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ARTICLE

# Supreme Court of Canada confirms shareholders do not have sufficient interest to claim damages from losses suffered by the corporations they own

In *Brunette v. Legault Joly Thiffault, 2018 SCC 55* (*Brunette*), the Supreme Court of Canada confirms how standing rules in the Code of Civil Procedure, CQLR, c C-25.01 (CCP) apply in situations where shareholders want to sue *on their own behalf* to recover losses to the corporation they own.

Like litigants across Canada, any individuals or entities that want to file civil suits against other parties in Québec must show that they have standing to do so. To secure standing, claimants must be able to demonstrate what is known as "sufficient interest" in the dispute under article 85 of the CCP. If the party being sued believes that the claimants have no such sufficient interest, it can ask the court to dismiss the complaint under article 168(3) of the CCP.

The appellants in this case were trustees of a trust that was the sole shareholder of a holding company. That company, in turn, controlled a set of corporations that owned, renovated, and operated seniors' residences. By 2010, most of these corporations were bankrupt as the result of, amongst other things, unexpected tax bills issued by Revenu Québec. The corporations had received tax advice from the respondents — several lawyers and accountants. According to the appellants, these lawyers and accountants gave the corporations faulty advice. The appellants allege that this bad advice caused the corporations to unknowingly structure their tax liabilities in a manner that did not comply with tax legislation. The appellants claim that the unexpected tax bills, and the resulting bankruptcy of the corporations, flowed directly from the lawyers' and accountants' questionable advice. Once the corporations were stripped of value as a result of going bankrupt, the entire value of the trust property or "patrimony"— the shares in the corporations — was lost.

The appellants claimed damages for the loss of the trust property. They brought their claim against the respondents as trustees of the depleted trust, not on behalf of the corporations. The respondents successfully sought to have the claim dismissed by the Superior Court of Québec on the basis that the appellants did not have a sufficient interest in the dispute because they were acting as third-parties, and not on behalf of the corporations that actually suffered the losses in question. The Court of Appeal agreed.

The Supreme Court of Canada also agreed. The majority decision confirms that under article 168(3) of the CCP, an action brought by shareholders on their own behalf against a defendant who caused harm to the owned corporation can be dismissed for insufficient interest where the plaintiffs fail to allege the necessary facts to establish two elements. First, they must adequately allege a breach of an obligation owed to them that is distinct from obligations owed to the corporation itself. Second, they must similarly allege personal and direct injuries flowing from that breach that are distinct from injuries suffered by the corporation. Put another way: a shareholder can only independently seek damages related to losses to the corporation where that shareholder can make a distinct claim from the one the corporation could have pleaded against the defendants. The majority's decision is a confirmation of the Court's 1990 decision in *Houle v. Canadian National Bank, [1990] 3 SCR 122* (*Houle*).

The Court's reasoning is premised on a hallmark of corporate law. Corporations have distinct legal personalities, therefore, it is the corporation that suffers losses that has the right to bring an action to recover those losses. This means that any sufficient interest in a dispute involving a collapsing corporation is attributed to the suffering corporation itself. The shareholders, acting on their own behalf, fall outside of the dispute unless they can plead a distinct cause of action.

The Court agreed with the courts below that the appellants' claim should be dismissed for lack of sufficient interest. The obligations, breaches, and damages pleaded by the appellants overlapped entirely with a claim the bankrupt corporations could have brought against their lawyers and accountants. The loss of the trust property, for example, was simply the indirect consequence of the corporations going bankrupt. Similarly, the defendant lawyers and accountants owed no separate obligation to provide advice to the trust. The Court concluded that, as a result, the trustees' claim was not distinct and so they were correctly refused standing for lack of sufficient interest.

The decision confirms the very narrow scope for direct actions by shareholders in Québec, which is consistent with how such claims are treated elsewhere in Canada. As per *Houle*, and now *Brunette*, shareholders will only have standing to bring independent causes of action for damages flowing from losses to the corporations they own if they plead adequate facts to establish that (1) the defendants owed the shareholders a unique obligation that was breached and (2) that the breach led to distinct and direct losses to the shareholders — losses that are separate from those suffered by the corporations.

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