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Case Commentary on *Cirque du Soleil Inc. v. Volvo Group Canada Inc. et al*

By: Sean Valentine, McCague Borlack LLP

The Ontario Superior Court of Justice recently released the decision *Cirque du Soleil Inc. v. Volvo Group Canada Inc.*[1] where Michael Blinick, partner at McCague Borlack, with the assistance of Matthew Malcolm, associate, successfully defeated a motion to dismiss the claim by one defendant on the basis that the defendant corporation had been previously dissolved pursuant to California law. Costs were also awarded for Michael's victory.

Factual Background

The plaintiff, Cirque du Soleil Inc. ("Cirque") produces theatrical shows in which it relies upon large generators to power its productions. The defendant, Power and Electronic Co. ("PECo"), which was incorporated under the law of the State of California, manufactured and supplied the plaintiff with the generators. On September 10, 2012, during a theatrical production held in Toronto, one of the generators malfunctioned and caught fire and caused substantial property damage and economic loss.

PECo was dissolved effective January 2, 2013 pursuant to California law upon the voluntary filing of a Certificate of Dissolution.

Cirque issued its statement of claim against PECo and the other defendants on August 26, 2014 to recover its losses claiming that PECo was negligent in the design and manufacture of the generators, amongst other things.

PECo sought an order dismissing the action against it on the basis that it lacked the legal capacity to be sued in Ontario as it was a dissolved foreign corporation.

The Honourable Justice Chapnik's Decision

The Honourable Justice Chapnik denied PECo its request for an order dismissing the action against it. She stated that the issue of dissolution of a corporation is a question of fact based on the evidence of the foreign law concerned.[2] As such, the question of whether a corporation has been dissolved must be decided by reference to the law of the place of the alleged incorporation.

The Honourable Justice Chapnik pointed to the California Code which specifically permits a dissolved corporation to "continue to exist" for various purposes, including "prosecuting and defending actions by or against it."[3] With this in hand, Justice Chapnik stated that the evidence

[1] 2015 ONSC 2698.
[2] *Ibid*, at para. 22.
[3] *Ibid*, at para. 19.

was clear and unambiguous that PECo was never "dissolved" and continued to exist for, among other things, the purpose of this lawsuit.[4] She ultimately concluded that PECo had the legal capacity to be sued in Ontario for damages arising from its alleged negligence notwithstanding its voluntary dissolution.[5]

This case offers insight into issues arising from conflict of laws between jurisdictions. It stands for the principle that a corporation cannot simply file for dissolution and expect to be immune from liability arising from its alleged negligence committed prior to dissolution unless this is contemplated in the jurisdiction of incorporation (an obvious rarity). This is a great win for the Plaintiff as well as other future plaintiffs who are seeking recourse from a foreign corporation that voluntarily dissolved prior to the initiation of a legal action.

Read Full Case Decision

[4] *Ibid*, at para. 23.
[5] *Ibid*, at para. 31.