

Newsletter



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December 18, 2018

Double representation of the insured: Example of an exception

In Groupe Sutton-Centre Ouest inc. c. Viger Blouin, 2018 QCCS 4525, the Superior Court restated the possibility that an insured be represented by his lawyer in relation to grounds of action not covered by his professional liability insurance when his insurer is required to defend him against certain allegations.

The plaintiff, a real estate brokerage firm, sued the defendant who refused to purchase a building which she had promised to buy. The plaintiff claimed the penalty provided for in the brokerage contract.

The defendant filed a cross-application, alleging that the plaintiff had violated its professional and contractual obligations. The claims based on professional liability were covered by the insurance policy. Accordingly, the plaintiff's insurer had retained a law firm for that purpose, while the firm retained by the plaintiff continued to defend it against grounds based on the contract.

The defendant filed a motion challenging the plaintiff's dual representation, arguing that both the claim and cross-application were based on the same facts, and were a single litigation.

The Superior Court dismissed these arguments and ruled that the double representation was allowed:

[24] The rights and obligations arising from the contractual relations between Groupe Sutton and its insurer are an exception to the rule of single representation. The alleged grounds for the litigation — the violation of the brokerage contract, which is not covered, and the breach of professional obligations, which is covered — aim at exclusive interests specific to each one. [Our translation]

As the insurer was not held to defend the insured against grounds not covered, the insured had therefore to provide for its own defence.

Accordingly, the Court allowed both lawyers representing the plaintiff to question the defendant, on the condition that questions not be duplicated.



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