. It will be up to the CNESST, if necessary and if it considers it appropriate, to waive this part of the judgment or to remit it to the defendant.

**9257-2742 Québec inc. and Registraire des entreprises**, 12 November 2018, Superior Court, EYB 2018-303990

**The court declares invalid and null a Certificate of Dissolution issued by the REQ, because the Declaration of Dissolution of the sole shareholder was filed in error.**

The Tribunal is of the opinion that section 461 QBCA gives it the judicial discretion to "take any other measure it deems useful when a certificate [of dissolution] has been obtained [...] in the ignorance of

some material fact" and that discretion must be judiciously exercised in considering the very particular, if not unique, facts of the case and the behavior of Patel who cannot be blamed for the error of good faith committed unbeknownst to him by Kamal.

The circumstances of this case call for a fair and reasonable solution, namely to declare that 9257's Declaration of Dissolution filed under the mistaken pretext that Patel was its sole shareholder was manifestly incorrect and, therefore, invalid and void *ab initio*.

It follows that the Certificate of Dissolution issued by the REQ on July 13, 2017 and the invalidity and nullity of the Certificate of Revival on September 21, 2017, which was not necessary in this respect, are invalid and void in such circumstances.

**Morin c. Perreault Capital inc.**, 31 octobre 2018, Cour du Québec, EYB 2018-304323

**The failure to conduct a basic audit or due diligence pursuant to a share purchase agreement such as the sale price and its suretyship is within the realm of inexcusable error.**

As part of the sale of his lettering business, the applicant claims the balance of the share purchase agreement he has entered into with the defendants. Perreault Capital is sued as the buyer. His shareholder, Luc Perreault, as a surety.

Issues in dispute:

1. Is there a balance due under the share purchase agreement between the parties?
2. If so, is Luc Perreault personally liable for the sum with his corporation?

Not only is there a balance to be paid, but Luc Perreault is personally liable of this amount because he agreed to be surety and not having read the particular clause is an inexcusable error.

**153114 Canada inc. v. Panju**, 25 October 2018, Superior Court, EYB 2018-304787

**Application for Mareva injunction. Rejected.**

**Mareva type order. Doctrine of clean hands.**

The Mareva injunction is a very exceptional remedy. The purpose of this order targets the debtor and orders him to not dispose of certain assets during the course of the court process. Assets subject to the injunction are subject to the order, regardless of the debtor's place of residence. The applicant must establish that there is a real risk that these assets will disappear. The injunction is aimed personally at the debtor.