The Court of Appeal clarifies the legal nature of a real guarantee

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Quebec law has for a long time distinguished the personal guarantor from the real guarantor: a personal guarantor is personally bound to repay a creditor should the principal debtor fail to perform its obligations; a real guarantor does no more than give some of its assets as collateral to a creditor, and unlike a personal guarantor, is not personally bound to repay the loan granted to the principal debtor.

On July 16, 2012, the Court of Appeal of Québec upheld a judgment of the Superior Court to the effect that real guarantees are governed by the rules pertaining to hypothecs and not by those pertaining to guarantees, with the result that unlike personal guarantors, real guarantors are not entitled to the benefit of division or of discussion. That issue had not been addressed by Quebec courts since the coming into force of the *Civil Code of Québec*.

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