

Québec Superior Court reaffirms importance of franchisors keeping their invoices

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In *Mise en marché Marketch inc. v. Plante*, 2018 QCCS 2799, the Québec Superior Court gave an opinion as to the value of an account statement issued by a franchisor to prove what the franchisee owed. That case illustrates how important it is for the franchisor to properly document the goods and services it supplies to its franchisees in case it will have to prove them in court.

Background

In 2005, Ms. Plante and her spouse, acting through their company, Anima Direct Inc. (Anima Direct), concluded a master franchise agreement and a franchise agreement with a franchisor working in pet food and accessories distribution.

The master franchise agreement template allows Anima Direct, in its capacity as the master franchisee, to recruit franchisees in a protected territory and withhold a commission on the price of each franchise sold. The franchisees have to send their product orders through the master franchisee, which relays them to the franchisor.

Anima Direct rents premises in Brossard as a point of sale. Later, the franchisor sold its assets and franchise rights to Marketch, which moved its warehouse from Brossard to Laval. Mainly due to all the extra travel required, Anima Direct decided to stop acting as the master franchisee. Relying on an account statement, Marketch claimed from Anima Direct and Ms. Plante (solidarily) the repayment of a debt of \$63,574, plus interest, for products sold to Anima Direct and not paid for.

Reasons and conclusions

The Court pointed out that Marketch had the burden of proving the amount of its claim against Anima Direct. Marketch filed the account statement but did not file any invoice supporting the amounts shown on the statement. According to the Court, doctrine and jurisprudence both recognize that an account statement does not make proof of its contents, since it is not a document regularly used in the course of a company's activities to evidence a juridical act (such as a contract of sale) and is not covered by article 2831 of the *Civil Code of Québec* (CCQ). That meant Marketch had to prove its claim some other way.

But Marketch was not able to supply all the invoices for the products sold. In addition, not only did the account statement not constitute proof of the debt, but its content did not seem reliable. The cheques filed in evidence by Anima Direct showed that some entries on the statement—for which Marketch did not provide invoices—had already been paid. The few

invoices that were actually produced only allowed Marketech to prove a claim of \$2,805.64 for products sold, together with other amounts due as repayment of financial assistance provided to Anima Direct and the balance of the master franchise price.

That being said, the Court found that the parties had agreed to end their business relationship by terminating both the franchise agreement and the master franchise agreement, deducting the master franchises sold by Marketech on Anima Direct's former territory from the debt owed by Anima Direct. The Court offset the deductions unpaid by Marketech and the unpaid commissions on the franchises sold by Anima Direct. Since the amounts owed by Marketech were greater than the amount of the claim it was able to prove, the Court concluded that Anima Direct's debt to Marketech was extinguished, with nothing further owing to Marketech.

Remarks

In this decision, the Court reaffirms the requirements of article 2831 CCQ. In order to prove its content, a writing must be held by an enterprise, must be regularly used in the ordinary course of its business, and must evidence a juridical act. For example, an invoice is a writing that meets those requirements. But, according to the Court, that rule did not apply to the account statement in this case.

This judgment demonstrates that franchisors have to properly document the sales they make to their franchisees, by keeping the sales-related invoices, for example. Franchisors that follow that practice will not find themselves unable to prove their claims, thereby incurring serious financial losses.