SUPREME COURT OF CANADA

Case in Brief: *3091-5177 Québec inc. (Éconolodge Aéroport) v. Lombard General Insurance Co. of Canada*

Judgment of October 19, 2018 | On appeal from the Court of Appeal of Quebec
Neutral citation: 2018 SCC 43

A business that holds keys to a customer's car parked on its lot doesn't necessarily have care and control of that vehicle, the Supreme Court has ruled.

The Econolodge Aeroport hotel, located near Montreal's Pierre Elliott Trudeau airport, offered a "park and fly" service where guests could park their cars for free while they traveled. In winter, guests had to leave their keys with the hotel to make it easier to remove snow from the parking lot. Econolodge didn't have any guards, fences, or cameras in the parking lot, and anyone could enter at any time.

In the winters of 2005 and 2006, two cars were stolen from its property. Econolodge still had the car keys its guests had left behind, and didn't know about the thefts until the guests returned. The owners filed claims with their insurance companies and were compensated under their policies. The insurance companies, in turn, sued the hotel for not taking reasonable steps to prevent the thefts. Econolodge said it did nothing wrong, but that even if it had, its own insurance company should pay. That company, Lombard, covered Econolodge for civil liability (responsibility for actions that harm others or their property, but aren't criminal). Lombard said it didn't have to pay because there was an exception in the policy. The exception said it wasn't responsible when the hotel had care and control of the vehicles.

The trial judge said Econolodge had a contract with its guests for the "park and fly" service. Under the Quebec Civil Code, that meant it had to act diligently in all matters related to the contract. (The Civil Code is the body of law that applies to non-criminal legal issues in Quebec.) The hotel did not take reasonable steps to secure the parking area, but let guests believe that it had. The trial judge said it was therefore responsible. She also said that Econolodge did not have care and control of the vehicles just because it had the keys. That meant the exception in the insurance policy did not apply, so Lombard had to pay. The Court of Appeal agreed that Econolodge was responsible, but disagreed about the exception. It said Lombard didn't have to pay because having the car keys meant Econolodge had control of the vehicles.

The Supreme Court agreed with both lower courts that Econolodge was responsible for the thefts. But it said that the trial judge wasn't wrong to decide the policy exception didn't apply (which meant Lombard had to pay). She also wasn't wrong to say that Econolodge didn't have care and control of the vehicles in the legal sense. Looking at the full situation, the Court said it was open to the trial judge to conclude that people only left their keys with the hotel for a limited reason. This was to make it easier to clear snow from the lot; summer guests didn't have to leave their keys at all. Econolodge wasn't really taking "control" of the vehicles, then. Lombard's insurance policy was meant to cover exactly this kind of situation—when the insured is at fault providing its usual services, and harms others (or their property) in the process. One of the reasons for the exception was to avoid the policy being used as a backdoor way to insure third-party property that had nothing to do with the contractual services.

This case dealt with the application of part of a standard commercial insurance contract. Econolodge's fault fell within what the insurance policy was supposed to cover, so the insurance company had to pay for it.

Breakdown of the Decision: *Majority:* Gascon J. (Wagner C.J. and Abella, Moldaver, Karakatsanis, Côté, Brown and Martin JJ. in agreement) | *Concurring:* Rowe J.

More information (case # 37421 & 37422): Decision | Case information: 37421 & 37422 | Webcast of hearing

Lower court rulings (in French only): Court of Appeal of Quebec | Court of Quebec

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