

COURT OF QUÉBEC

Small Claims

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF HULL
CITY OF GATINEAU
Civil Division

Nos. 550-32-019607-115
550-32-019608-113

DATE: March 22, 2013

PRESENT: THE HONOURABLE SERGE LAURIN J.C.Q.

Andrew Pickard and Anita Barak
[...]Gatineau (Québec) [...]

Plaintiffs

v.

7239785 Canada Inc., operating under the name Gestion P. Laflèche
31-10, rue Noël
Gatineau (Québec) J8Z 3G5

Defendant

JUDGMENT

INTRODUCTION

[1] Mr. Pickard, Ms. Barak and 7239785 Canada Inc., the latter operating under the name Gestion P. Laflèche ("Gestion"), agreed that the two cases should be heard jointly and the evidence accounted for in both cases.

[2] Mr. Pickard had a power of attorney mandating him to represent Ms. Barak, who was sick on the day of the hearing.

[3] Mr. Pickard and Ms. Barak maintain that Gestion refused to rent them a house because they refused to give personal information that was not necessary for the credit check to be processed. According to them, requesting such information is in contradiction with the *Act respecting the Protection of personal information in the private sector*.¹ They are asking the Court to condemn Gestion to pay a sum of \$7000.

QUESTION IN DISPUTE

[4] Did Gestion P. Laflèche refuse to rent a house to the applicants because they did not supply all the personal information requested in the rental application form?

THE FACTS

[5] On August 6, 2009, the applicants met with Ms. Gareau, a rental agent of Gestion, for a house visit on rue Sainte-Ursule in Gatineau. On August 7, 2009, Mr. Pickard called Mr. Laflèche, Gestion's property manager, and both agreed on a monthly rent of \$1800 for the said house. Mr. Laflèche asked Mr. Pickard and Ms. Barak that they each fill out a rental application and give a deposit. Mr. Pickard faxed a joint application, contrary to what Mr. Laflèche asked. Furthermore, Mr. Pickard struck out and initialized different parts of the rental application. For instance, he crossed out the sections asking for his social insurance number (S.I.N.), his driver's license number, his current monthly rent, his bank information (name, address, phone number and account number) and his car make, year and license number. As for the deposit requested by Mr. Laflèche, Mr. Pickard responded in the rental application:

I am enclosing a deposit of \$ 0 and accept that this deposit will be returned to me within three business days if my application is rejected by management. I accept that if my application is accepted but I do not sign a lease for the rental beginning on the date mentioned above, part or all of my deposit may be forfeited to cover the expenses involve din the verification of credit and all other expenses relating to finding other Tenants.

[sic]

[6] Also, Mr. Pickard crossed out the last paragraph of the rental application, which states:

Under the guideline of Law 68, in regard to the protection of The Personal Information Act., I hereby authorize P. Lafleche Management and Apro-Bail Eng. to obtain and/or use, and/or communicate and/or retain all necessary information from my own financial institutions mentioned above, in addition to any other information judged essential for property rental.

¹ *An Act respecting the Protection of personal information in the private sector*, R.S.Q. c. P-39.1.

[7] The rental application is dated August 10, 2009 and signed by both Mr. Pickard and Ms. Barak. It was faxed with a cover letter dated August 9, 2009, addressed to Mr. Paul Laflèche, in which the plaintiffs wrote:

Further to our telephone conversation August 7th, we hereby agree to your proposed monthly rent of \$1,800 and wish to proceed with our application for 8, rue Ste-Ursule.

We are including two references: M. Michjel Nazair of Les Immeubles Michel Nazair, our former landlord (819-210-1434), and M. Jacques Desautels of Desautels Di Santo Inc., our accountant (514-982-6000) both of whom will attest to the fact that we are 1) good tenants and 2) more than able to pay the rent

We are able to move in immediately, and look forward to your reply.

[8] Ms. Gareau and Mr. Laflèche put aside the plaintiffs' rental application because they needed their authorization and deposit to go ahead with the credit check.

[9] On August 12, 2009, Mr. Pickard sent an email to Ms. Gareau indicating that Ms. Barak and he were available the following day to sign the lease. On August 13, Ms. Gareau replied:

[TRANSLATION]

No. You did not authorize us to check your references and did not provide a social insurance number or a deposit. We choose our tenants seriously. You should understand, since you do the same work.

[10] Ms. Gareau mentioned that Ms. Barak operates the same type of business as Gestion, doing business under the name Redmaple Rentals.

[11] Mr. Pickard alleges that the parties never discussed a deposit. Mr. Laflèche and Ms. Gareau maintain that the deposit is the initial step before engaging in the verification of the references and the financial report.

[12] Ms. Gareau testified that Mr. Pickard called on August 13 to sign the lease, but she replied that that was not possible since Mr. Pickard and Ms. Barak did not give a deposit, which meant that the references were not vouched for. Mr. Pickard hung up on Ms. Gareau. He later called again and asked how much the deposit should be. She confirmed that a sum of \$1000 was requested as a deposit and that it would be applied to the first month's rent of \$1800. Again, Mr. Pickard hung up in her face.

[13] On August 26, 2009, the plaintiffs sent a formal notice by registered mail to Gestion P. Laflèche. Mr. Pickard and Ms. Barak ask the Court to condemn Gestion P. Laflèche to pay the following damages to both applicants:

- Moral damages: \$5000
- Punitive damages: \$2000

POSITIONS OF THE PARTIES

[14] Mr. Pickard and Ms. Barak maintain that it is illegal to ask for personal information such as a social insurance number, a driver's license number and a bank account number. More so, this information is not required for the object of the file according to the *Act respecting the Protection of personal information in the private sector*.

[15] On the other hand, Gestion P. Laflèche maintains that it did not refuse the plaintiffs' rental application on the grounds that personal information was not provided, but because the plaintiffs struck out the last paragraph of the application authorizing a credit check and also because they did not give the requested deposit.

ANALYSIS

The law

[16] According to sections 2803 and 2804 of the *Civil code of Quebec*,² a person wishing to assert a right shall prove the facts on which his claim is based, and evidence is sufficient if it renders the existence of a fact more probable than its non-existence (according to the balance of probabilities). In Book V of the Civil Code, "Obligations", the legislator states in article 1457, under "Civil Liability":

1457. Every person has a duty to abide by the rules of conduct which lie upon him, according to the circumstances, usage or law, so as not to cause injury to another.

Where he is endowed with reason and fails in this duty, he is responsible for any injury he causes to another person by such fault and is liable to reparation for the injury, whether it be bodily, moral or material in nature.

...

[17] The legislator adopted the *Charter of human rights and freedoms*,³ of which section 5 in particular stipulates that every person has a right to respect for his private life. The legislator also adopted measures to reinforce Charter principles, in section 49:⁴

49. Any unlawful interference with any right or freedom recognized by this Charter entitles the victim to obtain the cessation of such interference and compensation for the moral or material prejudice resulting therefrom.

In case of unlawful and intentional interference, the tribunal may, in addition, condemn the person guilty of it to punitive damages.

² *Civil Code of Québec*, 1991, c. 64.

³ *Charter of human rights and freedoms*, 1975, C-12, c. 6, s. 6.

⁴ *Op. cit.*, 1975, c. 6, s. 49; 1999, c. 40, s. 46.

[18] Section 5 of the Charter embodies the general principle that includes many aspects of private life. From Chapter III of the *Civil Code of Québec*, referring to respect of reputation and privacy, the Court will quote article 37 in relation to the present case:

37. Every person who establishes a file on another person shall have a serious and legitimate reason for doing so. He may gather only information which is relevant to the stated objective of the file, and may not, without the consent of the person concerned or authorization by law, communicate such information to third persons or use it for purposes that are inconsistent with the purposes for which the file was established. In addition, he may not, when establishing or using the file, otherwise invade the privacy or damage the reputation of the person concerned.

[19] The legislator adopted specific measures to protect an individual's personal information and to facilitate the exercise of the rights conferred by articles 35 to 40 of the *Civil Code of Québec*. He did so by adopting the *Act respecting the Protection of personal information in the private sector*,⁵ of which the Court will quote the following pertinent sections:

2. Personal information is any information which relates to a natural person and allows that person to be identified.

5. Any person collecting personal information to establish a file on another person or to record personal information in such a file may collect only the information necessary for the object of the file

...

9. No person may refuse to respond to a request for goods or services or to a request relating to employment by reason of the applicant's refusal to disclose personal information except where

(1) collection of that information is necessary for the conclusion or performance of a contract;

(2) collection of that information is authorized by law; or

(3) there are reasonable grounds to believe that the request is not lawful.

In case of doubt, personal information is deemed to be non-necessary.

Did Gestion P. Laflèche refuse to rent a house to the plaintiffs because they did not supply all the personal information requested in the application form?

5 An Act respecting the Protection of personal information in the private sector, foresaid note 1.

[20] Mr. Pickard and Ms. Barak had to demonstrate, according to the balance of probabilities, that Gestion P. Laflèche committed a fault, that they suffered a prejudice, and that there was a causal relation between the fault and the prejudice. The Court found many decisions from the Commission d'accès à l'information du Québec⁶ establishing that a social insurance number, a driver's license number and bank information are considered personal information and not necessary for the purpose of a rental application.

[21] Also, the Court indexed many Régie du logement files⁷ in which a social insurance number was not considered necessary in order to sublease. In the decision *Boufard v. Chouairy*,⁸ the Régie du logement rejects the tenant's motion, stipulating that the owner refused to rent the place because he declined to give the personal information that was requested. The judgment states:

[TRANSLATION]

On the contrary, he was the author of his own misfortune in refusing to provide the usual information that would have enabled the landlord to establish his solvency.

[22] In the present file, Mr. Pickard and Ms. Barak cannot accuse Gestion of collecting personal information, since they refused to give the said personal information. They maintain that Gestion refused to rent the house to them because they did not provide such personal information.

[23] The plaintiffs were unable to demonstrate this fact according to the balance of probabilities. Instead, the evidence shows that Gestion refused to rent the house because Mr. Pickard and Ms. Barak did not give the requested deposit and because they struck off the last paragraph of the rental application. Doing so prevented the defendant from conducting a credit search.

THEREFORE, THE COURT:

⁶ *Regroupement des comités logements de l'association des propriétaires du Québec v. L'Association des propriétaires immobiliers du Québec (CORPIQ)*, AZ-95151509; *Julien et Gauvin v. Domaine des Laudance*, AZ-50161968; *A et B v. C et D*, AZ-50195726; *Perrault v. Blondin*, AZ-50367515; *Plein droit de Lanaudière inc. v. Œuvre du toit de Bethléem inc.*, AZ-96151508; *X v. Machine à coudre P.E.Décarie inc.*, AZ-97151502.

⁷ *Brazeau v. Sousterra*, RL, 180796, 31-960612-008G; *Gasparrini v. Marciszewski*, RL 110998, 31-980728-042 T-980819.

⁸ *Boufard v. Chouairy*, AZ-950661027.

[24] **REJECTS** the application of the plaintiffs, Mr. Pickard and Ms. Barak;

[25] **CONDEMNS** the plaintiff Mr. Pickard to pay the defendant Gestion P. Laflèche judicial fees of \$159;

[26] **CONDEMNS** the plaintiff Ms. Barak to pay the defendant Gestion P. Laflèche judicial fees of \$159.

SERGE LAURIN J.C.Q.

Hearing date: January 30, 2013