

COURT OF QUEBEC

«Small Claims Division»

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL
TOWN OF MONTREAL
Civil Division

No: 500-32-127498-113

DATE: August 7, 2013

BY THE HONOURABLE MARTINE L. TREMBLAY, J.C.Q.

MARGARITA ASEYEVA

Plaintiff

v.

HYDRO SOLUTION S.E.C.

and

CONFORT EXPERT INC.

Defendants

JUDGMENT

[1] Plaintiff claims \$7,000 from Hydro Solution s.e.c. ("**Hydro**") and its subcontractor, Confort Expert Inc. ("**Confort**") for damages caused to her piano and to the frame of her condo door by Confort's employees, during the installation of a water heater tank. She also seeks compensatory and punitive damages in connection with the way her claim was treated.

[2] Hydro and Confort admit that Confort's employees caused damages on October 18, 2010, but contest the extent of the damages. They also deny having abused the judicial process.

QUESTION IN LITIGATION

[3] What is the amount of a fair indemnification for Plaintiff?

THE RELEVANT FACTS

[4] On October 18, 2010, two of Confort's employees, while transporting a water heater tank, hit the left side of Plaintiff's upright piano, and damaged the wood underneath the keyboard and of the leg (P-8). At trial, Plaintiff's testimony concerning the employees' inappropriate attitude and behaviour throughout the installation process was uncontradicted. When they left, one of them slammed the condo door, which, according to Plaintiff who filed a photo (P-10), led to the separation of one of the side boards and the top board of the door frame.

[5] Plaintiff and one of Confort's employees completed and signed a "*Constat de Dommage*" (P-1), mentioning only the damage to the piano. On that same day, Plaintiff called Hydro to inquire as to what it intended to do with respect to the damages. According to Hydro, Mrs. Miron ("**Mrs. Miron**") returned the call on October 25, 2010. According to Plaintiff, they didn't speak until November 1st, 2010, at which time Mrs. Miron told her to call Mr. Patrick Séguin ("**Mr. Séguin**") at Confort.

[6] Plaintiff's recollection of the event that ensued (P-18) differs from Mr. Séguin's, but some elements concur:

- a) Plaintiff had to obtain an estimate for the costs of the repairs to the piano and, given that she is a piano teacher, the costs of renting a piano for the duration of the restoration work;
- b) When Plaintiff called Mr. Séguin to inform him of the estimated amounts, he said he wanted to come and see the damages. Plaintiff was expecting him on December 2, 2010, and cancelled four lessons. Mr. Séguin claims that this date was never confirmed and he therefore did not show up.
- c) On December 23, 2010, Plaintiff faxed to Mr. Séguin the estimates she had obtained (P-2);
- d) On December 29, 2010, Mr. Séguin went to see the damages. He testified that Plaintiff did not mention the door frame. Plaintiff was left with the impression that the compensation would be paid shortly;
- e) On January 10, 2010, having no news from Mr. Séguin, Plaintiff called Mrs. Miron.

- f) On January 17, 2011, Mr. Séguin wrote (P-3) that Confort will pay \$1,000 plus tax to repair the piano and \$650 plus tax for the rental of a temporary one, upon receipt of the bill for work done;
- g) On January 25, 2011, after numerous calls to Mrs. Miron, Plaintiff complained about the treatment she was receiving (P-4) to a Hydro director;
- h) On February 1st, 2011, Mr. Séguin, who had still not spoken directly with Plaintiff since his visit of December 2010, advised Plaintiff (P-5) that he had received information to the effect that, instead of repairing her piano, she wanted to sell it. Therefore, Confort's offer (P-3) was being rescinded and replaced with a new one of \$500.

[7] On March 7, 2011, Plaintiff instituted the present action.

[8] On April 14, 2011, with its Contestation, Confort offered to pay \$1,862.44 towards the damages to Plaintiff's piano.

[9] In the month prior to the hearing, Hydro apologized in writing (P-14) and made, without admission, an attempt to settle the matter out of Court. The offer was declined by Plaintiff, who felt it was too little, too late.

[10] **ANALYSIS**

[11] Hydro is responsible for the damages caused by the fault of his subcontractor's employees and Confort is responsible for the damages resulting from its employees' actions and/or omissions¹.

[12] Plaintiff has proven the causal link between the actions of Confort's employees on October 18, 2010, the damages to her piano and, to a lesser extent, to the door frame.

[13] Evidence of a causal link between the incident of October 18, 2010, and Plaintiff's health problem described in her doctor's statement of March 2, 2011 (P-6), has not been established. Plaintiff's request for indemnification for the stress, trouble and inconvenience resulting from the treatment of her claim by Defendants will be addressed hereinafter.

[14] The determination of a fair compensation for Plaintiff must be made in accordance with the principles set forth in articles 1607, 1611 and 1613 of the *Civil Code of Quebec* ("**C.C.Q.**"), which read:

¹ Articles 1458 and 1463 of the *Civil Code of Quebec*.

"**1607.** The creditor is entitled to damages for bodily, moral or material injury which is an immediate and direct consequence of the debtor's default."

"**1611.** The damages due to the creditor compensate for the amount of the loss he has sustained and the profit of which he has been deprived.

Future injury which is certain and able to be assessed is taken into account in awarding damages."

"**1613.** In contractual matters, the debtor is liable only for damages that were foreseen or foreseeable at the time the obligation was contracted, where the failure to perform the obligation does not proceed from intentional or gross fault on his part; even then, the damages include only what is an immediate and direct consequence of the nonperformance."

[15] Compensatory damages are intended to put Plaintiff into the situation it would have been, had it not been for the fault of Defendant. The Court cannot, in awarding damages, enrich Plaintiff.²

[16] This principle, known as the "*réparation intégrale*", explains the need for the Court to consider the age and condition of the damaged or lost property.³

[17] With respect to the piano, the Court accepts the estimate for the cost of the restoration work, namely \$1,128.75 (P-2), which includes the cost of transportation by specialists, and concludes that this award does not unjustly enrich Plaintiff, considering that the piano, a Rubenstein, has been purchased only 10 years before in New York, and that Plaintiff will have to pay for a tuner after the repair.

[18] Considering that Plaintiff is a piano teacher and that the repair will take one week, the cost of renting a replacement piano, including the costs of transportation and tuning, namely \$733.69, is also granted.

[19] With respect to the damages to the door frame, the claim for \$1,793.61 (P-9) has to be reduced to take into consideration the fact that Plaintiff's condo will be in a better condition after the work than it was before. Considering the time elapsed since the existing painting was done and that Plaintiff will have to endure some trouble and inconveniences, an arbitrary amount of \$700 is therefore deemed to be a fair indemnification.

² BAUDOUIN, Jean-Louis et Patrice DESLAURIERS, *La responsabilité civile*, 7^e éd., t. 1, Cowansville, Éditions Yvon Blais, 2007, p. 434-435, par. 1-419,

³ Idem, par. 1-422

[20] Plaintiff's claim for the treatment she received from Mr. Séguin and Mrs. Miron while her claim was being processed is of a different nature than the two previous ones.

[21] Article 1617 C.C.Q. provides that the delay in the performance of an obligation to pay, such as this one, is indemnified by the award of interest at the legal rate, calculated from the date that the payment of a determined amount was demanded⁴, and to which an additional indemnity provided for by article 1619 C.C.Q. may be added. This is the reason why, in this matter, the award of legal interest and additional indemnity will be calculated on the sum of \$1,862.44 from January 25, 2011, and on the sum of \$700 from the date of service of the action, namely March 25, 2011.

[22] Confort and Hydro could have avoided the payment of legal interest and additional indemnity on the sum of \$1,862.44 if they had transmitted a cheque to Plaintiff rather than deciding to sit and wait. The Court is convinced that this hearing could have been prevented if Mr. Séguin had been more proactive and more aware of the best practice rules applicable to claims adjustments.

[23] Articles 54.1 to 54.4 of the *Code of Civil Procedure* (“**C.C.P.**”) stipulate:

54.1. A court may, at any time, on request or even on its own initiative after having heard the parties on the point, declare an action or other pleading improper and impose a sanction on the party concerned.

The procedural impropriety may consist in a claim or pleading that is clearly unfounded, frivolous or dilatory or in conduct that is vexatious or quarrelsome. It may also consist in bad faith, in a use of procedure that is excessive or unreasonable or causes prejudice to another person, or in an attempt to defeat the ends of justice, in particular if it restricts freedom of expression in public debate.

54.2. If a party summarily establishes that an action or pleading may be an improper use of procedure, the onus is on the initiator of the action or pleading to show that it is not excessive or unreasonable and is justified in law.

A motion to have an action in the first instance dismissed on the grounds of its improper nature is presented as a preliminary exception.

54.3. If the court notes an improper use of procedure, it may dismiss the action or other pleading, strike out a submission or require that it be amended, terminate or refuse to allow an examination, or annul a writ of summons served on a witness.

⁴ Articles 1595 and 1596 C.C.Q.

In such a case or where there appears to have been an improper use of procedure, the court may, if it considers it appropriate,

- (1) subject the furtherance of the action or the pleading to certain conditions;
- (2) require undertakings from the party concerned with regard to the orderly conduct of the proceeding;
- (3) suspend the proceeding for the period it determines;
- (4) Recommend to the chief judge or chief justice that special case management be ordered; or
- (5) order the initiator of the action or pleading to pay to the other party, under pain of dismissal of the action or pleading, a provision for the costs of the proceeding, if justified by the circumstances and if the court notes that without such assistance the party's financial situation would prevent it from effectively arguing its case.

54.4. On ruling on whether an action or pleading is improper, the court may order a provision for costs to be reimbursed, condemn a party to pay, in addition to costs, damages in reparation for the prejudice suffered by another party, including the fees and extrajudicial costs incurred by that party, and, if justified by the circumstances, award punitive damages.

If the amount of the damages is not admitted or may not be established easily at the time the action or pleading is declared improper, the court may summarily rule on the amount within the time and under the conditions determined by the court."

[24] In this matter, it clearly appears that Hydro relied on Confort to settle the matter since Confort was ultimately responsible to pay for the damages.

[25] Mr. Séguin did not act as swiftly or promptly as Plaintiff wished or expected. There was a misunderstanding between the parties. As a result, the meeting of December 2, 2010 did not take place. Therefore, Plaintiff was deprived of the income from four lessons. In addition, the letter of February 1st, 2011 (P-5), added oil on the fire. Nonetheless, the evidence has not established that either party has exercised its rights in an excessive or unreasonable manner, with the intent of injuring the other, the whole in contravention of the requirements of good faith⁵ and/or the requirements not to abuse the judicial process.

[26] The claim for a refund of the legal fees of \$150 (P-11) and punitive damages is therefore dismissed.

⁵ Articles 7 and 1375 C.C.Q.

[27] **FOR THESE REASONS, THE COURT:**

[28] **GRANTS**, in part, Plaintiff's action;

[29] **CONDEMNS** Defendants, solidarily, to pay Plaintiff \$2,562.44 with interest at the legal rate and the additional indemnity provided for by article 1619 C.C.Q., calculated on the sum of \$1,862.44 from January 25, 2011, and on the sum of \$700, from March 25, 2011;

[30] **CONDEMNS** Defendants, solidarily, to pay the judicial fees of \$159 to Plaintiff;

[31] **CONDEMNS** Confort Expert inc. to pay the judicial fees of \$ 194 to Hydro Solution s.e.c.;

[32] **DECLARES**, to be worth between Defendants only, that Confort Expert Inc. is solely responsible to the payment of the condemnation in favour of Plaintiff.

MARTINE L. TREMBLAY, J.C.Q.

Date of hearing: July 9, 2013