

Newsletter



Robinson Sheppard Shapiro
Avocats • Lawyers

September 18, 2019

Recent Court of Appeal Decision on Spoliation of Evidence

The Court of Appeal recently put an end to a case that had originated in November 2008 with the destruction by fire of a combine harvester. The owner's insurer had compensated its insured and then filed a claim against the seller of the machine. The seller had then brought a warranty action against the manufacturer, but only after the machine had been dismantled. The manufacturer then argued that failure to receive notice of the claim and the impossibility to examine the machine deprived it of the right to a defence, thereby justifying the dismissal of the action. Just how did this case end?

In *CNH Industrial Canada Ltd. c. Claude Joyal inc.*, 2019 QCCA 1151, the Court first recalled the following principles:

- The buyer who wants to invoke the guarantee of quality must report the defect to his seller within a reasonable time;
- The purpose of the notice is "to allow the seller to ascertain the defect, to examine the evidence and to proceed with the repairs by limiting the costs" [our translation];
- The sending of this notice is a substantive condition to exercise an action based on the guarantee of quality.

According to the Court, the failure to send a notice of denunciation to the seller will not always result in the dismissal of the action. It will be necessary to demonstrate the existence of a real prejudice and the proof in this respect will have to be submitted to the judge who will hear the case on the merits.

It is interesting to note that the Court of Appeal confirms that the transmission of an originating application may constitute such a notice, subject of course to the defendant being able to prove actual prejudice.



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.

RSS has the privilege of being the only Quebec law firm member of Canadian Litigation Counsel ("CLC"). The goal of this association is to provide legal services in all sectors of the insurance industry on a regional and national level which allows us to handle and oversee files across the country, all to better service our clients.

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 2019. 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

In this case, it had been demonstrated that the manufacturer had not suffered any damage. This conclusion was based on the following elements:

- The significant destruction of the combine harvester;
- The impossibility for all experts to identify the cause of the fire;
- The machine had not been modified and included all of its original parts;
- The buyer had used and maintained it thoroughly.

The Court of Appeal said "the appellant [the manufacturer] did not establish that the experts' proceedings were in-

complete, that their own expert would have been able to make additional findings by examining the debris, that it had reasons to suspect a problem with a component and was denied a potential warranty action against a vendor. " [Our translation]

Finally, the Court of Appeal dismissed the argument that the manufacturer had been barred from presenting a full and complete defence because that argument also required proof of actual prejudice.

