

# Newsletter



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November 1, 2017

## The Court of Appeal confirms the existence of a triple presumption against the professional vendor and the manufacturer

In *CNH Industrial Canada Ltd. c. Promutuel Verchères, société mutuelle d'assurances générales*, 2017 QCCA 154, the Court of Appeal confirmed that the purchaser of a property stricken with a latent defect, who sues the professional seller or the manufacturer, benefits from a triple presumption against the latter.

In this case, the purchaser had acquired, following an instalment sale, a farm tractor which was destroyed by a fire, less than three months after its acquisition. The purchaser was indemnified by its insurer and the latter sued the defendants, the seller and the manufacturer, alleging that the tractor had a latent defect that was the cause of the fire.

In addition to ruling on the validity of the subrogation, the Superior Court found that there was a latent defect and held the two defendants liable.

On appeal, the manufacturer pleaded that the purchaser first had to prove

that the tractor had a defect before he could benefit from the presumption of article 1729 of the *Civil Code of Quebec* [CCQ] which, in his view, only contains a presumption that the defect pre-dates the sale.

Article 1729 reads as follows:

In a sale by a professional seller, a defect is presumed to have existed at the time of the sale if the property malfunctions or deteriorates prematurely in comparison with identical property or property of the same type; such a presumption is rebutted if the defect is due to improper use of the property by the buyer.

The Court of Appeal's decision, delivered by the Honourable Justice François Pelletier, first recalled that authors and judges had already commented on this article but that there remained uncertainties as to its scope and application. While some jurists attributed a double presumption, the Court of Appeal in other decisions concluded to a single



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presumption “without alleviating the burden of proof resting on the party who wishes to rebut it.” [Our translation]

The Court of Appeal therefore ruled:

[28] In my view, the application of the rule posed by this section has the practical effect of implementing not a double, but a *triple presumption in favor of the purchaser, namely the existence of a defect, that it pre-dates the contract of sale and, finally, the causal link with the deterioration or malfunction*. In this respect, I share the views of Professor Deslauriers, who sees in it a presumption of responsibility [...] [Our emphasis and translation]

The existence of this triple presumption substantially reduces the purchaser’s burden of proof. In this regard, the Court of Appeal explains that in order to benefit from article 1729 CCQ, the purchaser will have to prove “that he has acquired the property from a person

held to the guarantee of the professional seller and that the property malfunctions or deteriorates prematurely in comparison with identical property or property of the same type.” [Our translation]

Finally, the Court of Appeal explained that even though this article provides that the presumption may be rebutted by evidence of improper use of the property by the purchaser, the professional seller and the manufacturer have two other defenses, according to the case-law, proof of a “causal fault of the purchaser or of a third party, or act of God”. [Our translation]

The Court of Appeal thus upheld the judgment of the Superior Court which had concluded that the destruction of the tractor had occurred without apparent external cause, since the defendants could not prove that the fire originated from a cause unrelated to a defect.

