Insurance Law

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Quebec Court of Appeal Decision: Security Obligation of a Mountain Resort

The Quebec Court of Appeal recently upheld a decision of the Superior Court in *Ski Bromont.com c. Jauvin*, **2021 QCCA 1070**, condemning a mountain resort to pay a guest $152,579 following a fall from a chairlift after resort employees left a customer stranded.

A fun day of mountain biking at one of Quebec's Eastern Townships' resorts, Ski Bromont, came to a tragic end when guest Mr. Vincent Jauvin was faced with an unenviable decision; attempting to climb down from a chairlift perched nearly 10 metres above the ground or risk hypothermia by spending the night alone in his chariot in the sky.

At around 6:30 p.m. on August 7, 2014, Mr. Jauvin boarded a chairlift to have one final descent. On his way up the mountain, approximately 300 metres from the landing area, the chairlift came to an abrupt stop and an announcement on the resort's PA system followed informing guests that the mountain was now closed for the day. Stranded without a cellphone, and with no help in sight, Mr. Jauvin decided to traverse the steel cable to a nearby tower where he could easily climb down to safety. Unfortunately, his grip gave way and he plummeted to the ground from a height of 10 meters. He sustained numerous injuries, which required three surgeries.

Superior Court Decision

The Superior Court (*Jauvin c. Ski Bromont.com*, **2019 QCCS 3984**) analyzed the resort's contractual obligations underlining that they include providing customers and users with proper facilities as well as chairlift services. In addition, the resort owes its customers an accessory obligation of security which requires the resort to use reasonable means, given the circumstances. In counterpart, customers are required to respect Ski Bromont's code of conduct and safety.

The facts established that, while Ski Bromont explicitly stated that the trails were not patrolled and that users should not bike alone, a team of four patrollers regularly canvassed the trails. Contrary to the procedure in place for winter activities, a sweep of the mountain was not performed at the end of the day and there was no procedure in place to ensure that no customers are left behind after closing. The Superior Court concluded that despite the resort's obligation of security being one of means, its obligation to ensure

that they are not forgotten on the chairlift is one of result.

The Superior Court dismissed Defendant's argument that Plaintiff's attempt to climb down constituted a *novus actus interveniens* such that the causal link between the fault of the resort and the damages sustained was ruptured. The fault committed by Ski Bromont resulted in plaintiff being stranded in the chairlift and unexpectedly exposed to danger. His unsuccessful attempt to reach the pole was in *continuum* with the initial fault committed by the resort.

The Plaintiff was forced to assume an abnormal risk because of the resort's fault, which sadly resulted in serious physical injuries. Plaintiff's action therefore was granted.

Court of Appeal Decision

The majority of the Court of Appeal maintained the decision, adding that, even if Ski Bromont's obligation was to be considered one of means, they failed to take all reasonable means, in the circumstances, to obtain the expected result.

Cellphones Now a Must?

It is interesting to note the comment made by the Court of Appeal dissenting judge who found that the Plaintiff committed a fault that contributed to the creation of the dangerous situation by not having a cellphone on hand which, would have enabled him to call for help. Accordingly, he would have reversed the trial judgment in part and reduced the condemnation against Ski Bromont to $114,434.

For more information, please contact:

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