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Information

# Ruling Provides Solace to Corporate Directors

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**Insurance and Professional Liability**

It is not uncommon for directors, officers or other agents of corporations to be named as co-defendants in suits that seek to hold liable not only a corporation, but also the intermediaries through whom it acts. Plaintiffs sometimes use such strategies to bring additional pressure to bear in the hope of eliciting a quick and satisfactory settlement of a dispute, or of increasing their chances of recovery where the financial position of a corporate defendant could be in jeopardy.

A recent ruling by the Quebec Superior Court, in *BBR Productions*, is sure to bring comfort to persons who act on behalf of corporations, affording them a basis for having such suits against them thrown out of court at a preliminary stage.[1]

Briefly, in *BBR Productions*, the plaintiffs were suing the corporate defendants in a commercial dispute. Certain individuals who were directors or officers or had acted on behalf of the corporate defendants, and who were named as co-defendants in the proceedings, applied to the Court at a preliminary stage asking for the action against them to be dismissed on the basis that it was bound to fail.

The Court began by noting that the commercial dispute between the plaintiffs and the corporate defendants would have to be decided on the merits, in a trial enabling all relevant evidence to be adduced. It nevertheless remained to be determined whether the individual defendants should continue to be parties in the legal proceedings.

The Court also stressed at the outset that preliminary motions of this kind pose a delicate question, since the case law has always instructed that in case of doubt where allegations made in legal proceedings are being examined, care should be taken not to dismiss a proceeding prematurely, for fear that plaintiffs could suffer injustice. However, the Court went on to note that:

> [Translation] On the other hand, concern for avoiding injustice must also be shown for defendants who believe they have been sued for the sole purpose of putting pressure on them and without any valid legal grounds, and who accordingly want the proceedings taken against them to end as soon as possible.

Indeed, only the contracting parties themselves can be held liable for breaches of their contractual obligations. As for persons who were acting on their behalf, the Court points out that it must be possible for the plaintiffs to assert that the fault being alleged against these persons does not flow solely from the breach of a contractual obligation owed by the corporation, but rather from the breach of a legal obligation that was incumbent on the individuals and was independent of the contractual relationship. If there is no possibility of such independent fault giving rise to extra-contractual liability for the intermediaries, the latter must benefit from “agent’s immunity”.

The Court emphasizes that even if the facts alleged in this case are to be taken as if proven (including allegations suggesting that the individuals may have acted in bad faith and with the aim of causing harm to the plaintiffs), no genuine case was made in the proceedings to the effect that a breach had occurred of a legal obligation incumbent on the individuals that was independent of the contractual relationship:

> [Translation] The entire cause of action is based on the acts that the corporate defendants are accused of having committed, which acts were carried out by the individual defendants who represented them, whether as a manager, director or shareholder. All the alleged actions derive from and are a consequence of the contractual agreements […].

Accordingly, there was no basis for a personal suit against the individuals, who had acted solely on behalf of the corporate defendants. The Court recalls in passing that directors or employees who act on a corporation's behalf are not acting for themselves, but rather for a legal entity that can only act through the intermediary of one or more individuals.

*BBR Productions* is also noteworthy for another point discussed in the decision, namely, the characterization given by a plaintiff to the actions of the opposing party. Undoubtedly with a view to their persuasive effect, plaintiffs often use words like illegal, abusive or fraudulent, hoping to convince a court that a defendant's conduct is all the more worthy of rebuke. In *BBR Productions*, the Court reminds us that it is the facts actually alleged in a proceeding that really count, not how they are characterized:

> [Translation] So it is not words or expressions like "illegal", "collusion", "maliciously", "without colour of right", "abusive", "with full knowledge and complicity", which are sprinkled throughout the proceedings under consideration, that form the basis for a suit, but rather specific facts that will allow the judge to draw conclusions and then go on to characterize them should he see fit to do so.

The various principles touched upon in *BBR Productions* are echoed here and there in the existing body of Quebec case law. By addressing these principles in a single decision, and by reaffirming clearly and unequivocally that liability arising from contractual obligations owed by corporations is limited to the parties to the contract, the Quebec Superior Court has given invaluable support to directors, who are frequently targeted by plaintiffs in such circumstances.

Jean-Charles René

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[1] *Girard et al. v. Productions BBR inc. et al.*, SCM 500-17-053835-099, December 15, 2010 (Justice Jean-Pierre Chrétien). Ogilvy Renault (Jean-Charles René) represented two of the individuals who petitioned the Court in this matter.

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