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Nouvelles

Notice

Corporations Canada – New chat service

Since April 12, 2018, you will be able to contact Corporations Canada by using their new chat service. The chat service is available on their website under the "Contact us" page.

Article

Community contribution companies ("CCC")

These companies have been around for a short time and started in British Columbia.They are non-existent in Québec.

Community contribution companies have in common the adoption of a business model that promotes social change and not profit at any price. To offset this "lower" pecuniary return for investors and to maintain their interest, government authorities have adopted regulatory measures to support these companies in achieving their community goals.

Here is a very brief overview of the relevant provisions of the *British Columbia Business Corporations Act*:

- A CCC is defined as a contribution that benefits society in general or a group of people that is greater than the number of people related to the CCC as defined in the act and includes purposes related to health, society, environment, culture, education and other similar services.
- A corporation is a CCC if in its articles it inscribes the following wording:
    - "This company is a community contribution company, and, as such, has purposes beneficial to society. This company is restricted in its ability to pay dividends and to distribute its assets on dissolution or otherwise."

The amount of the dividend that it can pay cannot exceed 40% of the profits made during its financial year. It may not sell its assets or transfer sums of money except at fair market value to a qualified entity as defined in the Act and it must pursue the purposes of the CCC that made the transfer. It is also subject to certain restrictions on share repurchases.

The CCC must disclose the names of all people earning more than $75,000 a year.

If it merges, the resultant can only be a CCC. Continuance under another jurisdiction is prohibited.

Shareholders participate in up to 40% of the CCC's assets to be distributed upon winding-up, with the rest going to another CCC, charity or service co-operative.

These companies can be a particularly interesting compromise between sustainable development and development at any cost.

Marque d'or offers the full range or corporate services including for Not-for-profit corporations.

Jurisprudence

Cheminées Gamelin inc. c. 9184-8630 Québec inc.

29 January 2018, Superior Court, EYB 2018-289925

Application for permanent injunction and damages; Rejected; Claim for damages for damage to reputation; Granted in part..

General allegations of unfair competition and corporate identity theft; Damage to reputation; Defamatory remarks made during a radio program; Intervention limited in time; Lack of evidence of damage resulting from damage to reputation.

The plaintiff is not able to prove the alleged faults. Many exhibits, statements and excerpts of testimony are hearsay and have no value since the defendant cannot cross-examine their authors. The defendant's owners have denied the use of any unfair strategy, claiming that their trucks and their employees present the names and colours of the business. They also claim that they were not aware of the allegations, having received no formal notice before the filing of the proceedings. In this context, the plaintiff's claim must be rejected. However, there has been public damage to the reputation of the defendant. The court awards an amount of $8,000 to it.

Massé c. Registraire des entreprises

21 February 2018, Superior Court, EYB 2018-290824

Application for annulment of dissolution of a non-profit legal person; General powers conferred on the Tribunal by the Code of Civil Procedure; Granted.

The Issue

What is the appropriate procedural vehicle for granting a motion to cancel the dissolution of a non-profit corporation?

The Tribunal has before it an application for the annulment of the dissolution of a non-profit legal person.

The Association des propriétaires du chemin Clément (hereinafter "the Association") is a non-profit corporation. On May 7, 2014, it was automatically dissolved by the Registraire des entreprises following a request made by a member of the Association.

The plaintiff, president and member of the Association at the time of its dissolution, contests this cancellation. He claims that it was made without right.

The Registraire des entreprises does not contest this application.

The applicant is duly mandated by the members of the Association for the purpose of this cancellation request.

The Tribunal is of the opinion that the application for dissolution prepared and filed by one of the directors was made in contravention of the provisions of the Companies Act in that no special meeting was called and no vote was taken. by the members authorizing the latter to sign the dissolution application documents. There is no resolution authorizing the latter to proceed with the dissolution.

It has been shown that the Association is still the owner of two buildings located on Clément Street and that since the date of the application for dissolution, it has continued to behave as owner of the said lots, despite the legal non-existence of the Association.

This situation resulted in harm to the Association when the financial institution of the Association found that its registration had been cancelled from the register. The Caisse blocked all transactions on the latter's behalf in order to allow the members of the Association to regularize the situation.

In addition, the dissolution of the Association may cause serious prejudice to liability insurance coverage.

Considering that the buildings no longer have any legal owners, it is imperative that the Association be reconstituted on the date of its dissolution, i.e. May 7, 2014.

It is therefore urgent to cancel the dissolution of the Association, retroactive to the date of dissolution.

The Tribunal considers that the present application for annulment is the only remedy available to the plaintiff to remedy this iniquity.

Given the general powers conferred upon the Tribunal by sections 25 and 49 of the *Code of Civil Procedure*, the Association must be restored to its present state prior to its dissolution.

Distribution Ledsgo inc. c. 9281-0332 Québec inc.

July 19, 2017, Court of Québec, EYB 2017-290983

The lifting of the corporate veil is one way.

Claim for unpaid commissions; Absence of legal relationship; Abusive claim. Defendant's strategy to evade responsibility; Inversed lifting of the corporate veil; Respondent's demand allowed in part.

Application instituting proceedings under which the demander is jointly and severally claiming the sum of $52,848.23 representing commissions due.

The defendant, availing itself of sections 51 et seq. of the Code of Civil Procedure, requests that the plaintiff's claim for the institution of proceedings be declared abusive by the Court and that, consequently, it be dismissed as such. It also seeks damages in the amount of $2,000, in compensation for the legal fees it had to pay to its lawyer to contest this abusive claim.

As to the liability of Mr. Vachon, director of the defendant, on a personal basis, it could reasonably be envisaged at the time of the filing of the originating application, that the corporate veil could be

effectively lifted under section 317 C.C.Q. so that his responsibility could be sought separately from that of the corporation he controlled.

317. The juridical personality of a legal person may not be invoked against a person in good faith so as to dissemble fraud, abuse of right or contravention of a rule of public order.

However, we know that Mr. Vachon is bankrupt and that a notice of stay has been issued against him.

Faced with this impasse, counsel for the plaintiff argued that in the case of Mr. Vachon, a sort of inverted lifting of the corporate veil could possibly be granted by the judge seized of the merits, because of his fraudulent actions, legal operation that would consist of reviewing the actions of Mr. Vachon personally, up to the corporation 9281-0332 Québec inc., the defendant.

With respect, such a rule of law does not at first seem to be based on any legal basis, even if Mr. Vachon's faulty conduct could be shown: Section 317 C.C.Q. specifically provides for the lifting of the corporative veil of the legal person towards its director who would use the legal personality of this one to evade his responsibility, but there is no rule which allows, explicitly, the opposite, to seek the liability of a legal person that has no legal relationship with a claimant, as is the case here, because of the work of its president as a whole personally, in particular via other legal entities that he controlled.

In this sense, the legal avenue of lifting the corporate veil is a one-way street.

On the basis of the documents filed in the Court's file, the application to institute proceedings presented no chance of success on its face and Ledsgo failed to demonstrate that its application to court was not excessive or unreasonable and that it was justified in law, as it had the burden of doing so under the first paragraph of section 52 C.C.P., the Tribunal finds that it is abusive and as such, it must be rejected.

52. If a party summarily establishes that a judicial application or pleading may constitute an abuse of procedure, the onus is on the initiator of the application or pleading to show that it is not excessive or unreasonable and is justified in law.

It is entirely possible to find an abuse without regard to the intent to abuse or the presence of bad faith or malevolence on the part of the party who is the perpetrator of the abuse.

9268-9579 Québec inc. c. Grenon

29 janvier 2018, Cour supérieure, EYB 2018-293323

Application for registration of a judgment for failure to answer the summons. Sole administrator bankrupt. Request to be relieved of the failure to appear. Corporation finally represented by a lawyer. Granted.

Interesting question: Can the two defendant corporations mandate a lawyer to answer for them while their sole director, Grenon, is bankrupt?

Section 327 of the C.C.Q. provides that bankrupts are disqualified to be directors. In addition, section 142 of the QBCA provides that a director's term of office ends when he is unable to exercise his mandate.

In such circumstances, a new director should have been appointed, which was not done.

On the other hand, section 328 of the C.C.Q. mentions that the acts of the director or the senior officers cannot be annuled for the sole reason that the latter were disqualified or that their designation was irregular.

With this context, the Tribunal considers that a lawyer could be mandated to respond on behalf of the defendant corporations and Grenon despite his bankruptcy, because of the authorization to prosecute.