SUPREME COURT OF CANADA

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Case in Brief: *6362222 Canada inc. v. Prelco inc.*

Judgment of October 15, 2021 | On appeal from the Court of Appeal of Quebec
Neutral citation: 2021 SCC 39

The Supreme Court provides guidance on how to interpret non-liability clauses under Quebec civil law.

This case centers on a contract dispute between two companies. Prelco is a large manufacturing company based in Rivière-du-Loup, Quebec, that makes and transforms flat glass for architectural and industrial uses. In 2008, it hired a company called Createch to design and install a management software system. The contract included what is known as a "non-liability clause". In this case, the clause limited Createch's liability should the software cause damages to Prelco such as the loss of data or profits. After the software installation, Prelco experienced problems with the system that affected its business. In 2010, Prelco ended its contract with Createch and hired another company to fix the faulty system.

Prelco sued Createch for loss of profits and to recover the costs it paid to have the other company repair the system. Createch responded with a counterclaim against Prelco for an unpaid invoice.

The trial judge ruled that Createch could not invoke the "non-liability clause" due to problems with the system. He said that even though Prelco signed the contract with this non-liability clause, Createch must still meet its fundamental obligation under the contract, which was the design and installation of a software system that met Prelco's needs. The judge awarded damages to Prelco, but not as much as the company had requested.

Both Createch and Prelco appealed to the Quebec Court of Appeal, which dismissed their appeals. Createch then appealed its case to the Supreme Court of Canada. It argued that the non-liability clause was valid.

The Supreme Court has agreed with Createch.

Createch could limit its liability toward Prelco under the contract.

Writing for a unanimous Court, Chief Justice Wagner and Justice Kasirer recognized that Createch had not met its fundamental obligation under the contract to design and install a software system that met Prelco's needs. Despite that breach, they wrote that the non-liability clause was still valid. After all, the parties had agreed to it when negotiating the contract. The judges said, "the will of the parties had to be respected."

In arriving at their conclusion, the judges explained the doctrine of breach of a fundamental obligation. According to this rule, a person or business cannot limit their liability for their primary service under a contract. This would make the contract meaningless. The judges said there are reasons for this rule under Quebec civil law, but these reasons do not apply in this case. In other words, Createch could rely on the non-liability clause in its contract with Prelco to limit its liability for the faulty system.

As a result, Createch will only have to pay Prelco what it cost to hire another company to fix the faulty system. As for Prelco, it must pay the unpaid invoice to Createch.

The contract in this case is different than a consumer contract.

Chief Justice Wagner and Justice Kasirer said the non-liability clause in this case was valid because it was negotiated by two sophisticated companies. This is different than for consumer contracts, where non-liability clauses are restricted by law to protect consumers who can be disadvantaged as compared to a company.

Breakdown of the decision: *Unanimous*: Chief Justice Wagner and Justice Nicholas Kasirer allowed the appeal (Justices Abella, Moldaver, Karakatsanis, Côté, Brown, Rowe and Martin agreed)

More information (case # 38904): Decision | Case information | Webcast of hearing

Lower court rulings (in French only)**:** judgment (Quebec Superior Court) | appeal (Quebec Court of Appeal)
