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The Court of Appeal: The liability of the life insurance broker is not limited to the framework of the contractual relationship

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The facts of the *Roy* v. *Lefebvre* case

On June 25, 2014, the Superior Court[1] allowed the action of an insured against a life insurance broker and his firm. The context of the subscription of the insurance policy is somewhat unusual and deserves explanations. In 1992, the purchaser of an immovable property undertook to pay part of the purchase price through the subscription of an insurance policy (the "Policy") on the life of the seller for the benefit of the estate of the seller. The purchaser undertook to pay the premiums by subscribing to an annuity contract with the insurer, which included the payment of the premiums for the first year. The insurance broker represented to his client and to the seller that the annuity contract would pay for all the premiums since they would be paid for the subsequent years from the accumulation fund of the policy, on the basis of an estimated annual return of 7.8%.

On August 19, 2008, the purchaser notified the seller that the funds accumulated were insufficient to pay the premiums. On June 3, 2009, the purchaser notified the seller that if the insurance premiums were not paid for the next three years, the Policy would lapse. Although formally put on notice by the seller, the purchaser of the immovable and the insurance broker neglected to take the necessary means to ensure that the premiums would be paid. On August 19, 2011, the seller instituted proceedings against the purchaser, the insurance broker and the brokerage firm. The purchaser instituted warranty proceedings against the broker and the firm. Starting on June 25, 2013, the seller had no alternative but to personally assume the payment of the premiums to maintain the Policy in force.

The decision of the trial court

The Superior Court noted that the insurance product proposed by the broker did not meet the needs of his client. Indeed, the broker had sold a "prepaid" Policy, not a "fully paid up" Policy on which no further premiums were payable. The prepaid Policy entailed risks since the payment process for the premiums from the annual estimated return of the accumulation fund of the Policy was not adequately explained to the client. The broker was held liable to his client, the purchaser of the immovable, because he had erroneously represented that only the premiums of the first year had to be paid at the time of the subscription of the policy and that all the subsequent premiums would be paid for with the returns from the annuity contract. The broker, thus, failed to discharge his duty to

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inform and to advise his client.

As for the extracontractual liability (tort) of the insurance broker toward the seller of the immovable property, the trial judge relied on the principles of the Supreme Court decision *Bank of Montreal* v. *Bail Ltée*[2] to conclude that the broker had failed in his obligation to act in good faith and adequately inform a third party. In fact, the broker clearly understood the objectives sought by the third party. The broker was fully aware of the business agreement entered into between the third party and his client, but nonetheless failed to discharge his duty to inform and, in so doing, committed an extracontractual fault for which he ought to be held liable.

The purchaser of the immovable, the broker and his firm were condemned to pay to the plaintiff an amount of $1,200,010 representing the value of the insurance coverage on his life. The broker and his firm were also condemned to indemnify the purchaser for any amount due in the principal action.

The judgment of the Court of Appeal: The extracontractual liability of the life insurance broker

The Court of Appeal upheld the trial decision on the issue of the extracontractual liability of the broker and his firm toward the third party. The Court of Appeal seems to send a clear message to life insurance brokers whereby they are bound by a duty to inform and a duty of good faith beyond the framework of the contractual relationship and must necessarily consider the interests and rights of a third party when selling an insurance product.

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1. *Robinson* c. *Lefebvre*, 2014 QCCS 3045 (CanLII).
2. *Montréal* v. *Bail Limitée*, [1992] 2 S.C.R. 554.

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