

COUR DU QUÉBEC
(Administrative and Appeal Division)

CANADA
PROVINCE DE QUÉBEC
DISTRICT DE MONTRÉAL
Civil Division

N° : 500-80-034721-176

DATE : April 18 2017

BEFORE THE HONORABLE DOMINIQUE GIBBENS, J.C.Q.

RAAMCO INTERNATIONAL PROPERTIES CANADIAN LTD.

Petitioner

v.

HAYCAM BORGHOL

Respondent

-and-

RÉGIE DU LOGEMENT

Mise en cause

**JUDGMENT ON MOTION FOR LEAVE TO APPEAL FROM
A DECISION OF THE RÉGIE DU LOGEMENT
(Article 91 of an Act respecting the Régie du logement (CQLR, c. R-8.1))**

[1] Raamco International Properties Canadian Ltd. (the “**Lessor**”) seeks leave to appeal from a decision of the Régie du logement (the “**Régie**”) which dismissed its application for resiliation of lease and eviction directed against its tenant Haycam Borghol (the “**Lessee**”).

FACTUAL AND PROCEDURAL CONTEXT

[2] On July 31, 2015, the Lessor filed an application against the Lessee seeking the resiliation of the lease entered into between the parties (the “**Lease**”) on the basis of:

- a) The Lessee's continued use of the garage to conduct auto repairs in direct violation of the regulations forming part of the Lease (the "**Regulations**"); and
- b) The Lessee's harassment of the Lessor's representatives and staff.

[3] The Lessor's application was later amended to add a request for an order enjoining the Lessee to grant access to his apartment.

[4] In November 2015, the Lessee filed his own application against the Lessor seeking the specific performance of the Lessor's obligations regarding repairs to the apartment, as well as a retroactive reduction in rent of 20%.

[5] The two applications were joined and heard together.

THE DECISION OF THE RÉGIE

[6] In a decision rendered on January 11, 2017 (the "**Decision**"), the Régie dismissed most of the Lessor's application.

[7] Although it found on the evidence that the Lessee was indeed using the garage to conduct auto repairs in violation of the Regulations, the Régie concluded that this did not cause serious prejudice to the Lessor and, consequently, did not justify the resiliation of the Lease.

[8] The Régie stated the following:

"[180] Après analyse, et bien que la preuve démontre certains manquements de la part du locataire, le tribunal ne peut conclure ainsi que le voudrait le locateur.

[181] La preuve démontre que le locataire fait probablement de la mécanique dans le garage, espace qu'il utilise dans le cadre d'une activité commerciale d'achat et vente de véhicule automobile.

[182] Le locateur a convaincu la soussignée que les travaux auxquels s'adonne le locataire dans le garage dépassent la simple vérification des niveaux de liquide, le survoltage ou le remplacement de pneu.

[183] Toutefois, le locateur n'a pas démontré que ce faisant le locataire a causé un préjudice sérieux au locateur.

[184] La soussignée est convaincue par les témoignages des locataires utilisateurs du garage qui ont eu le courage de se présenter à l'audience pour déclarer que l'usage du garage par le locataire ne les dérange aucunement.

[185] Le règlement de l'immeuble prévoit la résiliation du bail de stationnement dans un cas pareil. Puisque le tribunal n'est pas appelé à se prononcer sur la validité d'une telle clause, il ne le fera pas.

[186] Reste que les activités du locataire dans le garage ne semblent pas causer de préjudice sérieux au-delà du non-respect du règlement de l'immeuble à ce sujet et la contrariété qu'éprouve l'administration de l'immeuble à voir ses règles bafouées."

[Emphasis added]

[9] Regarding the other aspects of the Lessor's application, the Régie found that the Lessor had not established the alleged harassment of its representatives and staff. It did, however, grant the Lessor's request to order the Lessee to provide a key to the additional lock that he installed.

[10] As concerns the Lessee's application, the Régie granted a retroactive reduction in rent of 10% and enjoined the Lessor to complete certain repairs to the apartment.

[11] The Lessor seeks leave to appeal from the Régie's decision on its own application and not on the decision concerning the Lessee's application.

ANALYSIS

a) *The principles applicable to appeals from decisions of the Régie*

[12] Leave to appeal from a decision of the Régie may be granted "*when the matter at issue is one which ought to be submitted to the Court of Québec*".¹

[13] A matter will generally be considered as one which ought to be submitted to this Court if the issues raised by the applicant are serious, new, controversial or of general interest.²

[14] In addition, leave to appeal may be granted where the issues raised call into question the higher interests of justice, for example if there is an apparent weakness in the decision because of an error of law or a clear and manifest error in the appreciation of the facts, or where the requirements of natural justice were not followed.³

b) *The grounds of appeal and issues raised by the Lessor*

[15] The Lessor raises a series of grounds in support of its *Application for leave to appeal*. Briefly stated, it argues that the Régie committed manifest and dominant errors of fact and/or law in:

- a) Implying (in para. 185 of the Decision) that the provision of the Regulations prohibiting the use of the garage for auto repairs may be invalid;⁴
- b) Concluding that the Lessee's violation of the Regulations did not cause serious prejudice to the Lessor;⁵
- c) Failing to consider the impact of the Lessee's conduct on the Lessor's ability to respect its obligations towards other tenants;⁶
- d) Failing to deliver an order pursuant to article 1973 of the *Civil Code of*

¹ Article 91 of the *Act respecting the Régie du logement*, CQLR, c. R-8.1 (the "**Act**").

² *Lamarche McGuinty inc. v. Bristol (Municipalité de)*, [1999] R.J.Q. 1270 (C.Q.), CanLII 10748 (QCCQ), para. 10.

³ *Bremont v. Sevigny*, 2011 QCCQ 748, para. 11-12; *Boucher v. Office municipal d'habitation de Saint-Jérôme*, 2004 CanLII 41238 (QCCQ), para. 11.

⁴ *Motion for Leave to Appeal*, para. 5 to 14.

⁵ *Motion for Leave to Appeal*, para. 15 to 38.

⁶ *Motion for Leave to Appeal*, para. 39 to 46.

Québec (“C.C.Q.”) enjoining the Lessee from using the garage for auto repairs, given its decision not to resiliate the Lease;⁷ and

- e) Failing to consider that the Lessee’s continued use of the garage for auto repairs may encourage other tenants not to comply with the Regulations.⁸

[16] Without analyzing each of the issues raised, the Court is of the opinion that leave to appeal should be granted in the instant case because of an apparent weakness in the Decision.

[17] Indeed, the Régie’s conclusion that the repeated violation of the Regulations by the Lessee did not cause the Lessor to suffer serious prejudice and, consequently, did not justify resiliation of the Lease appears to be in contradiction with the position of our Courts⁹ and legal writers¹⁰ that even a minor default, if it occurs repeatedly, may justify the resiliation of a lease.

[18] This is a question of general interest which ought to be submitted to this Court, as it concerns the interpretation of the notion of “serious prejudice” within the meaning of article 1863 C.C.Q. and, more generally, the circumstances under which a repeated default, even if minor, may justify the resiliation of a contract of successive performance as provided in article 1604 C.C.Q.

[19] These provisions read as follows:

1863. The nonperformance of an obligation by one of the parties entitles the other party to apply for, in addition to damages, specific performance of the obligation in cases which admit of it. He may apply for the resiliation of the lease where the nonperformance causes serious injury to him or, in the case of the lease of an immovable, to the other occupants.

The nonperformance also entitles the lessee to apply for a reduction of rent; where the court grants it, the lessor, upon remedying his default, is nonetheless entitled to the re-establishment of the rent for the future.

1604. Where the creditor does not avail himself of the right to force the specific performance of the contractual obligation of the debtor in cases which admit of it, he is entitled either to the resolution of the contract, or to its resiliation in the case of a contract of successive performance.

However and notwithstanding any stipulation to the contrary, he is not entitled to resolution or resiliation of the contract if the default of the debtor is of minor importance, unless, in the case of an obligation of successive performance, the default occurs repeatedly, but he is then entitled to a proportional reduction of his correlative obligation.

⁷ *Motion for Leave to Appeal*, para. 47 to 54.

⁸ *Motion for Leave to Appeal*, para. 55 to 61.

⁹ *Lag v. Montréal (Office municipal d’habitation de)*, 2010 QCCQ 11866, para. 42 to 44; *Gestion Rinap ltée v. Dubé*, 2008 CanLII 52206 (QCCQ), para. 84 to 89.

¹⁰ See for example Pierre-Gabriel JOBIN, *Le Louage*, 2nd ed., Les Éditions Yvon Blais, Cowansville, n° 114, at page 297.

All the relevant circumstances are taken into consideration in assessing the proportional reduction of the correlative obligation. If the obligation cannot be reduced, the creditor is entitled to damages only.

[Emphasis added]

[20] The Court therefore concludes that the matter ought to be submitted to this Court, but on the following questions only:

1. Did the Régie commit a reviewable error of fact or law in concluding that the Lessee's repeated violations of the Regulations did not cause serious prejudice to the Lessor?
2. Did the Régie commit a reviewable error of fact or law in refusing to resiliate the Lease or, alternatively, to render an order pursuant to article 1973 CCQ?

c) *Additional evidence*

[21] During the hearing of its *Application for leave to appeal*, the Lessor asked the Court, should it grant leave to appeal, to authorize the production of additional evidence before this Court for the purpose of the appeal.

[22] This additional evidence purports to establish that the Lessee continued to violate the Regulations by carrying out auto repairs in the garage while the matter was under advisement before the Régie.¹¹

[23] The Court does not believe that the production of this additional evidence should be authorized at this stage. The Lessor admittedly chose not to submit the evidence to the Régie while the matter was under advisement and the Court must review the Decision on the basis of the evidence that was adduced before the Régie.

FOR THESE REASONS, THE COURT:

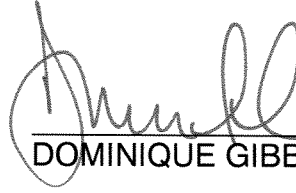
GRANTS the motion for leave to appeal;

AUTHORIZES the appeal from the decision rendered by the Régie du logement on January 11, 2017 in file bearing number 230077 31 20150731 G on the following questions:

1. Did the Régie du logement commit a reviewable error of fact or law in concluding that the Lessee's repeated violations of the Regulations did not cause serious prejudice to the Lessor?
2. Did the Régie du logement commit a reviewable error of fact or law in refusing to resiliate the Lease or, alternatively, render an order pursuant to article 1973 CCQ?

¹¹ Letter of Demand dated November 14, 2016 and attached photographs (Exhibit R-3).

WITH LEGAL COSTS to follow suit.

A handwritten signature in black ink, appearing to read 'D. Gibbens', written over a horizontal line.

DOMINIQUE GIBBENS, J.C.Q.

Hearing date: March 8, 2017

Sylvan Schneider
Schneider Attorneys Inc.
For the Applicant

Me Dora Amalia Hilario Urena
For the Respondent