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RECOURSE PURSUANT TO THE LAND USE PLANNING AND DEVELOPMENT ACT, ARTICLES 227 AND CONSECUTIVE ARTICLES: PAY ATTENTION TO THE SPECIFIED DELAYS!

by : Me Albert Prévost, lawyer

Articles 227 and consecutive articles of the *Land Use Planning and Development Act* specify recourse available to municipalities and other interested parties in cases of non-compliance with municipal planning bylaws. Essentially, this recourse consists of starting procedures in Superior Court to obtain orders to demand that guilty parties comply with relevant regulations.

Municipal representatives may be aware of contraventions to municipal bylaws for some time before the council decides to bring the matter to court. For various reasons municipalities may tolerate certain situations for months, even years. In general, courts have refused to conclude that such tolerance constitutes a valid defence against procedures to obtain compliance with municipal regulations. In these cases, jurisprudence shows that a municipality always has the right to request compliance with regulations, even if it has delayed in taking action.

However if the municipality knows that regulations are not respected and tolerates the situation over a long period of time, the court may reject the municipality's request. When proceedings are instituted pursuant to articles 227 and consecutive articles in the *Land Use Planning and Development Act*, the court has the discretionary power to reject the suit, particularly if the taxpayer's alleged derogations are minor as compared to the result that is desired.

In a recent decision dated March 21, 2007, in the matter of *Ville de Blainville vs. Les Soudures Gravel inc. et als* (C.S. Terrebonne, 700-17-002333-044), the honourable Pierre Joutet rejected the city's suit to obtain a court order to force Les Soudures Gravel inc. to cease operating a welding shop located in an agricultural zone.

The judge first noted that a court has the discretion to reject a suit instituted pursuant to articles 227 and consecutive articles in the *Land Use Planning and Development Act*, even if it recognizes that municipal regulations have not been respected. What is of particular interest in this decision, is that the honourable judge indicated when exercising this discretion, that courts should consider the delay from the time the municipality became aware of the operation to when they decided to seek a cessation order.

In this particular matter we must underline that a part of the workshop's activities complied with the bylaws in that they were related to agricultural activities. However the shop also did some welding that was not connected to agriculture. In exercising his discretion and rejecting the city's suit, the judge noted that the city had been aware of the shop's operations for nearly 20 years and had sometimes even used the services of Les Soudures Gravel inc. to repair machines and fire equipment belonging to the city. The judge added that closing the welding shop would be to apply the municipal regulations strictly and blindly and this would be unfair to the defendants.

For municipalities, this decision highlights the importance of acting rapidly once they are aware of a contravention of their municipal planning bylaws, and also underlines the fact that tolerating such a situation for a long period of time is an element that could be used in determining if a court will exercise its discretion. In other words, although a delay is not an

absolute obstacle to obtaining a court order to respect municipal planning regulations, in some circumstances the court could take this delay into consideration with negative consequences for the municipality.

CREDITORS, TAKE ACTION!

By: *Me Louis Morency*, lawyer

When a business sells movable property in the course of ordinary transactions, the creditor's mortgage on that property can be transferred to replacement properties or if there are no replacement properties, they can be transferred to the product of the sale if it can be identified¹. If a business sells moveable assets that are not their main product, such as equipment or material used for operations, the *Civil Code of Quebec* stipulates that the mortgage may follow the assets in the hands of the purchaser². It seems that this article was designed to protect the creditor, especially when businesses are liquidated without a creditor's knowledge.

To benefit from this provision, the creditor must publish a notice of the mortgage in the Record of personal and movable real rights (R.D.P.R.M.) and send a copy to the purchaser within 15 days from the date he received written notice of the sale. If the creditor does not receive written notice of the sale, in principle the 15-day delay does not expire, and, in spite of the sale, the moveable assets remain the creditor's collateral for the mortgage. However, if the creditor does not publish and send a notice of the record to the purchaser within the 15-day delay from the date he received the written notice, the mortgage will not follow the assets and they will be free of liens.

As for conditions for the written notice to the creditor which begins the 15-day count-down, the Code stipulates only that it must indicate which asset was sold and to whom. The courts have not concentrated on specific details regarding the criteria for the written notice and the means by which this notice must be sent.

In a recent matter³, the Superior Court considered that the mention of the sale of assets in unverified financial statements sent to the bank was a notice usable and valid in law. The honourable judge decided that the notes in the financial statements were sufficient in the case at hand, particularly because the representative of the debtor business had discussed this fact with the representative of the bank.

The court accepted the application from the purchaser of the assets opposing the creditor bank. In this decision, the Court substantially reduced the formalities regarding the written notice creditors can expect regarding the sale of collateral assets.

If creditors with an hypothec on moveable assets are aware of the sale of these assets, they should not wait for a formal written notice before taking whatever steps may be required to preserve their collateral.

¹ Art. 2674 C.c.Q.

² Art. 2700 C.c.Q.

³ *Canadian Imperial Bank of Commerce vs. sinage Aerotel inc. & als*, EYB 2006-111412, judgment rendered on November 23, 2006

NEWS FROM OUR FIRM

- The fifth edition of the annual auction of the **Grands Frères et Grandes Soeurs de la Porte du Nord** was held on April 3rd. A total of \$21,000 was raised. Congratulations to the event's organizing committee, which included **Me Julie Lavoie** and **Claude Le Bourdais**.
- **Me Stéphane Sansfaçon**, from our firm's environment and municipal law division will lead a training session for elected representatives and municipal officers in the Laurentians on April 17th and May 3rd in Sainte-Adèle and Mont-Laurier. The training session, on acquired rights and discretionary town planning bylaw, is sponsored by the Fédération québécoise des municipalités (FQM).



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