

DAMAGE CAUSED BY A WATERCOURSE: MUNICIPAL AUTHORITIES MAY SOMETIMES BE LIABLE

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In the recent decision of *Orsoni v. Ville de Sainte-Thérèse* [1], the Quebec Superior Court rendered judgment in a dispute between Jean-Pascal Orsoni and Pascale Orsoni, and the City of Sainte-Thérèse and the Regional County Municipality Thérèse-De-Blainville (together, the “Defendants”). This decision highlights the powers and responsibilities of municipal authorities regarding certain watercourses.

Facts

In 2008, the couple began residing on a property in the City of Sainte-Thérèse. From the start, the couple experienced – several times a year – major overflows of water and mud coming from a street above their property.

In 2020, the couple suffered several occurrences of damage, including subsidence of the ground on top of a storm sewer pipe. This prompted them to institute legal proceedings against the Defendants in April 2021. The couple sought, *inter alia*, the replacement of the damaged storm sewer pipe, the restoration of the premises to their original state, and the performance of adequate work to put an end to the overflowing of water and mud onto their property.

While the Defendants acknowledged that the storm sewer pipe needed to be replaced, they maintained that this was the couple’s responsibility. As it concerns the water overflows, the City maintained that it had adequately remedied the problem in August 2020 by installing a sump pump and an asphalt border to prevent the water from overflowing onto the couple’s property during the snowmelt period.

The Municipal Powers Act (MPA)

Article 103 of the *Municipal Powers Act* (“MPA”) gives regional county municipalities (“RCMs”) jurisdiction over certain continuously or intermittently flowing watercourses. This is an express jurisdiction of RCMs in environmental matters. The following articles summarize the obligations of RCMs pursuant to this jurisdiction.

Under article 105 MPA, RCMs are obligated to carry out the work required to restore a watercourse’s normal water flow if informed of an obstacle in the watercourse that threatens the safety of persons or property. Article

107 MPA gives RCMs the right to access the property of others to carry out watercourse-related work, but obliges them to restore the premises to their original state and to pay compensation for any damage caused by their actions.

Article 108 MPA provides that a RCM may delegate the management of watercourse-related work to a municipality in its territory, which was done in in the present case.

The Extracontractual Liability Regime Applicable to RCMs

Article 105 MPA supplements the rules of extracontractual liability under articles 1457 and following of the *Civil Code of Québec* to which RCMs are subject vis-à-vis citizens.

Thus, failure to fulfill the obligation to act when the conditions of article 105 MPA are met constitutes a fault that may engage the extracontractual liability of the RCM (or the City if there is an agreement to that effect).

In addition, article 1465 CCQ creates a presumption of liability once it is established that damage was caused by the autonomous act of a thing of which the RCM was the custodian. The RCM may rebut this presumption by proving it was not at fault, or by proving force majeure or fault on the part of the victim or a third party.

In this instance, the Defendants argued that the couple, as owners or custodians of the pipe (art. 1465 CCQ), were obliged to repair it and are responsible for their own damages pursuant to the theory of the ruin of buildings (art. 1467 CCQ).

The Court, however, rejected those arguments. The evidence showed that the pipe was an integral part of the City's storm sewer network and that the City was the custodian of its wastewater collection and disposal system. Moreover, the Court emphasized that the City's actions after the occurrences of damage on the couple's property show that it considered itself the custodian or owner of the storm sewer pipe at issue, within the meaning of articles 1465 and 1467 CCQ.

The Decision

The Court ruled in favour of the couple and ordered the Defendants to replace the pipe and restore the premises to their original state, at their expense.

Regarding the water overflows, the Court found that the City's solution to this problem was clearly inadequate and ordered it to remedy the situation.

Conclusion

This matter involves a situation that is likely to become increasingly common due to climate change. It is thus important for property owners to understand the responsibilities of RCMs and municipalities regarding the

management of watercourses in order to know what recourses are available in the event of damages caused by watercourses.

[1] 2023 QCCS 2350

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A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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