

CAN A COMMERCIAL LESSOR LIMIT ITS LIABILITY FOR MATERIAL DAMAGES IN QUEBEC?

By Paul Cooper Desjardins Ducharme LLP

The Quebec Court of Appeal has recently clarified that a lessor can legally limit or exclude its liability for material damages through carefully worded exclusion clauses contained within a commercial lease in Quebec. However, a lessor cannot limit its liability for intentional faults or gross negligence.

The case, *Thérèse Leblond v. Ghislain Dionne et al.*¹ (*Leblond*) involved a commercial lease for a retail clothing store in the city of Thetford Mines. The lease was for a three year term and included clauses obliging the lessee to obtain and maintain an insurance policy. The lease also excluded the lessors' liability for any damages due to lack of up-keep of the premises and the lessors' liability for damages to the merchandise or other goods belonging to the lessee found within the rented premises, 'caused by any reason foreign to the lessor'.

Nearly two years into the lease, a fire ravaged the building in question causing extensive damage to the lessee's goods. The cause of the fire was determined to be a ruptured pipe supplying a hot water heater located within the rented property which sprayed water onto an a wire connection above the water heater causing an electric arc. The defective pipes and water heater were installed by the lessors, who were not plumbers.

The lessee proceeded to sue the lessor for the resulting damages. The Superior Court ruled in favour of the lessee, basing its decision on the presumption created by article 1465 *Civil Code of Quebec* ("C.C.Q."), which establishes that the guardian of a thing is liable for damages resulting from the autonomous act of the thing unless the guardian can prove that he is not at fault. The Superior Court thus concluded that the damages

¹ C.A. Quebec 200-09-004988-041, March 1, 2006.

sustained were caused by the autonomous act of a thing over which the lessors had custody, and awarded damages in the amount of \$8,476.

The lessee appealed this decision arguing that the trial judge erred in the evaluation of the damages, and claimed for damages amounting to \$112,340 on appeal. The lessors filed an incidental appeal arguing that the trial judge erred in law in that their civil liability can only be contractual, that the presumption created by article 1465 C.C.Q. did not apply and that the limitation of liability clauses contained in their commercial lease absolved them of all liability for all damages to the lessee's goods or merchandise found within the rented property.

The Court of Appeal dismissed the appeal of the lessee, granted the incidental appeal of the lessors, and dismissed the claim of the lessee for the reasons set out below.

The Court of Appeal began by stating that, in general, the lessor's contractual liability will arise if a serious defect which was known, or ought to have been known, is not repaired, which principle is found at article 1854 C.C.Q.

However, in order for a serious defect to bring about the contractual liability of the lessor, the defective good must be covered by the lease contract.

The Court of Appeal confirmed that the obligations of both lessors and lessees are governed by the clauses of the leases binding them together. Where the lease is silent, the provisions applicable to rental contracts would supplement.

In Quebec, any clause which seeks to limit liability is subject to the provisions of the Civil Code. More particularly, article 1474 C.C.Q. stipulates that no one can limit his/her liability for damages caused through an intentional or gross fault, which includes gross negligence.

Furthermore, the Court of Appeal reiterated that, since the reform of the Civil Code, article 1458 C.C.Q. forbids a person from choosing the rules upon which its claim will be based. In other words, if one's claim is of a contractual nature, then the rules governing

contractual liability must apply, even if the rules governing extra-contractual liability may be more beneficial to them.

In the *Leblond* case, the lease was for a commercial space, and the water heater with the broken pipe which caused an electrical arc and ensuing fire was located therein. The commercial lease in question contained clauses which sought to limit the liability of the lessors.

In conclusion with this decision, the Court of Appeal confirmed the validity of limitation of liability clauses in such a case, pointing out that the lessee had not even alleged any intentional faults or gross negligence, let alone proven any. In a case involving a commercial lease that contained clauses limiting the liability of the lessor, it is not sufficient to allege and prove a fault or negligence. Intentional acts or gross negligence are required in order to circumvent such limitation clauses.