

Newsletter



Robinson Sheppard Shapiro
Avocats • Lawyers

December 12, 2018

RSS succeeds in having a \$55-million liability claim dismissed before the Supreme Court

In Brunette v. Legault Joly Thiffault, s.e.n.c.r.l., 2018 SCC 55, a judgment rendered on December 7, RSS obtained summary dismissal of a \$55-million claim against professionals by raising the plaintiffs' lack of legal standing to sue and the distinct legal personality of corporations.

In this case, Fiducie Maynard alleged professional liability on the part of a group of accountants and lawyers who had collaborated on the implementation of a tax structure for several companies referred to as "Groupe Melior". Fiducie claimed damages in the amount of \$55 million, representing the loss of value of residences owned by the various corporations of Groupe Melior. Fiducie was only an indirect shareholder of these corporations.

As it affirmed the dismissal of Fiducie's lawsuit, the Court emphasized the duty of the judicial system to dismiss claims at a preliminary stage when legal standing to sue is "manifestly absent", thus avoiding waste of judicial resources.

The Court based its opinion on the principle of standing to sue, a preliminary condition of admissibility for any judicial

application, under which the interest to bring an action must be analyzed in light of the nature of the claim.

The Court restated a well-established rule of Quebec law under which a corporation has a distinct legal personality from that of its shareholders. The rule shields a shareholder from being sued for the faults of the corporation; conversely, it bars the shareholder from directly suing third parties to claim compensation for damages sustained by the corporation.

The Court ruled that Fiducie, as indirect shareholder of the corporations holding the residences that had lost value, did not have the legal interest required to sue the professionals.

The Court also declared that, in order to sue a professional having rendered services to the corporation, a shareholder



Katherine Delage
514 393-7476
kdelage@rsslex.com



Nicholas J. Krnjevic
514 393-4027
nkrnjevic@rsslex.com



Ann-Julie Auclair
514 393-7489
ajauclair@rsslex.com

Our newsletters aim to bring to your attention the contemporary legal issues which we believe are and should be of interest to the public at large and under no circumstances are they to be considered as legal opinions. The newsletters are merely intended to alert readers to interesting topics and/or new developments in law. © RSS 2018. No part of this newsletter may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, unless the source is mentioned in writing on the face of the reproduction.



Robinson Sheppard Shapiro

must not only prove that the professional committed a fault towards him, in addition to any fault committed towards the corporation, but also that he suffered damages distinct from those sustained by the corporation.

Fiducie had neither alleged, nor proven, a fault and damages distinct from those that the corporations could have raised. This failure was fatal: the rule of corporate limited liability could not be set aside.

This decision from the Supreme Court is paramount to professionals working for corporations: it will probably be welcomed by Quebec courts.

N.B.: The Quebec Superior Court and Court of Appeal had unanimously sided with the accounting and law firms. One of the law firms was represented by RSS.

