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News

Corporate law CLE courses resume

M[e] Marc Guénette will present a number of in-class events and webinars with Éditions Yvon Blais this fall (in French only). Register now!

Fiducie 101 : mieux comprendre les principes de base
Montreal, October 4, 2018

Droits et recours des actionnaires sous la LSAQ : mise à jour
Online, October 24, 2018

Nom de la société : analyse des acceptations et refus
Online, November 7, 2018

Convention entre actionnaires III : questions-réponses sur des clauses particulières et ambiguës
Montreal, November 29, 2018

Revue jurisprudentielle 2018 en droit des sociétés
Online, December 5, 2018

Droit des sociétés I – La création de l'entreprise
Montreal, January 23, 2019

Droit des sociétés II – L'existence de l'entreprise
Montreal, February 8, 2019

Article

The Court of Appeal dismisses the Chambre des notaires and the Barreau du Québec in the case Chambre des notaires du Québec c. Compagnie d'assurances FCT ltée, EYB 2018-301350

The services of the mortgage loan management centers offered by FCT Insurance Company Ltd. and First Canadian Securities Company (collectively referred to as FCT Group) and by Chicago Securities Company and FNF Canada Company (collectively designated Chicago Group) in connection with a subscription of a title insurance in the context of a mortgage refinance indisposed the Chambre des notaires du Québec (Chambre) and the Barreau du Québec (Barreau). They criticize Groupe FCT and Groupe Chicago for taking action that is the exclusive domain of notaries and lawyers. The trial judge dismissed their claims. The Chambre and the Bar are appealing this decision.

Where a provision of a law enacting the exclusive exercise of a profession is ambiguous, that provision shall not be interpreted so as to unduly extend the scope of the acts and services of exclusive practice, as that would not serve the purpose of protecting the public; however, the scope of the provision must

not be unduly restricted, so that the protection of the public is jeopardized. The restrictive interpretation rule adopted by the judge must, therefore, be rejected.

The judge concluded that the activities of the Chicago Group and the FCT Group were administrative rather than legal in nature and consisted simply of filling empty boxes with computerized means in pre-established forms. It is established that the acts in question come from the financial institutions concerned and are standard contracts drawn up by lawyers or notaries working with these institutions. It is not the drafting of these acts that is in question, but rather the inclusion of additional specific information. The inscription of information about the parties, the building and the terms of the loan in these models or forms do not constitute the task reserved by the legislator to lawyers and notaries; it is rather the verification of this information and the identification of the legal problems which could result from this verification which are tasks exclusive to the lawyers and the notaries. The protection of the public is not jeopardized by the fact that the FCT Group and the Chicago Group carry out a prior verification of the information collected in the deeds in question since this information is also verified by the notary.

This decision of the Court of Appeal gives us the opportunity to remind our clientele that Marque d'or serves only the Quebec legal community. Our only clients are those who legally practice law in Quebec, lawyers and notaries. You can entrust us with all your mandates in corporate law with the assurance that they will be processed by expert professionals, in total confidentially and in accordance with your instructions. Marque d'or will celebrate 60 years of existence next year. 60 years exclusively at your service!

Jurisprudence

Igloo DGN inc. v. Abbruzzo

23 April 2018, Superior Court, EYB 2018-293504

Application for repayment of amounts due to a corporation. Granted in part. Application for liquidation and dissolution of a corporation. Granted in part.

Considering the dead-lock between Abbruzzo and Courchesne, the court orders the liquidation of Igloo under sections 214 and 241 of the *Canada Business Corporations Act*, which is fair and reasonable in the circumstances and is now accepted by the parties. The court will establish the rules applicable at the time of the liquidation, in particular, to supervise the appointment of the liquidator and to ensure that it is paid in priority before any creditor of Igloo.

Castilloux v. Syndicat des copropriétaires du 537 Jacques-Cartier Est Longueuil

6 April 2018, Court of Québec, EYB 2018-293639

Application for damages due to the actions of a syndicate of co-owners and a property manager. Granted in part.

The obligation of good faith provided for in sections 6, 7 and 1375 C.C.Q. applies to the Syndicate and the property manager must act with the same prudence, diligence, honesty, and loyalty as a director. There is normally no legal relationship between the manager and the co-owners, the Syndicate being

responsible for the actions of the latter, but the court considers that the mistakes made by the manager incur extra-contractual liability. The delays of the Syndicate and the manager in responding to the plaintiff's requests and questions thus fall under a breach of the duty to act in good faith, in an honest and reasonable manner. Moreover, although her behavior has not always been exemplary, failure to inform the plaintiff or to co-operate with her constitutes a fault.

As for the repair of the balcony, in the absence of urgency within the meaning of the building by-laws, the unauthorized access to the plaintiff's unit constitutes a violation of her right to the inviolability of her home. provided for in section 7 of the *Charter of Rights and Freedoms* and in section 1063 C.C.Q. Since the unlawful and intentional nature of the violation is clear, the plaintiff is entitled to punitive damages. Moreover, section 1070 C.C.Q. grants rights to the co-owner and nothing can justify the decision of the manager and the Syndicate to refuse access to the registers and contracts concluded by the Syndicate. The Syndicate and the manager have attempted to undermine legitimate rights, thereby committing an abuse that also justifies the award of punitive damages.

Filion v. Agence du revenu du Québec

29 March 2018, Court of Québec, EYB 2018-293816

Appeal from a notice of tax assessment to a director. Granted.

Because of the presumption of validity of tax assessments, the taxpayer must submit a *prima facie*case with a certain degree of accuracy and probability. In the context of the director's assessment, case law confirms that the director's conduct must be analyzed on the basis of an objective standard. The use of an objective standard does not mean that the particular circumstances should be ignored. In addition, the review of the director's conduct is made when the director, acting reasonably, finds that the corporation is facing financial difficulties. The liability of a director may be waived when the appointment of the director is factitious, when his duties are limited to those of an employee or when he has been deceived by third parties.

The applicant's testimony is credible and not contradicted. The overriding evidence revealed that the plaintiff acted primarily as a shareholder and acted reasonably in relying on one of his partners, who had good reputation at the time. The evidence also revealed that the plaintiff was deceived by his partners and that he was unaware that the corporation was in financial difficulty and did not remit the deductions at source. Since the applicant can invoke section 24.0.2, par. 1 LAF, his appeal is allowed.

Soudure LPB inc. v. Mécanique industrielle Fortier et Fils inc.

May 2018, Superior Court, EYB 2018-293847

In the context of a sale of assets, is the penal clause to ensure that the seller makes the "necessary efforts to transfer the customers" and collaborates with the buyer abusive?

The Tribunal concludes that the overriding evidence indicates that the primary objective pursued by the defendant in the transaction between the parties is to obtain Lafarge Canada Inc.'s regular and

substantial clientele. The evidence also reveals that this clientele follows the defendant and that the sales objectives are largely met.

The evidence also reveals that other important clients also continue, at least in the short or medium term, to do business with the defendant after the sale.

The evidence shows that the plaintiff may not have made all the efforts that the defendants expect, but nothing in the contract of sale specifically specifies the type of effort, method, or time that must dedicate the applicant to the transfer of the clientele.

In addition, no employment contract binds the applicant to the defendant and no specific objective, except the one relating to "gross sales" is specified in the written agreements.

The sales targets are largely met, the applicant's principal customers continue to do business with the defendant's business for at least some time and there is no clear indication that if they stop doing so afterward, this is due to and the result of a lack of effort or a lack of cooperation from the plaintiff and its main shareholder in transferring the clientele.

Although the situation appears to be hypothetical, due to the conclusions reached by the tribunal as to the lack of demonstration of the plaintiff's non-cooperation, it is nevertheless appropriate to determine that if this penal clause had to apply, it would have been reduced if not totally at least declared inapplicable because the defendant has not shown any real damage and the plaintiff has shown that there was no damage because all the objectives were achieved as well as the main objectives regarding the transfer of customers and level of patronage.