

March 2019

Decisions

9065-3395 Québec inc. v. 9227-7805 Québec inc., 17 September 2018, Superior Court, EYB 2018-302212

Request for safeguard order to access all documents. Granted.

This is a shareholder dispute between members of the same family.

Defendants file a safeguard application so that the trustee gives them access and transmits to them all the documents sent to them or which are sent to the experts whose services they retain within the scope of their mandate to evaluate the business.

The plaintiffs argue that the defendants cannot obtain the required information since the QBCA states that the right of shareholders to obtain information from a corporation is limited.

In a judicial context, the transparency and the transmission of documents that are useful and relevant to the dispute is the rule. Between the parties, the disclosure of the most complete evidence must be favored.

Waiting until the expertise is completed before requesting the transmission of documents would only result in adding additional delays, which goes against the guiding principles of the *Code of Civil Procedure*.

Centre d'intervention en commotions cérébrales inc. (CICC) v. 9149-0573 Québec inc., 11 September 2018, Superior Court, EYB 2018-302470

Application for liquidation under section 463 of the QBCA. Granted.

Mr. Alarie asks the Tribunal to transfer to him the shares of Mr. Ellemberg. The applicant states that he would like to one day resume the activities of the corporation.

This request is inadmissible. This is not a case of oppression that would justify the expropriation of a shareholder. In addition, Mr. Alarie himself ended the activities of the CICC at the end of 2017 by setting up a new corporation. There is no reason to believe that the CICC will resume its activities in the future.

It is more appropriate to order the judicial liquidation of the CICC under section 463 of the Québec Business Corporations Act. It is fair and reasonable to liquidate the corporation because it has lost its *raison d'être*, its purpose. Mr Ellemberg's application for liquidation will therefore be granted.

Investissements Avril inc. v. 6090621 Canada inc., 20 September 2018, Superior Court, EYB 2018-302760

Claim for a sum of money pursuant to a contract and for damages in a condominium project. Dismissed.

On the one hand, the contract is silent on this subject.

On the other hand, April is arguing that it was impossible to predict that it would take him so much time to sell the units.

"The theory of unforeseeability is hardly recognized in our law, and it would be rather daring to claim that recent decisions of this Court sanction this theory, while the doctrine tends to combat it.

In Quebec, this theory never took place. When the parties contract for a long time and want to protect themselves against the vagaries of the future, they must expressly provide for a review clause.

Our courts strictly apply the principle of the Civil Code that "contracts are lawful to those who made them" and consider this principle as an absolute defense to changing the terms of the contract. They are all the more inclined to respect this principle in terms of construction contract, section 1690 CCQ prohibits this possibility of modification. Always relying on positive law, our courts still find in section 1012 CCQ another argument favorable to the rejection of the theory of unforeseeability. Since lesion is not a cause of nullity of contracts between adults, there is no legislation to support the theory of unforeseeability in our law and jurisprudence cannot oppose to the binding force of the contract, the revision for unforeseeability, without the support of a legal text. "

Please note that the Supreme Court in *Churchill Falls (Labrador) Corp. v. Hydro-Québec* (2018 SCC 46) reiterated this position. See [Telemark • Volume 23 • Number 9](#), November-December 2018

Taber Diesel Services Ltd. (Taber Diesel) v. Couture (Mc Couture), 24 October 2018, Superior Court, EYB 2018-303396

Request to lift the societal veil under section 317 CCQ. Rejected.

The plaintiff seeks the joint and several liability of the defendants (several corporations) to pay him the amounts that remain unpaid to date.

The plaintiff thus invites the Tribunal to disregard the corporate personality of the corporations, in order to reach their one and only shareholder and hold their joint and several liability.

In other words, the plaintiff requests the "lifting of the corporate veil" provided for in section 317 CCQ.

The fact that a corporation is the *alter ego* of an individual is not sufficient to conclude that the Tribunal can "lift the corporate veil".

The evidence must prove that there has been "fraud", "abuse of right" or "contravention of a rule of public order".

The Tribunal cannot therefore conclude, as the applicant invites it to do, that the respondents have proceeded to draw up a "ploy" against him, even though his President was actively involved in the proceedings surrounding the incorporation of the corporations.

The plaintiff therefore failed to show that the incorporation of the corporations was intended solely to create confusion in order for the defendants to avoid their financial obligations, just as it did not show

the "bad faith" of the defendants or a sufficiently serious behavior on their part that can be likened to the "fraud" referred to in section 317 CCQ.