

# Newsletter



Robinson Sheppard Shapiro  
Avocats • Lawyers

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## Self-builder: A professional seller?

*In Grandmaître c. Lacombe (2016 QCCS 2216), the Superior Court held that a self-builder who sold an immovable was not a professional seller and consequently could invoke a clause excluding the legal warranty against hidden defects. The Court of Appeal recently affirmed this decision in Grandmaître c. Lacombe (2018 QCCA 651).*

The respondents sold to the appellants a cottage that they built, and lived in for eight years. The sellers had previously built and sold other buildings after having lived in them. After the sale, the buyers found small cracks and a bulge on the acrylic coating of the building. One of the sellers replied that this could easily be repaired. Relying on the sellers' representations, the buyers did not have the building inspected prior to the purchase. The sale was concluded and the contract contained a clause providing that the sale was made "without legal warranty and at the risk and peril of the purchaser" [our translation]. A few months later, the buyers discovered that the structure of the building had deteriorated. Accordingly, they filed a claim for repair costs and damages.

The Superior Court found that the buyers acted in a prudent and diligent man-

ner in the circumstances and that a pre-purchase inspection would not have revealed the defects. The Court also found that they proved that there were latent defects prior to the sale.

The Superior Court had to determine whether the legal guarantee could be excluded. The Court first recognized the validity of such exclusions in that article 1733 par 2 CCQ provides that the seller may exclude his liability when the buyer buys "at his own risk from a seller who is not a professional seller". Thus, the Court had to decide the status of the sellers. After reviewing the evidence, the Court concluded that the sellers were not "professional sellers", and could therefore exclude the warranty. Since the sellers did not committed fraud, the buyers' claim was dismissed.

The Court of Appeal affirmed this decision. According to the evidence, the



**Mrs. Chantal Noël**  
(514) 393-4004  
cnoel@rsslex.com

Mrs. Noël has been practicing insurance law for some 23 years. Within the scope of her work, she analyzes coverage issues and the duty to defend. She also specializes in civil liability and has developed extensive experience in legal research.

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sellers “had practically none of the characteristics of a professional seller or a manufacturer” [our translation]. In fact, the following facts were conclusive according to the Court of Appeal:

- The seller was not a contractor and did not hold any skill cards;
- Construction was not his “usual occupation”, or his secondary one; the seller had a full-time job during all of those years;

- The sellers built only two homes over a 20-year period and lived in them continuously;
- They did not intend to resell the buildings to quickly to make a profit.

Finally, the Court of Appeal pointed out that “the status of a ‘professional seller’ cannot be based solely on a single element — the number of residences built — but is based on a more global analysis.” [our translation]

