

COURT OF APPEAL

CANADA
PROVINCE OF QUEBEC
REGISTRY OF MONTREAL

No: 500-09-020876-108
(500-22-166287-105 and 500-22-170068-103)

MINUTES OF THE HEARING

DATE: August 19, 2010

THE HONOURABLE YVES-MARIE MORISSETTE, J.A.

PETITIONER	ATTORNEY
FRIEDA SCHNABEL	Personally

RESPONDENT	ATTORNEY
TIFFANY TOWERS CONDOMINIUM ASSOCIATION	Mtre Charles-Justin Nichols

MOTION FOR LEAVE TO APPEAL FROM A JUDGMENT OF THE QUEBEC COURT RENDERED ON JUNE 30, 2010 BY THE HON. FRANÇOIS BOUSQUET DISTRICT OF MONTREAL

Clerk: Annick Nguyen

Court Room: RC.18

HEARING

10h20: Commencement of the hearing.

10h21: Submission by Mrs. Schnabel.

10h32: Submission by Mtre Nichols.

10h38: Reply by Mrs. Schnabel.

10h44: BY THE JUDGE.

Judgment to be rendered on August 19, 2010.

Annick Nguyen

Clerk

JUDGMENT

[1] The petitioner, who is self-represented, seeks leave to appeal from a judgment of the Court of Québec¹ (the Honourable François Bousquet J.C.Q.) which dismissed without costs her proceeding, entitled “MOTION (art. 2765 2803 2804 2814 C.C.Q. Art. 20 47 C.C.P.)” and which granted with costs the respondent’s motion for forced surrender of a hypothecated immovable.

[2] The immovable in question is the petitioner’s condominium, a property in respect of which there arose between the petitioner and the respondent a dispute concerning the payment by her of common expenses owed to the syndicate. A first judgment resolving one aspect of this longstanding dispute was rendered in favour of the respondent by the Court of Québec, Small Claims Division (the Honourable Sylvain Coutlée J.C.Q.) on June 26, 2009. Pursuant to article 984 C.C.P. such a judgment is not appealable. Although the petitioner claims at this very late stage that she was prevented from presenting evidence in support of her case, no attempt was made by her to question the legality of the procedure for want or excess of jurisdiction. Therefore, this judgment is now *res judicata*. In late November 2009, on the basis of article 2724, par. (3) C.C.Q., the respondent published a notice of legal hypothec on the property. In an “Application for the correction of a legal hypothec”, the petitioner challenged the accuracy of the amount appearing in this notice, claiming *inter alia* that the respondent “did not exercise the option outlined in Art. 2729 C.C.”. On February 8, 2010, the Court of Québec (the Honourable Brigitte Gouin J.C.Q.) dismissed this proceeding and the petitioner did not apply for leave to appeal from this judgment.

[3] In the detailed and carefully reasoned judgment he rendered on June 30, 2010, Judge Bousquet notes:

[9] Le Tribunal discutera d’abord de la requête datée du 8 mars 2010 dont le titre est « MOTION (Art. 2765 2803 2804 2814 C.C.Q. Art. 20 471 C.C.P.) »

[10] Dans cette requête Freda Schnabel plaide essentiellement que les états financiers et livres comptables du syndicat des copropriétaires indiquent des montants incorrects, faux ou invraisemblables et elle conclut comme suit :

“For the above reasons, the Petitioner respectfully request that a Honourable Judge of this Court forbid the Respondent to exercise rights under Art. 2759 and 2791 Civil Code of Québec and order the Respondent to clarify the issues set forth in this Motion” (Sic)

[11] Cette requête faite le 8 mars 2010 ne pouvait pas être produite ni présentée dans le dossier 500-22-166287-105 puisque l’instance avait définitivement pris fin, un mois auparavant, lorsque l’Honorable Brigitte Gouin, J.C.Q., avait rejeté la requête introductive d’instance de Freda Schnabel datée du 7 janvier 2010.

¹ 2010 QCCQ 5485.

[12] Par ailleurs, le recours hypothécaire dont Freda Schnabel demande la suspension concerne une créance dont au moins une partie ne peut plus être contestée.

[13] En effet, le syndicat des copropriétaires a exercé, en 2007, un recours personnel devant la division des petites créances de cette Cour relativement aux arrérages des frais de condo dus par Freda Schnabel. Ce recours a été accueilli par un jugement daté du 26 juin 2009 dans lequel l'Honorable Sylvain Coutlée, J.C.Q., condamne Freda Schnabel à payer des arrérages de frais de condo totalisant 3 145,94\$ plus les intérêts, ainsi que l'indemnité additionnelle prévue à l'article 1619 C.c.Q. et les dépens.

[14] Freda Schnabel affirme que ce jugement n'est pas fondé mais il n'a jamais été légalement remis en question et il a maintenant acquis l'autorité de la chose jugée.

[4] I find that this description accurately reflects the state of the record I have before me. The petitioner does not show in any plausible let alone persuasive way that the judgment in respect of which she is seeking leave to appeal suffers from a reversible flaw; and mere obduracy on the part of a litigant is never a substitute for a valid cause of action or valid ground of appeal.

[5] Furthermore, the conditions set out in article 26 *C.C.P.* are here applicable: leave is granted only where "the matter at issue is one which ought to be submitted to the Court of Appeal, particularly where, in the opinion of the judge, the matter at issue is a question of principle, a new issue or a question of law that has given rise to conflicting judicial precedents". No such issue is apparent from the record and the precautions taken by the trial judge in paragraphs [27], [28] and [43] to [49] (among others) of his reasons, satisfy me that, even if the process started in late November 2009 follows its course, it will generate no injustice capable of giving rise to even the semblance of a question of principle.

[6] For these reasons, the motion is DISMISSED, but without costs.

YVES-MARIE MORISSETTE, J.A.