Cruise Lines In Difficulties Trying To Appoint Counsel In Québec Small Claims Proceedings

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In two strikingly similar recent cases before the small claims division of the Court of Québec, the court has held twice that the defendant cruise lines may not be represented by lawyers, as questions with respect to the application of Canadian maritime law and the interpretation of the *Marine Liability Act* are not considered to be complex questions of law under section 542 of the Québec *Code of Civil Procedure*. These cases are an illustration of the unyielding attitude of the small claims court towards parties being represented by attorneys, which directly affects non-resident cruise lines.

Facts

In *Sauvé v Oceana Cruises Inc*, 2017 QCCQ 50 ("Sauvé"), the two claimants fell ill during a cruise and had to be quarantined, which they attributed to unsanitary conditions and unhealthy food being served by the cruise line. They each claimed CA $15,000 (the maximum amount in the small claims court in Québec).

In *Fortin v Norwegian Cruise Line*, 2017 QCCQ 78 ("Fortin") the two claimants had forgotten to bring their passport with them to the port of departure in New York. The cruise line refused to let them board the vessel. The claimants argued that the cruise line had failed to warn them that a passport was required for boarding and claimed CA $14,200, the price they had paid for the cruise.

Issues

The respective cruise lines filed a request for dismissal (which is one of the forms a statement of defence can take before the small claims court in Québec) to be decided before a trial could be held, together with a request to be represented by counsel under section 542 of the Code of Civil Procedure ("CCP"). This section provides, in relevant part:

542. Natural persons must self-represent; […]. The State, legal persons, partnerships and associations and other groups not endowed with juridical personality can only be represented by an officer or employee in their sole service who is not a lawyer.

Despite section 34 of the Charter of human rights and freedoms (chapter C-12), lawyers or collection agents cannot act as mandataries except to recover professional fees owed to the partnership to which they belong. **By way of exception, if a case raises a complex issue on a point of law, the court, on its own initiative or on a party's request, after obtaining the consent of the chief judge of the Court of Québec, may authorize the parties to be represented by lawyers. […] Both natural persons and legal persons may consult a lawyer, including for the purpose of preparing the presentation of their case.**

The defendants in either of the two cases were not based in Québec nor did they have offices or representatives in the province. They argued that not being able to be represented by counsel caused them prejudice. Moreover, the merits of both cases would depend on the application of Québec consumer protection legislation in a context of Canadian maritime law and the *Marine Liability Act* — which the cruise lines argued is a complex issue of law. The plaintiffs in Fortin did not object to the request; the plaintiffs in Sauvé did.

Decisions

In both cases, the judge refused the application by the cruise lines. It was held that the exception under section 542 CCP must be interpreted strictly. Even if the plaintiffs do not object, the law requires specific circumstances before a company may be represented by counsel before the small claims court. Questions of application of Canadian maritime law or the international conventions incorporated therein are not "complex issues on a point of law", as required by the CCP. The fact that small claims court judges have little or no experience with this body of law, does not mean that the issues themselves are complex.

Moreover, while the fact that neither cruise line had an office in Québec may be inconvenient, this does not impact the merits of the case at the preliminary stage. The same goes for the fact that the cases may well be ill-founded. It is up to the trial judge to determine the consequences of the lack of offices of the defendants and to decide on the merits of the case. Both cases will proceed to trial.

Comment

These cases show that the small claims court is a difficult venue for cruise lines as the judges are usually sympathetic towards the individual claimant. Also in other pending cases before the small claims court against cruise lines, judges generally refuse to dismiss a case early or to grant any form of relief to the cruise lines. As a result, these cases usually proceed to trial, causing additional costs and delays to defendant cruise lines in oftentimes unfounded cases.

Québec civil procedure allows for a party to submit a written testimony instead of testifying at trial in person. This alleviates, to some extent, the pressure put on cruise lines to present witnesses which are often based internationally. However, preparation by counsel of the cruise lines' representatives is essential, as they must present the case and potential witnesses (written or otherwise) themselves at the hearing of the case.

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