

IRENEE SICARD (*Defendant*) APPELLANT;

1957

*May 28, 29
June 26

AND

LEON-DAVID GERMAIN (*Plaintiff*) RESPONDENT.ON APPEAL FROM THE COURT OF QUEEN'S BENCH, APPEAL SIDE,
PROVINCE OF QUEBEC*Contract—Sale—Intpretation.*

The defendant agreed to buy from the plaintiff 75 shares in a company for the sum of \$200 per share plus an additional amount to be determined as soon as certain outstanding government claims against the company had been settled. The additional amount was to be equal to "la différence entre la somme de \$200 . . . et la valeur nette des dites actions, basée sur le rapport des auditeurs de la Cie annexé aux présentes . . . après avoir donné effet au règlement des dites réclamations".

Held: The agreement was clear and unambiguous in its terms. The parties accepted as final the valuation of the company's assets and the amount of its liabilities as set forth in the auditors' statements and as shown on its books, with the exception that the items showing the estimated liability for contract refunds and the estimated liability for taxes were to be replaced by the actual amounts when the claims were settled. The settlement of the two liabilities was bound to affect the company's surplus of assets over liabilities but it could not affect the value of the assets of the company nor the amount of the other liabilities as accepted by the parties in their agreement.

APPEAL from the judgment of the Court of Queen's Bench, Appeal Side, Province of Quebec, reversing the judgment at trial. Appeal dismissed.

H. Gérin-Lajoie, Q.C., and *Charles J. Gélinas, Q.C.*, for the defendant, appellant.

Louis-Joseph de la Durantaye, Q.C., and *Jean Filion, Q.C.*, for the plaintiff, respondent.

The judgment of the Court was delivered by

ABBOTT J.:—For some years prior to June 18, 1945, both appellant and respondent had been actively engaged in the management and operation of a company known as Sicard Limitée. This appeal turns upon the interpretation to be given to an agreement dated June 18, 1945, between appellant and respondent, under the terms of which appellant

*PRESENT: Taschereau, Cartwright, Fauteux, Abbott and Nolan JJ.

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purchased from respondent 75 shares of the capital stock of the said Sicard Limitée owned by respondent. The agreement of sale reads as follows:

M. L. D. Germain.

Je, soussigné, par les présentes, vous offre d'acheter soixante-quinze (75) actions ordinaires du capital-actions de Sicard Limitée, pour et en considération du paiement des sommes suivantes:

A.—Une somme de \$200 par action, représentant le prix payé par vous pour l'acquisition desdites actions, ladite somme devant être payée comptant sur la livraison des certificats d'actions dûment endossés et transférés en mon nom;

B.—Une somme additionnelle qui sera déterminée dès que les réclamations des Départements des Munitions et de l'Impôt sur le revenu auront été réglées définitivement et qui sera égale à la différence entre la somme de \$200 ci-dessus payée comptant et *la valeur nette desdites actions, basée sur le rapport des auditeurs de la Cie annexé aux présentes et sujet à la vérification de L. D. Germain après avoir donné effet au règlement desdites réclamations.* Cette somme sera payable dès que l'évaluation desdites actions aura été complétée.

L'achat desdites actions sera censé prendre effet comme en date du 31 août 1944.

La présente offre doit être acceptée immédiatement et à défaut de telle acceptation elle deviendra caduque et sans effet.

Montréal, 18 juin, 1945.

ACCEPTÉE:

(Signé) I. SICARD

(Signé) L. D. GERMAIN.

(The italics are mine.)

As originally drafted by appellant, this agreement contained the following words in clause B following the words "la valeur nette desdites actions":

tel que fixée par les Auditeurs de la Compagnie, et approuvée par M. M. Lajoie, Gélinas & Macnaughten, avocats,

but at the suggestion of respondent these words were struck out and replaced by the words:

basée sur le rapport des auditeurs de la Cie annexé aux présentes et sujet à la vérification de L. D. Germain.

The amount of \$200 per share called for by clause A of the agreement was paid and respondent's claim is for the balance alleged to be owing under the provisions of clause B.

Appellant contends that the terms of clause B require that "la valeur nette" of the company's shares be established (i) by using as a basis the financial statements annexed to the agreement, but also (ii) by giving what Mr. Gérin-Lajoie described as "full effect" to certain settlements made with the Department of Munitions and Supply

with respect to war contracts and with the Department of National Revenue with respect to liability for income tax and excess profits tax.

Before the Superior Court and the Court of Queen's Bench, respondent took the position that the agreement entitled him, by reason of his right of "vérification", to revalue all the assets of the company and to revise the amount of all its liabilities following the final determination of the two claims referred to, in order to ascertain the net value of the shares. This interpretation was rejected by the trial Court and by the Court of Queen's Bench, and was not urged before this Court.

Alternatively respondent submitted that the financial statements prepared by the company's auditors and annexed to the agreement were to be accepted as final in determining the value of the assets and the amount of the liabilities of the company as shown therein, leaving only the undetermined claims for contract refunds and taxes to be replaced when these items had been finally settled. This interpretation was accepted by the Court of Queen's Bench and is the one urged by respondent before this Court.

It is conceded that the financial statements annexed to the agreement accurately reflected the financial position of the company as shown by its books at August 31, 1944, including the value placed upon its assets and the amount of its liabilities, both actual and estimated.

I am in respectful agreement with the view expressed by Bissonnette and Hyde JJ. in the Court below, that the agreement of sale is clear and unambiguous in its terms. The parties accepted as final for the purposes of the agreement the value of the company's assets and the amount of its liabilities as set forth in the auditors' statements and as shown on its books with two exceptions, namely, the estimated liability for contract refunds and the estimated liability for income and excess profits tax. In these two instances the actual amounts when these were determined were to replace the estimated amounts shown in the statements. In addition, respondent reserved the right to verify (1) that the auditors' statements annexed to the agreement were in accordance with the company's books and (2) the amounts finally settled as being the company's actual liability for contract refunds and taxes.

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Respondent, having ceased to be a shareholder of Sicard Limitée, took no part in the settlement of the two Government claims although it was obviously in his interest as well as in that of the company that these claims should be settled for the lowest possible amount. The final determination of the exact amount of these two liabilities may have rendered it desirable that some changes be made in the company's books in order to make them conform to approved accounting practice. This, however, was something in which the respondent had ceased to have any interest, and he was, of course, in no position to have any say as to what changes it might be deemed desirable to make in the company's books. The settlement of the two liabilities in question was bound to affect the company's surplus of assets over liabilities but the final determination of the amounts owing for contract refunds and taxes could not affect the value of the assets of the company, nor could it affect the amount of the company's other liabilities as accepted by the parties in their agreement of June 18, 1945.

For these reasons as well as for those given by Bissonnette and Hyde JJ. in the Court below, with which I am in respectful agreement, the appeal should be dismissed with costs.

Appeal dismissed with costs.

Solicitors for the defendant, appellant: Lajoie, Gélinas & Lajoie, Montreal.

Solicitor for the plaintiff, respondent: L. J. De La Durantaye, Montreal.
