

COPYRIGHT LIMITATION: A VALID REASON FOR INADMISSIBILITY

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In *Expertises Didactiques Lyons Inc v Ghanotakis* the Superior Court of Québec has reiterated that the applicable limitation for infringement, in the absence of belated knowledge, is three years for any civil remedy pursuant to the *Copyright Act*.

Expertises Didactiques Lyons (EDL) initiated an action against Georges Ghanotakis, who was at the time insolvent, after learning that he was likely to receive a significant sum of money from another proceeding. This action comprised:

- a tort claim for C\$150,000 for fees and extrajudicial expenses incurred since 1996;
- a royalty payment claim for C\$105,000 based on two distinct periods; and
- a compensation for infringement for C\$45,000 pursuant to the Copyright Act.

Ghanotakis introduced two motions for dismissal pursuant to (i) Section 165 of the Québec *Code of Civil Procedure* indicating that the applicant's proceeding was unfounded in law, *res judicata* and absence of interest, and (ii) Section 75.1 of the code, where the examination has showed that "the action is frivolous or clearly unfounded".

In order for the first motion to be successful, it was essential that all the claims be clearly unfounded in law. In this regard, EDL pointed that it would not have entered into an agreement if it had known Ghanotakis's true intentions and that he was not in fact the author of a particular book as he had pretended.

First, the court held that there is no privity between the initial statement and the legitimate inference and conclusions sought. Indeed, there is no chain of causation between the fact that the applicants were erroneously induced when signing the agreement and the many subsequent lawsuits and expenses, as well as between the alleged fault and damage.

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Second, according to the Court of Appeal of Québec, extrajudicial fees can be granted as damages only when the other party abuses the legal system and not as a punishment for misconduct. Thus EDL cannot thus claim extrajudicial fees just because it was the victim of fraud. Besides, EDL did not bring forward any allegation of abuse of right to sue.

Third, there was *res judicata* with regards to the infringement action where extrajudicial fees have already been claimed. This action was rejected since there was insufficient justification for an adverse judgment. As the claim for extrajudicial fees was not appealed, EDL could not thus reconsider. For these reasons, the claim for the extrajudicial fees was inadmissible.

As for the royalty payment claim, EDL argued that when Ghanotakis was president of Learned Entreprises Internationales (LEI) he had failed to reveal the sales revenues and to pay the prescribed royalties. Moreover, as per the agreement, these royalties belong only to Mondia Éditeurs Inc and only it could institute a proceeding. Further, this action was personally brought against Ghanotakis, excluding LEI, which went bankrupt and whose rights and assets were acquired by EDL. In these circumstances, would Ghanotakis be personally liable for the non-payment of royalties? The Court of Appeal held that when an action is based on a contractual liability against a company, its administrator cannot be held extra-contractually liable in the absence of abuse or fraud.

The *Civil Code of Québec* and Section 41 of the Copyright Act indicate that a court may not award a remedy unless proceedings are commenced within three years after the infringement occurred where the plaintiff knew or could reasonably have been expected to know. Therefore, any proceedings filed after the three-year period are barred. The Supreme Court of Canada, in *Massie & Renwick Ltd v Underwriters' Survey Bureau Ltd* ([1937] SCR 265), reiterated that the limitation applies to all civil remedies under the Copyright Act. The royalties in question covered the period ending in 2001. Consequently, because there is no allegation of belated knowledge, it was held that the action was prescribed, and thus inadmissible.

The last claim covered the compensation for infringement. The allegation was by itself very limited and the only significant precision was brought at the hearing by EDL's counsel indicating that the infringement only occurred in 2002. Consequently, the applicable limitation was also that of Section 41. There was no explanation for this belated action so the recourse was similarly deemed prescribed.

For all these reasons, the court concluded that none of EDL's claims are admissible, although the pleaded facts were true. Ghanotakis's motion for inadmissibility, pursuant to Section 165 of the Québec Civil Code of Procedure, was thus allowed.

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