

The Court of Appeal confirms that the franchisor's duty to inform can extend to third parties

JULY 7, 2017 4 MIN READ

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The franchisor's duty to inform toward the franchisee is the subject of frequent commentary. In the case of *Camions Daimler Canada Ltée c. Camions Sterling de Lévis inc.*, 2017 QCCA 798, the Court of Appeal confirmed that this duty extends not only toward the franchisee — in certain circumstances, it may extend toward third parties related to the franchisee, such as a shareholder or manager.

The facts

Camions Daimler Canada Ltée (Daimler) owns the Sterling brand of heavy trucks. Camions Sterling de Lévis inc. (Lévis) operates a dealership for the sale and maintenance of Sterling trucks under a contract with Daimler. Mr. Pierre Corriveau is a manager of Lévis, in addition to being the sole shareholder of Centre de l'auto St-Nicolas inc. (St-Nicolas).

In 2008, Daimler undertook a restructuring and stopped production of Sterling trucks. It therefore offered its dealers, including Lévis, to sign a new contract restricting their activities to the maintenance and supply of parts. Lévis signed the new contract in 2009. The new contract was for an indefinite period and allowed Daimler to terminate the contract on 30 days' notice.

In 2010, Mr. Corriveau acquired through St-Nicolas all of the shares in Lévis. In accordance with the dealership contract, Mr. Corriveau obtained Daimler's approval.

In 2011 and 2012, Daimler issued notices of termination to Lévis. St-Nicolas therefore sued Daimler for \$213,816 for loss of its investment. Mr. Corriveau sued Daimler for the inconvenience he had personally sustained as a result of the termination.

Analysis

In confirming the merit of the plaintiffs' claim, the Court of Appeal reaffirmed that the duty of good faith is required at all stages of a contractual relationship, from pre-contractual negotiations to the termination of the contract. That being said, such duty also arises outside of any contractual relationship. According to Articles 6 and 1457 of the *Civil Code of Québec*, the obligation of good faith translates, both in contractual and extra-contractual matters, into a duty to inform.

On that point, the Court of Appeal summarized the conditions of the duty to inform:

- 1) The information is determinant in the decision of the creditor of the duty to inform;

- 2) The information is known or is presumed to be known to the debtor of the duty to inform;
- 3) The creditor of the duty does not know, and is incapable of obtaining, the information, or else has relationship of trust with the debtor of the duty such that the creditor expects the debtor to provide him or her with the information; and
- 4) The duty to inform does not extend to information which the creditor of the duty could reasonably obtain (i.e., the duty to inform oneself).

In light of these conditions, the Court of Appeal upheld the trial judgment, which found that Daimler had breached its duty to inform. While approving the acquisition of the shares of Lévis by St-Nicolas, as required by the contract, Daimler failed to mention to St-Nicolas and Mr. Corriveau the likelihood of a reduction in the number of Sterling dealers, and by extension the likely termination of the new dealership contract. Yet, Daimler was already aware of this possibility.

Meanwhile, Mr. Corriveau had developed reasonable expectations as to the term of the new contract between Lévis and Daimler. These expectations were based on experience, the invitation to dealers to transform their facilities into maintenance centres, the amount of money offered to dealers in this context, and Daimler's undertaking to continue providing parts for Sterling trucks for 10 years. In addition, Mr. Corriveau had developed a relationship of trust with Daimler during their long business relationship. Even though the contract provided for the possibility of termination on notice, these circumstances prevented Mr. Corriveau from considering the short-term probability of termination. Whereas, had he known, Mr. Corriveau would not have invested, through St-Nicolas, hundreds of thousands of dollars to acquire the shares of Lévis.

In short, Mr. Corriveau and St-Nicolas, as manager and shareholder of the franchisee, respectively, were in a "[translation] vulnerable informational position." By failing to disclose a determinative fact about the future of the franchisee, Daimler incurred its extra-contractual liability.

Commentary

This case illustrates the important scope of a franchisor's duty to inform. Although a franchisor does not generally have such a duty toward third parties, to avoid liability, a franchisor should be transparent in providing determinative information to all relevant parties, whether such party be the franchisee itself, or in some cases, its shareholder or manager.