lavery
Lawyers

A Decision of Interest to the Entertainment Industry

July 31, 2019

Authors

Myriam Brixi

Partner, Lawyer

Laurence Bich-Carrière

Partner, Lawyer

Is an event organizer responsible for an artist's late appearance? Context is key, answers the Superior Court's, as it dismisses the application for authorization to institute a class action against Gestion Evenko Inc.[1] regarding Travis Scott's late appearance at the Osheaga Music and Arts Festival in the summer of 2018. Overview of the first class action on this topic in Quebec.

Background

The Osheaga Festival, organized by the defendant, Evenko, is a huge celebration dedicated to music and visual arts where artists of all genres perform for three days on the many outdoor stages set up in Parc Jean-Drapeau on Notre-Dame Island.

Rapper Travis Scott was on the lineup for the evening of August 3, 2018. His performance was scheduled from 9:45 p.m. to 10:55 p.m. on the River stage. Wishing to attend this performance, the plaintiff, who had purchased a weekend pass, went to the venue at 8:45 p.m.

Unfortunately, Travis Scott was held up at customs that evening. The sequence of events can be summarized as follows.

At 9:55 p.m., Evenko displayed a first message on the site's giant screens indicating that the show was delayed for a reason beyond its control.
At 10:15 p.m., Evenko broadcast a second message, both on the giant screens and on Twitter, indicating that Travis Scott had been delayed at customs and was on his way to Notre-Dame Island.
At 10:30 p.m., the plaintiff left the premises; she claimed that she did not believe Evenko's messages, feared a curfew and found the crowd aggressive.
At 10:40 p.m., Evenko broadcast a third message on the giant screens confirming that Travis Scott had arrived on the island.
At 10:55 p.m., Evenko broadcast a fourth message announcing to festival-goers that the show was about to begin.

Copyright (c) Lavery, de Billy, S.E.N.C.R.L. - L.L.P.

The show started at 11:00 p.m. and ended around 11:40 p.m. An application for authorization to institute a class action was filed the next day.

The plaintiff sought to represent nearly 50,000 festival-goers who, in her opinion, suffered prejudice attributable to Evenko. She claimed that Travis Scott's 90-minute delay constituted a breach of contract by Evenko such that all members of the group should obtain a refund equivalent to the value of a daily pass.

The Decision

In carrying out the analysis required by section 575 of the C.C.P., Justice André Prévost concluded that the alleged facts did not appear to justify the conclusions sought. The application for authorization to institute a class action was therefore dismissed.

From the outset, the Court questioned some of the allegations in the application: for example, the plaintiff's assertion that [translation] "Travis Scott's performance was the main consideration in the contract with Evenko" seems incompatible with the fact that she purchased a three-day pass (paras. 51, 56); similarly, there was no evidence to support her claim that the crowd was aggressive (para. 54).

However, it is mainly two deficiencies in the legal syllogism that led the Court to conclude that the application for authorization did not establish an arguable case or a reasonable prospect of success (para. 66).

First, the Court refused to reduce the Osheaga Festival experience to a single performance, even that of a headliner. Rather, it described the event as [translation] "a comprehensive experience [...] whose interest lies in the multiplicity and simultaneity of cultural experiences" (para. 48). In fact, in addition to the invited musical, cultural and circus artists, there are various activities, fairs, cruises and awards ceremonies, to name but a few (para. 48). The Court pointed out that all documents relating to Osheaga's programming and schedule contain one or more of the following warnings: "Schedule and lineup subject to change" or "Artists and schedule subject to change" (para. 47). These warnings are a strong indication that such delays are far from unusual or, in the words of the Court, [translation] "this is not exceptional for those acquainted with the cultural milieu" (para. 57). In this context, Evenko cannot be found to be at fault.

The Court continued its analysis, adding that, even if it were found to be at fault, which is not the case, the situation did not result in any compensable damage: Citing *Sofio*[2] and *Mustapha*[3], the Court pointed out that mere annoyance is not prejudice, and that, in fact, [translation] "there is no evidence that Travis Scott's delayed performance caused a more serious inconvenience than what is usual for people attending festivals of this nature" (para. 65).

In short, in the context of a multi-genre festival, an artist appearing late does not necessarily constitute compensable prejudice and does not automatically amount to the promoter's failure to fulfil its obligations.

What It Means

The decision is important to the entertainment industry in that it recognizes that major event organizers sometimes deal with unforeseen circumstances and they are allowed reasonable leeway to adapt to them. Of course, each situation will be particular, but a well-informed promoter will make sure to indicate that changes are possible in its documentation.

The decision also recognizes that a comprehensive cultural experience is more than the sum of its parts: a single artist appearing late does not cast a pall on the entire event. This conclusion is likely to apply to many other industries: Osheaga is a typical example of a set of distinct and simultaneous

Copyright (c) Lavery, de Billy, S.E.N.C.R.L. - L.L.P.

performances, but the same characterization can be given to all the rides in an amusement park or all the individual sections of a zoological garden.

Our partners, Myriam Brixi and Laurence Bich-Carrière have successfully represented Evenko's interests in this case.

---

1. *Le Stum c. Gestion Evenko inc.*, 2019 QCCS 2422. The time limit for appeal expired on July 22, 2019.
2. *Sofio c. Organisme canadien de réglementation du commerce des valeurs mobilières (OCRCVM)*, 2015 QCCA 1820.
3. *Mustapha v. Culligan of Canada Ltd.*, [2008] 2 SCR 114, 2008 SCC 27.

Copyright (c) Lavery, de Billy, S.E.N.C.R.L. - L.L.P.