

Wheels of Justice: Judge heads off \$1 property sale

BY PAUL DELEAN, THE GAZETTE DECEMBER 28, 2011

Every month, Quebec judges and regulatory agencies issue dozens of rulings that, without making headlines, set the ground rules for business in Quebec.

Here are a few of the offbeat and/or consequential rulings rendered in recent weeks.

A bitter feud between brothers over a real-estate transaction ended with Superior Court Judge Dionysia Zerbisias annulling the transfer of a million-dollar-plus penthouse apartment in Montreal.

The price on the notarized deed of sale was \$1.

The older brother on the receiving end claimed the deal was an “act of conscience” by his younger brother to compensate him for not receiving anything from the final estate of his father, who had labelled him “the black sheep of the family” and cut him out of the will prior to his death in 2007.

The brother who inherited the apartment from his father, and then leased it to his older brother, asked for the annulment on the grounds he’d been misled.

He said he received an offer of \$1.1 million for the apartment in 2008, but his brother then offered him \$1.2 million.

He told the court his brother wanted the deed to show \$1 because the municipal evaluation was \$400,000 lower so his “welcome tax” would be based on a lower figure.

Their understanding, confirmed before a notary who testified at the trial, was that the sale price was \$1.2 million.

But the money was never paid. The younger brother subsequently learned the other brother had put the property up for sale, for \$1.25 million, just four days after the deed was registered, and had been approached by the same buyers who made him the initial offer. That’s when he took legal action.

Judge Zerbisias said the older brother, who remained in the apartment but stopped paying taxes and condo fees that now exceed \$67,000, is manipulative and malicious, has “an elastic notion of truth” and presented a version of events that was “inconsistent, illogical and unworthy of being believed.”

“By contradicting himself, (he) divests himself of any reasonable explanations as to why (his brother) would give him an apartment worth \$1.2 million.”

As well as voiding the transfer, Judge Zerbisias awarded the younger brother costs of \$282,882 to compensate for his sibling’s “abusive” use of legal proceedings.

In another estate-related contestation, three daughters of a man who changed his will and insurance policies to make a new spouse his lone heir failed to convince a judge that a previous will should have precedence over the latest one, prepared in 2005.

The daughters argued the man – who died after being struck by a car in 2007 – did not change his will rationally and of his own volition.

He'd suffered serious head injuries in a motorcycle accident in 1995, four years after he began to cohabit with the woman he'd eventually make his sole beneficiary, and court was told that after the accident, he began to drink heavily.

One daughter testified that the woman had refused her father's proposal to marry her in 1994 because she didn't want to sign a pre-nuptial agreement.

Although never legally married, they remained together until his death. The woman said he became rude and aggressive after the accident and the burden of caring for him got heavier, but she cared for him well.

Superior Court Judge Martin Bédard said the fact the man had been seriously injured in 1995 didn't mean he could not make a rational decision in 2005,

And he didn't accept the daughters' argument the spouse had isolated him from them, saying the man had the same daily routine for years, eating breakfast and lunch alone at two specific restaurants, and they could have met him there any time they chose.

"Nothing in the evidence leads me to doubt the (woman's) good faith," Bédard said. "The modifications to the will reflect a reality: as the plaintiffs' (daughters) distanced themselves from their father, (his new spouse) assumed a greater role."

He said the woman was devoted to the father "right to the end," and there was no cause to reject the 2005 will.

An employed woman who received more than \$52,000 in unjustified unemployment insurance benefits over a four-year period, money she said was all lost at a casino, received a suspended sentence of two years less a day from Quebec Court Judge Christine Auger, but with conditions requiring her to remain at home much of the time she's not at work.

The woman, a married, 48-year-old mother of two who earned \$3,400 a month from her job, misreported her income or falsely claimed not to be working in regular telephone reports to the Employment Insurance office.

She already had an outstanding file with welfare authorities after collecting more than \$85,000 from them without cause. That money also was lost at the casino, which at one point she was visiting four or five times a week, the woman testified.

Court was told she has enrolled in a program for problem gamblers and hasn't gone to the casino in a year. She's also repaid \$33,000 of the benefits she received fraudulently, leaving a balance of \$79,000.

About 30 per cent of her weekly salary now is deducted automatically for debt repayment, and Judge Auger ordered that to continue until the full amount is repaid.

The woman also cannot have a computer with Internet access to online gaming sites.

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