The elected domicile appearing in the Québec Enterprise Register cannot provide a basis for the Superior Court's territorial jurisdiction within the meaning of article 41(3) of the Code of Civil Proce

August 9, 2024

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Introduction

On July 11, 2024, the Court of Appeal[1] rendered a decision that, for the first time, addresses the question of whether the elected domicile appearing in the Québec Enterprise Register (the "**REQ**"), established under the *Act respecting the legal publicity of enterprises*,[2] can provide a basis for the Superior Court's territorial jurisdiction within the meaning of article 41(3) of the *Code of Civil Procedure.*[3] Upholding the decision rendered by the Superior Court,[4] the Court of Appeal answered that it cannot.

The Facts

On April 25, 2023, Promark Electronics Inc. and Electrical Components International Inc. (collectively, "**Promark**") filed a claim for damages against Bombardier Recreational Products Inc. ("**BRP**") in the judicial district of Montréal, alleging that a letter of agreement had been terminated and related purchase orders cancelled.

On June 22, 2023, BRP raised a declinatory exception asking the court to issue an order transferring the case to the judicial district of Bedford, where its head office is located. Promark argued that filing its claim in the judicial district of Montréal was warranted because of BRP's elected domicile indicated in the REQ, which corresponded to the office of its counsel located in Montréal. On September 5, 2023, the Honourable Tiziana Di Donato, J.S.C. (the "**Judge**") allowed BRP's declinatory exception and issued an order referring the case to the judicial district of Bedford.

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On November 10, 2023, the Honourable Stephen W. Hamilton, J.C.A., granted leave to appeal the Judge's decision, indicating that the courts have never settled the question of whether the domicile elected under section 33 ALPE is sufficient to make paragraph 3 of article 41 of the C.C.P. apply. He added that it appeared to him that the lower courts had rendered contradictory judgments in this regard.[5]

The Trial Judgement

The Judge began by pointing out that, generally, for a purely personal action, the judicial district of the defendant's domicile is the natural forum (article 41(1) C.C.P.) and that, in the case of a corporation, the domicile would be that of its head office. The Judge further clarified this principle by explaining that, where more than one judicial district has jurisdiction, the plaintiff may institute its proceedings before another court having territorial jurisdiction (article 42 C.C.P.), provided that it establishes that it is entitled to make such an election.

In support of its contestation to the declinatory exception, Promark argued that it was entitled to institute the proceedings in the judicial district of Montréal because BRP had elected its domicile under the ALPE, and that, consequently, that district constituted an "elected domicile" under article 41(3) C.C.P., which reads as follows:

So far as public order permits, the court of the defendant's elected domicile, or the court designated by an agreement between the parties other than a contract adhesion, also has territorial jurisdiction. [Our emphasis]

To render her decision, the Judge determined that article 41(3) C.C.Q. should be interpreted using modern rules of statutory interpretation, adding in particular that it is useful to refer to prior provisions of a law to ascertain the legislature's intent.

The Judge thus revisited the legislative history of article 41 C.C.P., affirming that it essentially restates the prior law, in particular article 68 of the former *Code of Civil Procedure*, CQLR c. C-25, which provided in paragraph 1, subparagraph 1 that ". . . a purely personal action may be instituted: (1) [b]efore the court of the defendant's real domicile or, in the cases contemplated by article 83 of the Civil Code, before that of his elected domicile." Although paragraph 3 of article 41 C.C.P. no longer specifically refers to article 83 of the *Civil Code of Québec* (the "**C.C.Q.**")[6] the Judge, following an interpretive analysis, found that said article still applies to determine whether a party has elected domicile, and stressed the fact that the election of domicile must be express and unequivocal. The Judge added that election of domicile is the exception and must be interpreted restrictively.

As for the scope of an election of domicile under the ALPE, the Judge pointed out that subsection 33(1) ALPE indicates that a business may elect domicile and appoint a person to "receive documents for the purposes of this Act." Article 98(5) ALPE also indicates that the domicile elected by a business under the ALPE is intended to inform third parties of the address where the business wishes to receive documents "for the purposes of this Act." The Judge was thus of the opinion that sections 33(1) and 98(5) ALPE, as drafted, cannot have the scope that Promark seeks to ascribe to them, as they are clear and they do not need to be interpreted. In the case of an election of domicile under the ALPE, the purpose of the election is to provide an address where documents can be sent to the business, unless there is specific evidence to the contrary.

For these reasons, the Judge allowed the declinatory exception and referred the case to the judicial district of Bedford.

The Judgement on Appeal

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From the outset, the Court of Appeal confirmed that the Judge did not commit a reviewable error: (1) the domicile elected for purposes of attributing territorial jurisdiction under article 41 (3) C.C.P. is the domicile designated by the parties for the execution of their agreement within the meaning of article 83 C.C.Q., and (2) the domicile elected under the ALPE is elected for the purposes of applying the ALPE (para. 23).

The Court of Appeal is of the opinion that the Judge's decision is consistent with what the legislature had prescribed in article 68 of the former *Code of Civil Procedure* and upholds stability in the law, which is particularly important in matters of jurisdiction.

After analyzing the parliamentary debates surrounding the enactment of article 41 C.C.P. and the *Commentaires de la ministre de la justice*, the Court indicated that there is a presumption of the survival of the existing legal rule and that, contrary to what the appellants claimed, the wording of article 41 C.C.P. and articles 33 and 98 ALPE do not give the courts territorial jurisdiction other than that of the defendant's domicile. The removal of the reference to article 83 C.C.Q. in article 41 C.C.P. does not constitute a clear indication of the legislature's intent to set aside the requirements of article 83 C.C.Q., under which, for the purposes of determining territorial jurisdiction, the parties must establish the elected domicile in their agreement.

On that basis, the Court of Appeal dismissed the appeal without costs and confirmed the Judge's reasoning that territorial jurisdiction of the courts under article 41(3) C.C.P. is established based on the election of domicile made under article 83 C.C.Q., and not on the election of domicile made by a corporation under the ALPE, whereby a business elects a domicile for the purposes of the application of that law.

Conclusion

This case serves as a reminder that the C.C.Q. establishes the general law in our province. It is therefore important to refer to it when interpreting other laws enacted by the Quebec legislature. Because the legislature is "deemed to know its legislative fabric as well as the existing law,"[7] the Court cannot interpret a given law—such as the ALPE—in a way that would amend a substantive statutory provision of general application—in this case, the C.C.Q.—where there is no clearly expressed intention to that effect.

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1. *Promark Electronics Inc. c. Bombardier Recreational Products Inc.*, 2024 QCCA 906
2. CQLR, c. P-44.1 (the "**ALPE**")
3. CQLR, c. C-25.01 (the "**C.C.P.**")
4. *Promark Electronics Inc. c. Bombardier Recreational Products Inc*., 2023 QCCS 3405
5. *Promark Electronics Inc. c. Bombardier Recreational Products Inc*., 2023 QCCA 1427, para. 8
6. 83. "The parties to a juridical act may, in writing, elect domicile with a view to the execution of the act or the exercise of the rights arising from it. Election of domicile is not presumed."
7. *Promark Electronics Inc. c. Bombardier Recreational Products Inc*., 2024 QCCA 906, para. 24

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