

MONTREAL LARGE-SHOW VENUE ORDERED TO BETTER CONTROL THE NOISE IT GENERATES

Posted on December 14, 2023

Categories: [Insights](#), [Publications](#)

In its recent decision in *7350121 Canada inc. c. Ville de Montréal*,^[1] the Quebec Court of Appeal (hereinafter the “Court”) upheld the trial judge’s order regarding a nuisance caused by noise, but clarified its scope.

Facts

7350121 Canada Inc. leases an immovable property in Montreal where, since 2012, it has been operating New City Gas, a large-scale show and event venue and a bar. The property also has outside patios used for events where music is played. These activities are no longer permitted today under the zoning applicable to what is now a very densely populated area of Griffintown, but 7350121 Canada Inc. has acquired rights protecting the activities it legally carried on prior to the zoning changes.

A few years after 7350121 Canada Inc. began operating New City Gas, the City of Montréal (hereinafter the “City”) filed an application for cessation of land use incompatible with the municipal by-laws, under section 227 of the *Act respecting land use planning and development*^[2] (hereinafter the “Act”). The City claimed that certain activities of 7350121 Canada Inc. contravened *Règlement 01-280 d’urbanisme de l’arrondissement du Sud-Ouest* (hereinafter “By-law 01-280”). The City also sought an order under article 9(1) of the *By-law concerning noise*,^[3] which prohibits, where it can be heard from the outside, noise produced by sound equipment, “whether it is inside a building or installed or used outside.”

The trial judge ruled in favour of the City and concluded that the activities carried out on the patios were not authorized under the zoning by-laws. Even taking into account the acquired rights enjoyed by 7350121 Canada Inc., the patios are allowed to be used as a sidewalk café only and multiple restrictions apply. All other authorized uses must be exercised inside buildings.

In particular, the judge ordered 7350121 Canada Inc. to remove the sound devices from its patios, cease all shows there, and ensure that noise from indoor activities cannot be heard from the patio.

7350121 Canada Inc. raised three grounds of appeal, all of which were dismissed by the Court.

Good faith

Good faith is a test established in *Chapdelaine*^[4] regarding a judge's discretion when assessing an application for an order under section 227 of the Act. The actions of the person who contravenes the by-laws are taken into account, beyond the presumption of good faith. In this case, the Court noted the lack of transparency and good faith of 7350121 Canada Inc. and therefore dismissed this ground of appeal. The appellant's multiple attempts to circumvent the by-laws was also noted.

Characterization of outside patios

7350121 Canada Inc. sought to convince the Court that the patios are buildings under section 172 of By-law 01-280. However, this literal interpretation is contrary to modern interpretation methods, under which legislative wording must be read in its overall context to be consistent with the legislation as a whole, its purpose and the legislator's intent.

These patios, or inner courtyards, as 7350121 Canada Inc. describes them, are not buildings, as these spaces outside the building are limited to the building's outside walls. In addition, the by-law establishes additional criteria for the height or density of these spaces, which cannot apply to these outside patios.

Accordingly, the interpretation of 7350121 Canada Inc. was rejected, as it is contrary to the legislator's purpose, which is to minimize neighbourhood annoyances by limiting noise to inside a building.

Interpretation of "noise" pursuant to the *Regulation concerning noise*

The Court interpreted the decision of the Supreme Court in *Montréal (City) v. 2952-1366 Québec Inc.*^[5] and the three cumulative criteria for qualifying noise pursuant to article 9 of the *By-law concerning noise*. The by-law prohibits noise that (1) comes from sound equipment, (2) is located inside a building or used outside the building, and (3) is heard from the outside.

The crux here is that even if the noise originates from inside a building, it is prohibited if it can be heard from the outside and is detrimental to the peaceable use of urban space.

However, the Court acknowledged that sound coming from inside the building that is audible on the patios but not in the public outdoor urban space is permitted.

Conclusion

Accordingly, the Court upheld the trial judge's decision but amended the order to ensure that it only applies when noise from the building's activities can be heard in public urban space, which excludes the patios of 7350121 Canada Inc.

[1] *7350121 Canada inc. c. Ville de Montréal*, 2023 QCCA 1335.

[2] *Act respecting land use planning and development*, CQLR, c. A-19.1.

[3] B.C.M. c. B-3.

[4] *Montréal (Ville) c. Chapdelaine*, 2003 CanLII 28303 (QC CA).

[5] *Montréal (City) v. 2952-1366 Québec Inc.*, 2005 SCC 62.

by [Martin Thiboutot](#) and [Léa Jaouich](#) (Articling student)

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.

© McMillan LLP 2023