In the Wake of Domtar: Manufacturers' and Professional Vendors' Liabilities - Separate Defences

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In one of the first decisions in Quebec since the landmark Domtar case, the Québec Court of Appeal has refined the parameters of the liability of a professional vendor and of a manufacturer for a latent defect. In this case, Joseph Élie Limitée had sold an oil tank manufactured by Réservoirs d'acier Granby, and supplied the oil to its customer, who was insured by Federation Insurance Company of Canada. When sued by Fédération after the new tank had leaked, Joseph Élie Limitée called in warranty the subcontractor that had removed the old tank and installed the new one Confort Expert Inc.

We summarize you the analysis of the conclusions in the judgement in the first instance and the analysis of the conclusions in the judgment in appeal. Following the judgment issued by the Supreme Court in Domtar, the Court of Appeal has confirmed the essential criteria for the application of the presumption of knowledge provided for in Article 1729 C.C.Q. As in the Domtar case, the Court of Appeal confirms that a manufacturer has a heavy burden to overcome when the product it manufactured is defective.

However, this judgment also shows that a professional vendor (or a distributor) may nevertheless defeat the presumption of knowledge by demonstrating that the product sold was not intended to be opened by anyone other than the purchaser-user, although, evidence must be adduced to support this. The manufacturer and the professional vendor are therefore not necessarily in the same boat!

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