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No presumption of lessor's liability in case of fire

In 9192-2401 Québec inc. (Fabrication Pro-Fab) c. Villeneuve (Immeubles Jolika), 2018 QCCA 1143, the Court of Appeal underlined that in a claim by a lessee against a lessor, in virtue of article 1854 CCQ, the lessee must prove that the damages were caused by either a defect, a default or a failure of the leased property.

In that case, the lessee of commercial premise and its subrogated insurer sued the lessor following a fire that allegedly had been caused by a failure of the lessor's electrical system. The Superior Court dismissed their claims, ruling that the cause of the fire was unknown.

In appeal, plaintiffs argued that, despite the fact that the cause of the fire was unknown, the lessor should have been held liable since it was under an obligation of result, under art 1854 CCQ:

> The lessor is bound to deliver the leased property to the lessee in a good state of repair in all respects and to provide him with peaceable enjoyment of the property throughout the term of the lease.
>
> He is also bound to warrant the lessee that the property may be used for the purpose for which it was leased and to maintain the property for that purpose throughout the term of the lease.

The lessor pleaded that it could not be held liable as there was absence of proof linking it to the cause of the fire.

The Court of Appeal agreed with the lessor. First, it stated that, although article 1854 CCQ is not of public order for commercial leases, in this case, the parties had not elected to set it aside. It then continued:

> [29] The lessee who wishes to raise article 1854 to hold his landlord liable must first prove that the damage was caused by a defect or a failure of the leased property or accessories, which includes the whole building of which the leased premises are only a part. At that point, considering its obligation of result, the landlord will have to prove that the damage was caused by a superior force or by the

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fault of a third party for which he cannot be blamed.

[30] Although the warranty of suitability imposed by the second paragraph of article 1854 is very demanding upon the lessor, it does not make him the lessee's all-risk insurer when the lessee is unable to prove that his damage was caused by a defect or a failure of the leased property. [Our translation]

Thus, the Court of Appeal confirmed that, although article 1854 CCQ imposes obligations of result and warranty upon the lessor regarding the leased property, it does not create a presumption of fault or liability. "And mostly, it does not relieve the lessee of proving that his damage was caused by a defect or a failure of the leased property." [par 34, our translation]

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