

## Legal update

# The Supreme Court of Canada confirms that, barring rare exceptions, shareholders cannot bring proceedings when a corporation suffers damages that result in a loss in the value of their shares

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**December 2018**

### Dispute resolution and litigation

In a recent decision, the Supreme Court of Canada<sup>1</sup> confirms that, barring rare exceptions, shareholders cannot bring proceedings when a corporation suffers damages that result in a loss in the value of their shares.

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### The facts

Mr. Yves Brunette and Mr. Jean M. Maynard, acting in their capacity as trustees of Fiducie Maynard 2004 (the 2004 Maynard trust, or **Fiducie**) instituted proceedings before the Superior Court of Québec against lawyers and accountants to recover the lost value of Fiducie's patrimony, claiming that the professionals had committed a number of faults (i.e., in setting up the tax structure of Groupe Melior) and, in doing so, had breached their duty to advise Fiducie.

Fiducie was the sole shareholder of 9143-1304 Québec Inc., a holding company that controlled, in whole or in part, the corporations making up Groupe Melior.

Owing to the discovery of a \$1.8 million fraud against the corporations and the unexpected notices of assessment issued by Revenu Québec, most of the Groupe Melior corporations went bankrupt, resulting in the total loss of value of the patrimony of Fiducie, which was comprised exclusively of shares in 9143-1304 Québec Inc.

The respondents moved to dismiss Fiducie's claim for lack of sufficient interest on the basis that, as an indirect shareholder of the corporations, Fiducie had no right to claim losses equivalent to the value of the assets that had belonged to the corporations.

Both the trial judge and the Court of Appeal found that the trustees did not have sufficient interest to act for and on behalf of Fiducie, and therefore could not claim damages on the grounds that the right of action, if one did exist, belonged to the Groupe Melior corporations.

### The decision

The Supreme Court therefore had to decide whether Fiducie, as a shareholder of Groupe Melior, could sue the lawyers and accountants of Groupe Melior to claim the value of the shares that was lost when 9143-1304 Québec Inc. went bankrupt.

In its decision, the Supreme Court confirms that the principles of procedural and corporate law in Québec bar shareholders from exercising rights of action that belong to the corporations whose shares they hold. The Supreme Court also indicates in its judgment that the same is true under the common law principles that apply elsewhere in Canada.<sup>2</sup> Fiducie was claiming that civil law diverges from common law and that, under the circumstances, it allowed Fiducie to bring this action on the grounds that it had the legal interest needed to claim the loss of value of the Groupe Melior shares.

The Supreme Court found and affirmed that only a direct damage can be invoked before the courts under civil law, and that the shareholders cannot bring proceedings based on damages incurred by the corporation unless they can establish:

- a breach of an obligation that is distinct from the one incumbent on the party having committed a fault against the corporation;

and

- a direct injury that is distinct from that suffered by the corporation.

Once their analysis complete, the majority of the Supreme Court judges concluded that the motion to institute proceedings did not disclose the breach of a distinct legal obligation, nor did it disclose an injury distinct from that suffered by the Groupe Melior corporations. This being the case, Fiducie therefore failed to demonstrate a direct and personal interest allowing it to claim damages from the lawyers and accountants of Groupe Melior.

The position expressed by the Court majority, which required that the shareholder demonstrate an injury distinct from that of the corporation in order to claim a direct injury within the meaning of civil law, makes it very difficult for shareholders to bring an action for damages suffered by a corporation.

In this decision, the Supreme Court is reaffirming the importance of the distinct legal personality of corporations and their shareholders. Seeing as the shareholders opted for this corporate vehicle, they must now assume the consequences of that choice. Just as the shareholders cannot be held liable for the faults committed by the corporation, they also cannot claim damages for the faults committed against it.

In *obiter*, the Court majority reminds us that given the scarcity of judicial resources, it is important that the courts be able to dismiss claims that are manifestly unfounded at a preliminary stage, including for lack of sufficient interest. In the Court's opinion, these powers are crucial for the proper functioning of the courts, and allow for the fair and just resolution of disputes.

Samuel Perron

## Footnotes

- <sup>1</sup> *Brunette v Legault Joly Tiffault s.e.n.c.r.l.*, 2018 SCC 55. For the reasons written by Justice Rowe, the Court majority dismissed the appeal whereas the dissenting judge, Justice Côté, would have allowed it.
- <sup>2</sup> *Foss v Harbottle* (1843), 2 Hare 460, 67 ER 189 (HL).

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