

Newsletter



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The obligation of a syndicate of co-owners to exhaust all remedies against its insurer

In Syndicat des copropriétaires du condominium Verrières VI c. Maddalon, 2018 QCCS 2312, the Superior Court examined the interaction between an insurance policy issued to the benefit of a syndicate of co-owners and the declaration of co-ownership, highlighting its importance in assessing the validity of a claim against a negligent co-owner.

Ms. Maddalon was the co-owner of an apartment on the fifth floor of the building managed by the Syndicate, the plaintiff in the case. A water leak originating in her apartment caused damage on many floors of the building.

The Syndicate undertook to identify the cause of the damage. According to the expert who conducted the examination, the leak was caused by the deterioration of a wall gasket close to the toilet of unit 502, belonging to Maddalon. The Syndicate made the necessary repairs.

Several months later, the Syndicate filed a claim with its insurer. The insurer replied that the damage was not covered, since it was caused by gradual deterioration. The Syndicate, having obtained a letter confirming the default of coverage, filed a claim against Maddalon and her insurer.

As a defence, Maddalon argued that the Syndicate was barred from claiming against her since it had not exhausted all remedies against its insurer after coverage had been denied.

The issue rested on two articles of the declaration of co-ownership that are common in such agreements:

103.9 Any co-owner is liable to the other co-owners and the syndicate of the damage caused by his fault or negligence and that of his subordinates or by the act of things in his custody.

52. Any insurance obtained by the Syndicate must provide:

52.1 a waiver, by the insurer, of any and all claims against the directors, each of the co-owners [...] except in the cases of arson, fraud or vehicle impact. [Our translation]



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Based on these provisions, the Court ruled that the Syndicate could not validly decide not to file a claim against its insurer when this was penalizing the co-owners, who pay the premiums for the insurance. Furthermore, the Court added that since the insurer's denial of coverage seemed abusive and impulsive, the Syndicate should have challenged the insurer's decision.

Another reason for the dismissal of the Syndicate's claim was the failure to have formally notified Maddalon in due time

that the damage had originated in her apartment and was caused by a defective gasket under her care.

However, the clause of the declaration of co-ownership requiring the Syndicate to obtain insurance is crucial to the validity of its claim.

The Syndicate's failure to exhaust its recourses against its insurer, as seen in the case, can justify dismissing the Syndicate's recourse if the denial of coverage seems abusive or impulsive.

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