

DAME REJANE BASTIEN ET VIR }
(Defendant) }

APPELLANT;

1961
*Jun. 5, 6
Oct. 3

AND

J. M. DESSUREAULT INC. (Plaintiff) RESPONDENT.

ON APPEAL FROM THE COURT OF QUEEN’S BENCH, APPEAL SIDE,
PROVINCE OF QUEBEC

Contract—Assignment of debt with notice—Whether absolute transfer or merely a pledge—Civil Code, art. 1174, 1571.

In December 1955, A Co. owed the plaintiff \$6,906.68 for materials furnished and assigned to the plaintiff a debt of \$6,841.42 it claimed was owed to it by the defendant. The transfer, a copy of which was duly served on the defendant as required by art. 1571 of the *Civil Code*, purported to assign and transfer the debt (cède et transporte) and concluded by these words: “The present security is granted subject to the other securities which [the grantee] presently holds or may hold”. In the action, following the refusal of the defendant to pay the amount under the assignment, the defendant pleaded that the assignment was not an absolute transfer but was one by way of pledge only. The trial judge dismissed the action on that ground, but his judgment was reversed by the Court of Appeal.

Held: The appeal should be dismissed.

The words “cède et transporte”, in the absence of some qualifying term, meant a transfer of the ownership of the debt. No such qualification could be found in the agreement. The whole tenor of the document was in the opposite sense and the concluding words of the transfer could not have the effect of constituting the contract merely one of pledge. The amount owing to the plaintiff was somewhat greater than

*PRESENT: Taschereau, Fauteux, Abbott, Martland, and Ritchie JJ.

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the amount of the debt transferred, and the transfer of a debt with or without the acceptance of the debtor does not effect novation. The fact that the plaintiff was entitled to retain any other security it may have held until its debt was paid in full did not affect the absolute character of the assignment it had taken.

APPEAL from a judgment of the Court of Queen's Bench, Appeal Side, Province of Quebec¹, reversing a judgment of Boulanger J. Appeal dismissed.

Hon. Mark Drouin, Q.C., and *J. P. Bernier*, for the defendant, appellant.

René Fournier, Q.C., for the plaintiff, respondent.

The judgment of the Court was delivered by

ABBOTT J.:—The sole matter at issue in this appeal is whether the transfer to respondent of a debt owing by appellant to a company known as Agel Construction Limitée was an absolute transfer or merely a pledge of the said debt.

The facts which are not in dispute are these: Agel Construction Limitée had built a house for appellant at a contract price of \$25,800 on which it claimed a balance owing of \$6,841.42. On December 21, 1955, the said Agel Construction Limitée was indebted to respondent in an amount of \$6,906.68 for materials furnished and on that date executed the following instrument—a copy of which was duly served on appellant as required by art. 1571 of the *Civil Code*—which reads as follows:

TRANSPORT DE CRÉANCE

Pour bonne et valable considération, Agel Construction Limitée, ici représentée par monsieur Roger Gélinas, son Président, dûment autorisé par résolution des Directeurs et des Actionnaires de la Compagnie, adoptée le 22 novembre 1954, et dont copie est demeurée annexée à l'original des présentes, cède et transporte à J. M. Dessureault Inc., acceptant, représentée par monsieur J. Aug. Lapointe trés., Martin Garneau sec., de la dite Compagnie, se déclarant dûment autorisés, les sommes d'argent actuellement dues ou qui pourront lui être dues par Dame J. Antoine Mercier, née Bastien, domiciliée au numéro 1,342 de la rue Duquet, cité de Sillery, en vertu d'un contrat de construction dont le solde est actuellement de six mille huit cent quarante-et-un dollars et quarante-deux cents (\$6,841.42).

J. M. Dessureault Inc. pourra toucher en totalité ou en partie toutes les sommes d'argent qui sont ou seront ainsi dues au soussigné, donner pour et en son nom, sur paiement, bonne et valable quittance, et imputer

¹[1960] Que. Q.B. 1052.

à son gré les sommes qu'elle recevra, aux dettes et responsabilités du soussigné, échues ou non échues, qu'elle choisira à sa discrétion, sans égard à leur date d'ancienneté, et sans être tenue d'en établir l'existence.

Si le paiement de toute somme d'argent ainsi due au soussigné se faisait au moyen d'un chèque, ordre de paiement, mandat, billet ou autre effet à l'ordre du soussigné ou à son ordre conjoint avec d'autres, J. M. Dessureault Inc., sous la réserve de tous droits et recours pourra signer le nom du soussigné pour tenir lieu d'endossement ou de reçu et afin d'opérer l'encaissement du dit effet; et le soussigné donne à cette fin, irrévocablement à J. M. Dessureault Inc. et à chacun de ses officiers, tout pouvoir et mandat requis.

J. M. Dessureault Inc., sans y être tenue, est autorisée:—

1. A procéder même judiciairement, au nom et aux frais et dépens du soussigné à la perception de toute somme due;
2. A enregistrer tout privilège autorisé par la loi;
3. A faire tout concordat et règlement qu'elle jugera à propos;
4. A terminer au nom du soussigné et comme son agent, le contrat ou tous travaux en cours et se procurer tous matériaux jugés par elle utiles ou nécessaires et à en ajouter le coût à sa créance.

La présente garantie est ainsi consentie sous la réserve des autres garanties que J. M. Dessureault Inc. peut actuellement ou pourra détenir.

Appellant having refused to comply with a demand for payment, respondent instituted the present action. In its plea appellant, without prejudice, acknowledged liability to the extent of \$3,946.32, and the action was proceeded with for the balance of \$2,895.10. By its amended plea appellant alleged that the transfer in question was not an absolute transfer but was one by way of pledge only. At the trial it was conceded that if the transfer was an absolute one respondent was entitled to judgment in the amount claimed in its action. The sole issue before all courts therefore has been the interpretation and effect to be given to the document of transfer dated December 21, 1955.

The interpretation of the said transfer urged by appellant found favour with the learned trial judge, but his judgment was unanimously reversed by the Court of Queen's Bench¹ and I am in respectful agreement with that view.

The words "cède et transporte" used in the transfer, in the absence of some qualifying term, mean a transfer of the ownership of the debt—*Laliberté v. Larue et Les Appartements Lafontaine*². I find no such qualification in

¹ [1960] Que. Q.B. 1052.

² [1931] S.C.R. 7, 2 D.L.R. 12, 12 B.C.R. 495.

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the agreement. Indeed the whole tenor of the document is in the opposite sense and the concluding words of the transfer cannot, in my view, have the effect of constituting the contract merely one of pledge. The amount owing to respondent was somewhat greater than the amount of the debt transferred, and the transfer of a debt with or without the acceptance of the debtor does not effect novation (C.C. 1174). In taking a transfer of the debt in question, respondent was entitled to retain any other security it may have held until its debt was paid in full without affecting the absolute character of the assignment it had taken.

I would dismiss the appeal with costs.

Appeal dismissed with costs.

Attorney for the defendant, appellant: Hon. Mark Drouin, Quebec.

Attorneys for the plaintiff, respondent: Fournier, Monast & Walters, Quebec.
