SUPREME COURT OF CANADA

CITATION: Sainte-Julie (City) *v.* Investissements Laroda inc., 2025 SCC 44

APPEAL HEARD: February 17, 2025
JUDGMENT RENDERED: December 19, 2025
DOCKET: 41036

BETWEEN:

Ville de Sainte-Julie
Appellant/Respondent on cross-appeal

and

Investissements Laroda inc.
Respondent/Appellant on cross-appeal

OFFICIAL ENGLISH TRANSLATION

CORAM: Wagner C.J. and Karakatsanis, Côté, Rowe, Martin, Kasirer, Jamal, O'Bonsawin and Moreau JJ.

REASONS FOR JUDGMENT: (paras. 1 to 124)
Côté J. (Wagner C.J. and Karakatsanis, Rowe, Martin, Kasirer, Jamal, O'Bonsawin and Moreau JJ. concurring)

Ville de Sainte-Julie *Appellant/Respondent on cross-appeal*

v.

Investissements Laroda inc. *Respondent/Appellant on cross-appeal*

Indexed as: Sainte-Julie (City) *v.* Investissements Laroda inc.

2025 SCC 44

File No.: 41036.

2025: February 17; 2025: December 19.

Present: Wagner C.J. and Karakatsanis, Côté, Rowe, Martin, Kasirer, Jamal, O'Bonsawin and Moreau JJ.

ON APPEAL FROM THE COURT OF APPEAL FOR QUEBEC

Contracts — Novation — Modalities and performance of obligation — Developer transferring excess land to municipality in payment of its park fees in connection with real estate development projects — Developer and municipality entering into agreement in which land area bank, representing excess land transferred and other land that municipality wanted to acquire, was created in favour of developer to pay future park fees at time of future cadastral operations, which, however, never

took place — Whether agreement effected novation of municipality's pre-existing obligation resulting from excess land transferred by developer — Whether agreement created obligation with term or conditional obligation — Point in time at which term must be fixed if agreement created obligation with term — Whether developer is entitled to remedy — Civil Code of Québec, arts. 1508, 1512 para. 1, 1607, 1660.

During the 1990s, Larochelle, a real estate developer, completed several projects on the territory of Ville de Sainte-Julie ("City"). To comply with the statutory and by-law provisions in force, Larochelle was required to transfer 10% of the total area of its projects to the City for the purposes of parks, playgrounds or green spaces, but it transferred excess land. Since the City was unable to return the land or reimburse its value, and since the City wanted to acquire an additional area of land owned by Larochelle, the parties entered into an agreement creating a land area bank in favour of Larochelle. That bank was to be applied in compensation for future park fees to be paid to the City in connection with cadastral operations allowing for new real estate developments. In the end, however, those operations never took place.

Larochelle's successor, Laroda, turned to the courts to seek compensation for the value of the area bank. The Superior Court dismissed the application. It found that the City's obligation resulting from the agreement was conditional on the approval of cadastral operations, that is, a future and uncertain event which had not occurred and for which the parties had not stipulated any term. Because the fulfilment of the condition had become impossible, the judge held that the City was released from its

obligations. The Court of Appeal allowed Laroda's appeal and ordered the City to pay Laroda $287,458.51. In its view, the parties' goal had not been to extinguish the City's obligation, but rather to delay when the performance of the obligation would be exigible. The parties had therefore made the City's obligation subject to a term rather than a condition, a term that had to be fixed by the court. Next, in determining the quantum of the remedy, the Court of Appeal held that the value of the excess received by the City had to be determined as of the time when Larochelle had transferred the land, that is, in 2001.

Held: The City's appeal should be dismissed and Laroda's cross-appeal should be allowed in part. The City should be ordered to pay Laroda the market value of the land as of December 15, 2015, and the case should be remanded to the Superior Court for a determination of this value.

The agreement extinguished the City's prior debt relating to the excess land transferred to it and, by formalizing the establishment of an area bank, transformed that initial obligation into a new contractual obligation, thereby creating a distinct obligational relationship based on the terms of the agreement. This alteration of the obligation satisfies the legal criteria for novation. Moreover, the parties agreed on an obligation with a suspensive term, since the City's obligation to effect compensation for the value of the area bank would not become exigible until the occurrence of events that the parties considered certain, namely cadastral operations allowing for new real estate developments. The term was indeterminate, because the parties did not know

when those cadastral operations would take place. Having regard to the nature of the City's obligation, the situation of the parties and the circumstances, the term must be fixed judicially at December 15, 2015, when Laroda sent the City a demand letter. Under the performance by equivalence regime, Laroda is entitled to damages equivalent to the market value of the area recognized in the bank on that date.

Novation is an alteration of an obligation that has two distinct and simultaneous legal consequences: the extinction of the initial relationship, without payment, and the creation of a relationship that is both new and different. The principles relating to novation are set out in arts. 1660 to 1666 of the *Civil Code of Québec*. Three types of novation are provided for in those articles: (1) by a change in debt; (2) by a change in debtor; and (3) by a change in creditor. Novation by a change in debt occurs when the debtor contracts, towards its creditor, a new debt that is substituted for the former one, which is then extinguished. For there to be novation, five conditions must be met: (1) a prior obligation; (2) a new obligation; (3) the two obligations being different from each other; (4) an intention to novate; and (5) capacity to enter into a contract. The parties must have had the clear and evident intention to extinguish the existing debt and to create a new one that is different from the first (art. 1661 *C.C.Q.*). Thus, novation cannot result from a combination of circumstances or an unintentional act by the parties. The intention to novate does not need to be confirmed in writing and may be tacit and result from the parties' conduct. A high threshold of proof is required because of the fact that the extinction of the former debt entails a renunciation by the creditor of the benefit of its rights.

In this case, novation was effected. The parties' intention in entering into the agreement was to extinguish the City's debt to Larochelle resulting from the excess received and to transform it into a new debt that was fundamentally different. The City and Larochelle agreed to enter into a contract that would establish a mechanism to effect compensation for the excess land transferred by Larochelle as well as formalize the transfer and financing of the additional area the City wanted in order to complete its amenities. This mechanism took the form of a land area bank, which was a form of credit requiring the City to effect compensation for future debts for parks, playgrounds or green spaces using the negotiated and agreed area making up the bank. It was only by carrying out future cadastral operations that the parties could use that bank, and their intended use of it constitutes a truly new element. This is therefore novation by a change in debt, which produces the same effects as an acquittance for the prior debt resulting from the excess received.

The modalities of an obligation concern the time limit for performance, the number of parties involved or the number of prestations to be performed. An obligation with a simple modality can be either conditional or with a term. An obligation is conditional where its creation or its extinction depends on a future and uncertain event (art. 1497 *C.C.Q.*). An obligation with a suspensive term is an obligation that arises immediately but whose exigibility is suspended for a length of time defined by reference to a date on the calendar, a precisely identified period or the occurrence of a future and certain event (art. 1508 *C.C.Q.*). The parties are therefore bound as soon as the contract is signed, and the obligation becomes exigible when the term expires

(art. 1513 *C.C.Q.*). A condition and a term are different, because with a condition the occurrence of the event is uncertain, whereas with a term the event is certain but the date may not be. The characterization of an event as a condition requires two kinds of uncertainty: objective, because the occurrence of the event must be objectively uncertain, but also subjective, because the parties must not have taken the occurrence of the event as certain. Thus, the parties' state of mind with respect to whether the occurrence of the event is certain or uncertain can serve to distinguish a term from a condition.

In this case, the agreement imposes an obligation with a suspensive term on the City. The circumstances in which the agreement was entered into show that the parties intended compensation for the credited area of land making up the bank to be dependent on future cadastral operations and that they were convinced those operations would take place. The two parties therefore had a common vision regarding future real estate developments on the City's territory and regarding an impending use of the area bank. The trial judge erred in focusing solely on the objectively uncertain nature of future cadastral operations in order to characterize the City's obligation. To properly distinguish an obligation with a term from a conditional obligation in this case, it was important to consider the occurrence of the event in a subjective sense as well, that is, the question of whether, in the parties' minds, future cadastral operations were certain.

When a term is defined by reference to the occurrence of a future event and the event does not occur, arts. 1512 and 1510 *C.C.Q.* allow the term to be fixed

judicially on a specific date. Article 1512 para. 1 *C.C.Q.* states that where "the parties have agreed to delay the determination of the term or to leave it to one of them to make such determination and where, after a reasonable time, no term has been determined, the court may, upon the application of one of the parties, fix the term according to the nature of the obligation, the situation of the parties and any appropriate circumstances." This paragraph contemplates a situation where the parties have decided on a term by reference to an event that is considered certain, without knowing when it will occur. Article 1510 *C.C.Q.*, for its part, provides that "[i]f the event that was considered certain does not occur, the obligation is exigible from the day on which the event normally should have occurred." Three conditions must be met for the principle in art. 1510 *C.C.Q.* to apply: (1) the parties must have decided on a term by reference to an event that was considered certain; (2) the day must be determinable; and (3) it must have become impossible for the event that was considered certain to occur. Article 1512 para. 1 and art. 1510 *C.C.Q.* are mutually exclusive.

Article 1512 para. 1 *C.C.Q.* applies in this case. Having regard to the nature of the obligation, the situation of the parties and any appropriate circumstances, the term must be fixed at the time of the demand letter sent to the City by Laroda, that is, at December 15, 2015. The first paragraph's conditions for fixing the term are met: Laroda asked the court in its originating application to fix the term; the parties did not fix the date on which the term would occur and left it to themselves to make this determination later; the term was potestative, insofar as the occurrence of the event that

was considered certain depended on the parties' conduct; and the parties did not, after a reasonable time, establish when the term would occur.

With regard to the remedy, restitution of prestations takes place where a person is bound by law to return to another person property received (1) without right or in error; (2) under a juridical act which is subsequently annulled with retroactive effect; or (3) under a juridical act whose obligations become impossible to perform by reason of superior force (art. 1699 para. 1 *C.C.Q.*). None of these scenarios applies in this case; it therefore could not be asserted, as the Court of Appeal did, that the City had to return the excess area received to Larochelle. It is necessary to turn instead to the performance by equivalence regime set out in arts. 1607 et seq. *C.C.Q.*, which gives the creditor the right to obtain damages for injury caused by the debtor's failure to comply with its obligation. The injury sustained by Laroda lies in being deprived of the value of the land transferred to the City, which used it without having to pay a single cent to acquire it. This justifies monetary compensation equivalent to the market value of an area of 26,705.78 m^2 of bulk land free of park fees on the territory of Ville de Sainte-Julie at the time the obligation became exigible, that is, on the date of the demand letter of December 15, 2015. Because the evidence in the record does not make it possible to determine this value, the case should be remanded to the Superior Court so that a finding can be made on this question.

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S.C.R. 261; *Banque Laurentienne du Canada v. Mackay*, [2002] R.J.Q. 365; *Intégration de réseaux M.I.R. inc. (Faillite de)*, 2001 CanLII 24879; *Rémy v. Gagnon*, [1971] C.A. 554; *Chamberland (Syndic de)*, [1988] R.J.Q. 1159; *Trust Général du Canada v. Immeubles Restau-Bar Inc.*, [1994] J.Q. nº 2564 (Lexis), 1994 CarswellQue 1928 (WL); *Compagnie Trust Royal v. Entreprises B.M. St-Jean inc.*, 1997 CanLII 8959; *Caisse populaire Desjardins de Saint-Rédempteur v. Auclair*, 1998 CanLII 11729; *Banque Laurentienne du Canada v. Adeclat*, 1999 CanLII 12173; *Pincourt (Ville de) v. Construction Cogerex ltée*, 2013 QCCA 1773; *Roy v. Caisse populaire de Percé*, 2003 CanLII 71979; *144286 Canada inc. v. 9121-6788 Québec inc.*, 2009 QCCA 2398; *Placements Marc Laplante inc. v. Gagnon*, 1996 CanLII 6540; *Municipalité de Sainte-Béatrix v. Fabrique de la paroisse de Saint-Pierre-de-Belles-Montagnes*, 2018 QCCA 553; *Venne v. Quebec (Commission de protection du territoire agricole)*, [1989] 1 S.C.R. 880; *9165-5662 Québec inc. v. 4459181 Canada inc.*, 2015 QCCA 969; *Hiess v. Zelnik*, 2019 QCCS 150; *Uniprix inc. v. Gestion Gosselin et Bérubé inc.*, 2017 SCC 43, [2017] 2 S.C.R. 59; *Tourangeau v. Gatowski*, 2004 CanLII 8105; *Richard v. Boucher*, 2013 QCCS 3142; *Péladeau v. Placements Péladeau inc.*, 2020 QCCS 1373; *Pellerin Savitz LLP v. Guindon*, 2017 SCC 29, [2017] 1 S.C.R. 575; *Ratelle v. Chevrette*, 2014 QCCA 2070; *Sofilco inc. v. 9056-8544 Québec inc.*, 2012 QCCS 2191; *Montréal (City) v. Octane Stratégie inc.*, 2019 SCC 57, [2019] 4 S.C.R. 138; *Quebec (Attorney General) v. Pekuakamiulnuatsh Takuhikan*, 2024 SCC 39.

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APPEAL and CROSS-APPEAL from a judgment of the Quebec Court of Appeal (Marcotte, Hogue and Moore JJ.A.), 2023 QCCA 1294, [2023] AZ-51975870, [2023] J.Q. nº 10633 (Lexis), 2023 CarswellQue 14768 (WL), setting aside a decision of Courchesne J., 2021 QCCS 3573, [2021] AZ-51791250, [2021] J.Q. nº 10218 (Lexis), 2021 CarswellQue 13450 (WL). Appeal dismissed and cross-appeal allowed in part.

Armand Poupart jr., for the appellant/respondent on cross-appeal.

Alex Lévesque and *Guillaume Bourbeau*, for the respondent/appellant on cross-appeal.

English version of the judgment of the Court delivered by

CÔTÉ J. —

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Appendix A

Appendix B

I. Overview

[1] This appeal and the cross-appeal require the Court to consider a number of concepts from the law of obligations in the context of an agreement ("agreement", reproduced in Appendix A) entered into by a municipality, Ville de Sainte-Julie ("City"), and a developer, Promotions M.G. Larochelle inc. ("Larochelle"), concerning the development of land in the municipality. The parties to the agreement created an "area bank" that was to be applied in compensation for future park fees to be paid to the City in connection with new real estate developments by the developer. In the end, those developments never took place, and the respondent, Investissements Laroda inc. ("Laroda"), the successor to Larochelle's rights, titles and interests, turned to the courts to seek compensation for the value of that bank.

[2] In the courts below, the debate focused primarily on three points, namely (1) the question of whether novation had been effected against a pre-existing debt, (2) the existence of an obligation with a term or a conditional obligation, and (3) the nature of the remedy to which the respondent was entitled, if any. Through their various grounds of appeal, the parties are challenging the Court of Appeal's conclusions on each of these points. They are asking this Court to decide several grounds of appeal relating to the agreement, including its characterization, its interpretation and the remedy to which Laroda may be entitled given that the "area bank" was never used.

[3] Therefore, in order to dispose of the appeal and the cross-appeal, it must first be determined whether the agreement effected novation of a prior debt. Upon analysis, I conclude that this is the case. In my opinion, the agreement extinguished the City's prior debt for excess land mistakenly transferred to the City and, by formalizing the establishment of an "area bank", transformed that initial obligation into a new contractual obligation, thereby creating a distinct obligational relationship based on the terms of the agreement. This alteration of the obligation satisfies the legal criteria for novation, particularly an intention to substitute a new obligation for the former one and a substantial change in the legal relationship.

[4] Next, it is important to consider the legal nature of the obligation arising from the agreement: Is it an obligation with a term, whose exigibility is deferred in time, or a conditional obligation, which depends on an uncertain event? In this case, I am of the view that the parties agreed on an obligation with a suspensive term. In other words, the City's obligation to effect compensation for the value of the "area bank" would not become exigible until the occurrence of events that the parties considered certain, namely cadastral operations allowing for new real estate developments.

[5] That being the case, the term was indeterminate because the parties did not know when those cadastral operations would take place, such that it becomes necessary to fix it. Having regard to the nature of the City's obligation, the situation of the parties and the circumstances, I am of the opinion that the term must be fixed at December 15,

2015, when Laroda sent the City a demand letter. It was on that date that the City's obligation with a term became exigible.

[6] As for the remedy to which Laroda is entitled, the applicable regime must be determined: Is it restitution of prestations or performance by equivalence? Given the fact that novation extinguished the debt resulting from the excess land received by the City that was mistakenly transferred by Larochelle, I am of the view that the restitution of prestations regime does not apply to this area of land (3,898.27 m^2). Rather, it is the performance by equivalence regime that applies here, both for the excess received by the City and for the additional area of land (22,807.5 m^2) transferred later. As a result, Laroda is entitled to damages equivalent to the market value of the area recognized in the bank, which is to say vacant bulk land free of park fees, as it stood on the date of the term fixed, that is, at the time of the demand letter sent to the City by Laroda on December 15, 2015.

[7] However, the evidence in the record does not make it possible to determine the market value as of December 15, 2015, of the area recognized in the bank. The case should therefore be remanded to the Superior Court on this question alone so that evidence can be adduced in this regard, unless of course the parties come to an agreement on the market value as of December 15, 2015.

[8] For the reasons that follow, I would dismiss the appeal, allow the cross-appeal in part and order the City to pay Laroda the market value of the land as of

December 15, 2015. This value is to be determined by the Superior Court, to which the case is remanded on this question alone.

II. Background

[9] Larochelle and the City had a long-standing collaborative relationship, marked by the carrying out of many real estate development projects over the years. During the 1990s, Larochelle completed several of those projects on the City's territory. In December 2000, the total area of the projects so completed by Larochelle was 760,926.3 m^2.

[10] Pursuant to the statutory and by-law provisions in force governing this type of development, Larochelle was required to transfer 10% of that area to the City for the purposes of parks, playgrounds or green spaces or, alternatively, to pay the City a sum equivalent thereto (*Act respecting land use planning and development*, S.Q. 1979, c. 51, s. 115 para. 2(8) (then in force); By-law No. 701, *Règlement de lotissement* (1991)).

[11] Once those developments had been completed, the City and Larochelle wanted to take stock of the area that had actually been transferred during the various development phases. The result of that assessment was that Larochelle had transferred to the City 3,898.27 m^2 more than it was legally required to transfer for the purposes of parks, playgrounds or green spaces ("excess transfer"). At that time, the City stated that it was unable to return the land or to reimburse its value to Larochelle.

[12] It is important to note at the outset that, with regard to this "excess transfer", the restitution of prestations regime applied at the time because this was simply a case of receipt of a payment not due. However, no restitution was made at the time the events occurred, either in kind (i.e., land) or by equivalence (i.e., money). The City was unable to make such restitution at that time.

[13] During the same period, the City expressed its interest in another parcel of land owned by Larochelle, as it wished to complete certain public amenities, including a bicycle path. That desired parcel of land had an area of 45,615 m^2, half of which was buildable. The City indicated that it did not have the means to purchase the land and asked Larochelle to finance the land for it.

[14] The City and Larochelle began negotiations to deal with these two matters, that is, the "excess transfer" of 3,898.27 m^2 and the financing for the additional area of 45,615 m^2, of which 22,807.5 m^2 were buildable. On February 19, 2001, the parties therefore entered into an agreement whose terms were drafted exclusively by the City, through which they agreed to create a land bank in favour of Larochelle. The creation of this bank spared the City from having to immediately fulfill its obligations to Larochelle, that is, compensating Larochelle for the "excess transfer" of 3,898.27 m^2 and paying for the acquisition of the 45,615 m^2 parcel of land given that Larochelle had agreed to provide the financing requested by the City for that parcel.

[15] Thus, the parties created a bank to deal with the two matters referred to above. Article 4 of the agreement provided that Larochelle [TRANSLATION] "undertakes

to transfer 45,615 square metres, 50% of which is applicable to this protocol, that is, 22,807.5 square metres", and article 5 provided that "[t]he transferee [City] agrees that the transferor [Larochelle] has created a bank of 26,705.78 square metres", that is, the total of the area of 22,807.5 m^2 referred to in article 4 and the excess 3,898.27 m^2 received (A.R., vol. II, at pp. 136-37 (emphasis deleted)). Moreover, the resolution of the City's municipal council approving the agreement stated that [TRANSLATION] "this agreement will create a bank for the purposes of parks or playgrounds for future approvals of cadastral operations" (p. 138). Lastly, it is important to note that the agreement did not include any mechanism in the event that specific performance of the City's obligation proved to be impossible.

[16] At the time of entering into the agreement, Larochelle did not own any land that could be developed on the City's territory. However, this was not the case for its subsidiary, Laroda,[1] which owned lots in an agricultural zone forming part of a sector of the City called "Du Moulin" (hereinafter "Du Moulin sector") with an area of 143,000 m^2. It was therefore expected that Laroda could use part of the 26,705.78 m^2 land bank for a future cadastral operation on the lots it owned. However, it is important to note that the agreement did not impose any specific limitation on how any future development would take place.

[17] Because this area of 143,000 m^2 was in an agricultural zone, an application for exclusion from the agricultural zone had to be made to and approved by the

[1] In 2010, a corporate reorganization resulted in Laroda becoming the holder and beneficiary of all of Larochelle's rights, titles and interests and, consequently, of the bank of 26,705.78 m^2.

Commission de protection du territoire agricole du Québec ("CPTAQ") in order for the proposed development on Laroda's land to move forward. The parties sincerely believed that there would be no difficulty with that application for exclusion, since all of the applications previously made by the City to the CPTAQ with respect to lots owned by Larochelle or its subsidiaries had been granted. The Court of Appeal referred to this, stating that [TRANSLATION] "both Larochelle and the City were convinced that the same would be true of this one" (2023 QCCA 1294, at para. 11) and that "[i]t was not even contemplated that this authorization might be denied" (para. 39).

[18] It was in this context that, in February 2003, the City filed a first application with the CPTAQ to have the land targeted by the proposed development excluded from the agricultural zone. On March 22, 2004, that application was denied. On November 12, 2008, a second application for exclusion suffered the same fate.[2] That decision was confirmed by the Administrative Tribunal of Québec ("ATQ") on June 14, 2011. In short, the applications for dezoning failed. Despite this, however, the parties continued thereafter to discuss the land bank and ways of making its use possible.

[19] In 2012, the Communauté métropolitaine de Montréal adopted the Metropolitan Land Use and Development Plan ("MLUDP"), which limited development in agricultural zones for a period of at least 10 years. That plan thus

[2] The land of 22,807.5 m^2 was the subject of two separate transfers to the City, in 2007 and in 2010.

restricted Laroda's ability to file an application for approval of a cadastral operation with the City.

[20] After the MLUDP was adopted, Laroda tried to acquire other parcels of land within the City's urbanization perimeter so that it could use the bank, but its attempts failed.

[21] On December 15, 2015, Laroda, through its representative, sent a demand letter to the City's mayor. In the letter, the representative complained of [TRANSLATION] "the impossibility of applying these 26,705.78 square metres" (A.R., vol. III, at p. 136). He noted that the situation did not look much better for the future: [TRANSLATION] ". . . according to what we were told by the director of urban planning at our last meeting, with the new urban planning scales, it is inconceivable to have a new sector without the possibility of having an area of 10% set aside for the purposes of parks and playgrounds" (p. 136). Laroda's representative concluded by asking the City to [TRANSLATION] "finalize the matter" and "presen[t] a monetary offer" to it (A.R., vol. III, at p. 136).

[22] Following unsuccessful discussions with the City, Laroda filed an originating application against it on December 13, 2018, asking the court to fix the expiry of the term specified in the agreement and to award compensatory damages in its favour.

III. Judicial History

A. *Quebec Superior Court, 2021 QCCS 3573 (Courchesne J.)*

[23] The trial judge dismissed the originating application for a declaratory judgment and damages filed by Laroda. The City was therefore released from any obligation arising from the agreement.

[24] Looking first at the prior debt resulting from the excess received by the City, the judge found that the agreement was actually a transaction because its purpose was to prevent a future dispute between the City and Larochelle with regard to that debt. According to the judge, that transaction automatically effected novation by a change in debt pursuant to art. 1660 of the *Civil Code of Québec* ("*C.C.Q.*"). In her view, the agreement therefore had the effect of extinguishing any obligation that the City might have toward Larochelle to return the excess area received, and created a new obligational relationship between the parties.

[25] The judge found from the evidence that because the City had refused to pay the monetary value of the excess area received, the agreement had created an "area bank" that was to be applied at the time of future cadastral operations by Larochelle and its subsidiaries. In the judge's opinion, this was the only method of using the bank stipulated in the agreement.

[26] With regard to how the agreement was to be performed, the Superior Court found that the obligation resulting from it was conditional on the approval of cadastral operations, that is, a future and uncertain event which had not occurred and for which

the parties had not stipulated any term. To support this finding, the judge considered the context and the parties' intention at the time the agreement was signed. The occurrence of future cadastral operations could not be considered objectively certain, because it depended on an exercise of discretion by an administrative body responsible for assessing applications for the exclusion of lots from an agricultural zone. Despite their high level of confidence, the parties could not regard the outcome of the application to the CPTAQ as certain. This observation also applied to the acquisition by Larochelle or its subsidiaries of land in a residential zone. According to the judge, the evidence showed that the fulfilment of the condition, that is, the filing by Laroda of an application for approval of a cadastral operation, had become impossible. The judge therefore held that the City was released from its obligations.

[27] However, the judge stated that if she had found that the obligation was one with a term, then the future event on which the exigibility of the City's obligation depended would have had to occur at the latest in 2012, after the failure of the applications for exclusion of the Du Moulin sector from the agricultural zone and the adoption, by the metropolitan regional community, of a policy aimed at limiting the use of agricultural land for urban development purposes. The judge therefore found that this date would be the one to use for fixing the term. However, because the action had been instituted by Laroda in December 2018, she was of the view that the action would be prescribed under art. 2925 *C.C.Q.*

B. *Quebec Court of Appeal, 2023 QCCA 1294 (Marcotte, Hogue and Moore JJ.A.)*

[28] The Court of Appeal allowed Laroda's appeal and ordered the City to pay it $287,458.51.

[29] The Court of Appeal held that the trial judge had erred in law by finding that the agreement, recognized by the parties as being a transaction, had automatically effected novation and extinguished the City's obligation to return the excess it had received. In the Court of Appeal's view, the parties' goal had not been to extinguish the City's obligation, but rather to delay when the performance of the obligation would be exigible. Given that the parties were convinced that Larochelle would develop a new parcel of land and that this was not an uncertain event, the parties had made the City's obligation subject to a term rather than a condition. To arrive at this finding, the court noted that the objective uncertainty of an event was not enough to make the event a condition, as the parties themselves would also have had to consider it uncertain. However, this was not the case here. The ATQ's decision upholding the CPTAQ's refusal to exclude the Du Moulin sector from the agricultural zone in 2011 did not exhaust the other possibilities for using the bank and, at that time, the City could still benefit from the term stipulated in its favour. Indeed, the Court of Appeal noted that the parties had continued their discussions on the use of the bank and had looked for ways to make its use possible, even after the ATQ's decision. Consequently, the City's obligation with a term was still not exigible in 2011, and Laroda's action thus could not be prescribed as the trial judge had held.

[30] To determine when the City's obligation with a term had become exigible, the Court of Appeal applied arts. 1510 and 1512 *C.C.Q.* simultaneously. Although the parties considered the development of the land certain, and although this event constituted the term to which the City's obligation was subject, the Court of Appeal found that the time of this event remained undetermined. Neither of the parties could determine when the City's obligation, suspended up to that point, had become exigible or the manner in which the bank would be used. In such circumstances, it was therefore necessary, in the Court of Appeal's opinion, for one of the parties to go to court to have the term fixed. The trial court's intervention thus served to make the obligation exigible and to cause extinctive prescription to begin running. The Court of Appeal held that the term could not be fixed at a time prior to the commencement of the proceedings, in order to prevent the parties from losing rights without having been able to take the necessary steps to protect them. Laroda's application therefore could not be prescribed.

[31] With regard to the remedy, the Court of Appeal determined that the rules of the restitution regime applied. This was because it was not possible to establish when the City should have returned the excess land received. Moreover, the parties had provided only for restitution of the excess land received by the City, without creating any alternative mechanism for indemnification or restitution by equivalence. Insofar as the factual situation no longer allowed for such restitution, the Court of Appeal held that the value of the excess received by the City had to be determined as of the time when Larochelle had transferred the land. Since there was no evidence from which the value at that time could be established, the Court of Appeal used the value listed on the

municipal roll for 2001. It therefore held that the City had to pay $287,458.51 to Laroda, as the beneficiary of Larochelle's rights.

IV. Issues

[32] To dispose of this appeal and this cross-appeal, the Court must answer the following questions:

A. Did the agreement effect novation of the City's pre-existing obligation resulting from the excess 3,898.27 m^2 of land received by the City?

B. Did the agreement create an obligation with a term or a conditional obligation? If it created an obligation with a term, at what point in time must the term be fixed?

C. To what remedy is the respondent entitled?

V. Analysis

A. *Did the Agreement Effect Novation of the City's Pre-existing Obligation Resulting From the Excess 3,898.27 m^2 of Land Received by the City?*

[33] It must first be determined whether the pre-existing obligation relating to the excess 3,898.27 m^2 of land received by the City was extinguished. This question must be resolved first because this is a preliminary step in deciding another question in

issue. The fact is that the City and Laroda both disagree with the Court of Appeal's conclusion that the restitution of prestations regime applies in this case, arguing instead that the performance by equivalence regime should apply if this Court were to conclude that the value of the "area bank" must be reimbursed. However, the subsistence of the initial debt or its extinction by novation determines whether it is the restitution of prestations regime or the performance by equivalence regime that applies, because if the pre-existing debt relating to the excess 3,898.27 m^2 of land received by the City was extinguished, then it goes without saying that restitution for that debt is not necessary.

[34] To determine whether the pre-existing obligation was extinguished through novation, I begin by reviewing the applicable legal principles. After completing this review, I conclude that the agreement effected novation by a change in debt and thus extinguished the prior debt relating to the land.

(1) Concept of Novation

[35] Novation is an alteration of an obligation that originates in Roman law (J.-P. Lévy and A. Castaldo, *Histoire du droit civil* (2nd ed. 2010), at Nos. 719-22). This operation has two distinct and simultaneous legal consequences: the extinction of the initial relationship, without payment, and the creation of a relationship that is both new and different (J.-L. Baudouin and P.-G. Jobin, *Les obligations* (7th ed. 2013), by P.-G. Jobin and N. Vézina, at No. 994; D. Lluelles and B. Moore, *Droit des obligations* (3rd ed. 2018), at No. 3072). Novation involves an [TRANSLATION] "organized

severing" of the initial obligational relationship (Lluelles and Moore, at No. 3072 (emphasis deleted)).

[36] The civil law of Quebec sets out the principles relating to novation in arts. 1660 to 1666 *C.C.Q.* (reproduced in Appendix B). Three types of novation are provided for in art. 1660 *C.C.Q.*: (1) novation by a change in debt; (2) novation by a change in debtor; and finally, the last type, which is rarer, (3) novation by a change in creditor. I am concerned more specifically with novation by a change in debt, because the trial judge found that this was the type of novation effected in this case.

(2) Novation by a Change in Debt

[37] Novation by a change in debt occurs when the debtor contracts, towards its creditor, a new debt that is substituted for the former one, which is then extinguished. In this scenario, the same debtor binds itself to the same creditor by assuming a new obligation (and not simply a modified obligation), while being released from the former one (Baudouin, Jobin and Vézina, at No. 998).

[38] Novation by a change in debt may result from a change in the cause, object or modalities of the obligation, as long as the new obligation has a [TRANSLATION] "truly new element" when compared to the former one (Baudouin, Jobin and Vézina, at No. 998). The change therefore cannot be one that merely adds an extra element to the former obligation or simply a change in form (No. 998).

(3) Conditions for Novation

[39] In *Lalonde v. Sun Life Assurance Co. of Canada*, [1992] 3 S.C.R. 261, this Court reiterated the conditions required for novation under arts. 1169 and 1171 of the *Civil Code of Lower Canada* ("*C.C.L.C.*") (at p. 284, quoting L. Faribault, *Traité de droit civil du Québec*, vol. 8 (1959), at No. 677):

> [TRANSLATION] For there to be novation five conditions must be met:
>
> 1. there must be a prior obligation, 2. a new obligation must be created, 3. these two obligations must be different from each other, 4. the parties must have indicated their intention to novate, and 5. they must have the capacity to enter into a contract.

[40] These principles are still relevant today. The provisions on novation in arts. 1660 to 1666 of the *Civil Code of Québec* did not substantively change the content of the rules on novation set out in the *Civil Code of Lower Canada*. While arts. 1660 to 1666 *C.C.Q.* do not include a specific provision stating that novation must be effected between persons capable of contracting, as was formerly stated in art. 1170 *C.C.L.C.*, this condition remains in effect, because it is an essential condition of contract formation. Logically, since novation is carried out through a contract (Lluelles and Moore, at No. 3087), its conditions of formation must be met in order for novation to be validly effected.

[41] I have already referred to the principle relating to the criterion of a new element between the two debts in the context of novation by a change in debt. I will now look more specifically at the principle relating to the parties' intention.

(4) Parties' Intention to Novate

[42] For novation to be effected, the parties must have had the [TRANSLATION] "clear and unequivocal" intention to extinguish the existing debt and to create a new one that is different from the first (*Banque Laurentienne du Canada v. Mackay*, [2002] R.J.Q. 365 (C.A.), at para. 26). This condition is set out in art. 1661 *C.C.Q.*, which provides as follows: "Novation is not presumed; the intention to effect it must be evident." Thus, novation cannot result from a combination of circumstances or an unintentional act by the parties (*Intégration de réseaux M.I.R. inc. (Faillite de)*, 2001 CanLII 24879 (Que. Sup. Ct.)).

[43] While the intention to novate must be evident, this does not require that it be confirmed in writing. It may be tacit, which is to say that it may [TRANSLATION] "result from behaviour or conduct by the creditor that clearly demonstrates its intention to discharge the original debtor" (*Mackay*, at para. 24, citing *Rémy v. Gagnon*, [1971] C.A. 554 (Que.), at p. 557; *Chamberland (Syndic de)*, [1988] R.J.Q. 1159 (C.A.); *Trust Général du Canada v. Immeubles Restau-bar inc.*, [1994] J.Q. n^{o} 2564 (Lexis), 1994 CarswellQue 1928 (WL) (Sup. Ct.); *Compagnie Trust Royal v. Entreprises B.M. St-Jean inc.*, 1997 CanLII 8959 (Que. Sup. Ct.); *Caisse populaire Desjardins de*

Saint-Rédempteur v. Auclair, 1998 CanLII 11729 (Que. Sup. Ct.); *Banque Laurentienne du Canada v. Adeclat*, 1999 CanLII 12173 (Que. Sup. Ct.)).

[44] The high threshold of proof for establishing the intention to novate is based on the fact that the extinction of the former debt entails a renunciation by the creditor of the benefit of its rights resulting from the former debt. In this context, since renunciation cannot be presumed (art. 646 *C.C.Q.*), the same must be true of the intention to novate (art. 1661 *C.C.Q.*). Accordingly, unless there is "clear and unequivocal" evidence revealing the parties' intention to novate, a solution that preserves the creditor's rights must be preferred, and it must be found that novation has not been effected (*Mackay*, at para. 26).

(5) Application

[45] I must decide whether, on the basis of the principles I have just outlined, it can be concluded that the agreement effected novation of the pre-existing obligation relating to the excess 3,898.27 m^2 of land received by the City. In this case, only the criteria of the parties' intention and the new element need to be considered.

[46] The Court of Appeal found that the new agreement did not include a new element between the debts; rather, the new debt was merely an extension of the former one. Furthermore, in its opinion, the parties had no intention of extinguishing the former debt. In contrast, the parties argue that the Court of Appeal erred in finding that the agreement was an extension of a single debt owed by the City to Larochelle. They

submit that the agreement can be characterized as a transaction with respect to the excess 3,898.27 m^2 received, since its purpose was to prevent a future contestation. They add that their intention was to extinguish the obligation in its initial form and replace it with a new obligation. The Court of Appeal found that the question of whether the agreement could be characterized as a transaction was not in issue. For my part, I am of the view that the agreement is not a transaction, but simply a contract. In any event, this question is of little relevance because there is no need to decide it in order to determine whether novation extinguished the City's debt to Larochelle for the excess 3,898.27 m^2 received.

[47] Respectfully, I agree with the parties that the Court of Appeal erred in holding that novation had not been effected in this case. The parties' intention in entering into the agreement was, in part, to extinguish the City's debt to Larochelle resulting from the excess 3,898.27 m^2 received and transform it into a new debt fundamentally different from the first. I will explain.

(a) *Context Before the Agreement Was Entered Into*

[48] The agreement covered two aspects.

[49] The first aspect arose from the fact that Larochelle had mistakenly transferred an excess area of 3,898.27 m^2 to the City as a transfer for the purposes of parks, playgrounds and green spaces. I reiterate that this excess 3,898.27 m^2 was received as a result of development projects in the 1990s for which Larochelle was

required to transfer the equivalent of 10% of the total area of the projects to the City for the purposes of parks, playgrounds and green spaces. The excess 3,898.27 m^2 received therefore reflects the difference between the area actually transferred by Larochelle and the area required to be transferred under By-law No. 701.

[50] However, this aspect was not the only one negotiated by the City and Larochelle at the time. As explained above, the City, wishing to complete certain amenities, including a bicycle path, wanted Larochelle to transfer a 45,615 m^2 parcel of land to it, which Larochelle agreed to do even though the City was unable to pay it at the time. Larochelle thus agreed to finance the City. This area, which had initially been included in an urban development plan tabled in 1998, was transferred by Larochelle in a context where it wanted compensation to be effected by the City when new transfers for the purposes of parks, playgrounds or green spaces would be required in connection with future cadastral operations.

[51] These two aspects therefore formed the backdrop to the discussions that led the parties to enter into the 2001 agreement.

(b) *With Regard to the Excess Received, the Parties Intended to Be Bound by a New Debt*

[52] Although the agreement says nothing about novation, an analysis of the circumstances in which it was entered into reveals that the parties had the common intention of extinguishing the prior debt resulting from the excess received in order to

replace it with a new obligation. At the time the agreement was signed, the City acknowledged that it was unable to reimburse to Larochelle either the value of the additional area of land or the value corresponding to the excess 3,898.27 m² received, while also expressing a wish to continue the development of its territory using other land that was owned by Larochelle and that it hoped to acquire. As for Larochelle, it intended to continue its development activities on the City's territory while seeking a form of compensation for the excess it had transferred.

[53] The City and Larochelle therefore agreed to enter into a contract — the agreement — that would establish a mechanism to effect compensation for the excess land transferred by Larochelle (A.R., vol. II, at pp. 135 et seq.) as well as formalize the transfer and financing of the additional area the City wanted in order to complete its amenities. This mechanism took the form of a land bank (also called "area bank" in these reasons).

[54] For an understanding of how the parties intended to use the bank, it is important to look to the testimony of Laroda's representative — the only person who testified regarding the circumstances in which the agreement was entered into. The parties agreed that this "area bank" would be used at the time of future cadastral operations by Larochelle or Laroda. In this regard, Laroda's representative in fact described the bank as "financing" in consideration for the transferred area. This interpretation is confirmed by the minutes of the City's municipal council (appended to the agreement) stating that "this agreement will create a bank for the purposes of

parks or playgrounds for future approvals of cadastral operations" (A.R., vol. II, at p. 138).

[55] In this context, the bank must be seen as a form of credit, which required the City to effect compensation for future debts for parks, playgrounds or green spaces using the negotiated and agreed area making up the bank. As the Superior Court judge noted, it was only by carrying out future cadastral operations that the parties could use the "area bank" provided for in the agreement (para. 37).

[56] We are thus dealing with novation by a change in debt, which produces the same effects as an acquittance for the prior debt resulting from the excess 3,898.27 m² received — a debt that arose under the rules on receipt of a payment not due (arts. 1491 and 1492 *C.C.Q.*) (see, by analogy, V. Karim, *Les obligations* (6th ed. 2024), vol. 2, at No. 3737). This debt was therefore extinguished. At the same time, a new obligation arose: the one that combined the 22,807.5 m² described by the parties as "financing" and the former debt of 3,898.27 m², thereby creating a new total debt of 26,705.78 m². The former debt thus lost its individuality within the agreement (see, by analogy, Baudouin, Jobin and Vézina, at No. 998; Lluelles and Moore, at No. 3078). The new debt resulting from the agreement arose out of a separate contract independent of the prior debt. In other words, the agreement truly wiped the slate clean: the rules on receipt of a payment not due no longer governed the initial debt of 3,898.27 m². The parties agreed on a bank, a credit mechanism, that would be applicable from then on to future cadastral operations.

[57] It is therefore apparent that the "area bank", as well as the parties' intended use of it, constitutes a new element. This mechanism reflects a common intention by the parties to restructure their contractual relationship — with respect to the question of restitution of the payment not due consisting of the area of 3,898.27 m² — in order to take better account of their respective interests. This situation corresponds to novation by a change in debt: the debt resulting from the "excess transfer" of 3,898.27 m^2 was extinguished and replaced by a new one.

B. *Did the Agreement Create an Obligation With a Term or a Conditional Obligation for the City? If It Created an Obligation With a Term, at What Point in Time Must the Term Be Fixed?*

[58] I must now determine whether the City's obligation to credit Larochelle for future transfers for parks, playgrounds and green spaces is a conditional obligation (arts. 1497 et seq. *C.C.Q.*), in which case it never arose, or an obligation with a term (arts. 1508 et seq. *C.C.Q.*), which had the effect of deferring its exigibility. The characterization of the City's obligation as being either conditional or with a term is precisely what will determine whether there must be compensation for the "area bank".

[59] It was only by carrying out future cadastral operations that the parties could use the "area bank" provided for in the agreement. In a context where such cadastral operations never took place, the question of whether the City must fulfill its obligation is a thorny one. The parties disagree on this.

[60] Like the Court of Appeal, I am of the view that the agreement imposes an obligation with a suspensive term on the City (art. 1508 *C.C.Q.*). Since the parties considered it certain that cadastral operations (and thus the development of new land) would take place even if it was not known when such cadastral operations would occur, I find that they intended to be bound by the expiry of a suspensive term. Indeed, the parties chose to defer the exigibility of the City's obligation until future cadastral operations took place; the term was thus for the benefit of the City as debtor (art. 1511 *C.C.Q.*), which did not have to pay anything at that time.

[61] Because the term in this case is indeterminate, it is necessary to fix it. In my opinion, the term must be fixed on the basis of art. 1512 *C.C.Q.* and not art. 1510 *C.C.Q.* Article 1510 *C.C.Q.* requires that the times at which the cadastral operations would take place be determinable and that the occurrence of such operations have become impossible, which cannot be ascertained from the evidence in the record. As for art. 1512 *C.C.Q.*, it allows the term to be fixed according to the nature of the obligation, the situation of the parties and any appropriate circumstances. In this case, the term must be fixed at the time of the demand letter sent to the City by Laroda, that is, at December 15, 2015.

(1) Obligations With a Simple Modality

[62] The modalities of an obligation concern the time limit for performance, the number of parties involved or the number of prestations to be performed (Lluelles and Moore, at No. 2459). An obligation with a simple modality — as opposed to a complex

modality involving multiple persons or prestations — can be either conditional or with a term.

(a) *Conditional Obligation (Articles 1497 et Seq. C.C.Q.)*

[63] An obligation is conditional where its creation or its extinction depends on a future and uncertain event (art. 1497 *C.C.Q.*). This event is extrinsic to the legal relationship between the parties, which means that it is an autonomous and independent event that does not entail any undertaking by the contracting parties (*Pincourt (Ville de) v. Construction Cogerex ltée*, 2013 QCCA 1773, at para. 132, quoting *Roy v. Caisse populaire de Percé*, 2003 CanLII 71979 (Que. C.A.); see also Lluelles and Moore, at No. 2467).

[64] The condition may be suspensive or extinctive. When it is extinctive, the obligation is liable to disappear should the event occur (Lluelles and Moore, at No. 2463; *144286 Canada inc. v. 9121-6788 Québec inc.*, 2009 QCCA 2398, at paras. 45-46). In the case of a suspensive condition, the creation of the relationship between the parties is delayed, and the obligation cannot arise before the condition is fulfilled (*144286 Canada inc.*, at paras. 45-46). Thus, before the event occurs, the parties are not bound by any obligation, which means that the prospective debtor is safe from any recourse for payment by the other contracting party (*Placements Marc Laplante inc. v. Gagnon*, 1996 CanLII 6540 (Que. C.A.), at p. 10; Lluelles and Moore, at No. 2464). Moreover, if it becomes certain that the event will not occur, the condition

fails (art. 1501 *C.C.Q.*). There is then no obligation between the parties (Baudouin, Jobin and Vézina, at No. 596).

(b) *Obligation With a Term (Articles 1508 et Seq. C.C.Q.)*

[65] An obligation with a suspensive term is an obligation that arises immediately but whose exigibility is suspended for a length of time defined by reference to a date on the calendar, a precisely identified period or the occurrence of a future and certain event (art. 1508 *C.C.Q.*; J. Pineau et al., *Théorie des obligations* (5th ed. 2023), by C. Valcke, at No. 1356). The parties are therefore bound as soon as the contract is signed (Baudouin, Jobin and Vézina, at No. 566). The obligation becomes exigible when the term expires (art. 1513 *C.C.Q.*).

[66] A condition and a term are different, because with a condition the occurrence of the event is uncertain, whereas with a term the event is certain but the date may not be (*Municipalité de Sainte-Béatrix v. Fabrique de la paroisse de Saint-Pierre-de-Belles-Montagnes*, 2018 QCCA 553, at paras. 16-17; *Commentaires du ministre de la Justice*, vol. I, *Le Code civil du Québec — Un mouvement de société* (1993), at p. 927). The characterization of an event as a condition requires two kinds of uncertainty: objective, because the occurrence of the event must be objectively uncertain, but also subjective, because the parties must not have taken the occurrence of the event as certain (*Venne v. Quebec (Commission de protection du territoire agricole)*, [1989] 1 S.C.R. 880, at p. 903, quoting J. Ghestin, "Réflexions d'un civiliste sur la clause de réserve de propriété" (1981), 1 *Recueil Dalloz Sirey* 1, at pp. 4-5).

[67] Similarly, authors Didier Lluelles and Benoît Moore (now a justice of the Quebec Court of Appeal) explain that the characterization of an obligation as "conditional" or "with a term" may depend on the circumstances and the likely intention of the parties:

> [TRANSLATION] The contracting parties may very well regard as a certainty an event that would not in itself necessarily be certain to occur if, in their minds, they reasonably considered its occurrence to be certain. . . . [I]f it was clear in the parties' minds that the event would really take place, why not consider it to be a term? [No. 2503, fn. 10]
>
> (See also Baudouin, Jobin and Vézina, at No. 562.)

[68] Thus, the parties' state of mind with respect to whether the occurrence of the event is certain or uncertain can serve to distinguish a term (in the former case) from a condition (in the latter case) (see, e.g., *9165-5662 Québec inc. v. 4459181 Canada inc.*, 2015 QCCA 969, at para. 15; *Hiess v. Zelnik*, 2019 QCCS 150, at para. 34).

(2) Fixing of the Term

(a) *Respective Scope of Articles 1512 and 1510 C.C.Q.*

[69] We have seen that a term can be defined by reference to a specific date, a precisely identified period or the occurrence of a future event. In the first two cases, the question of fixing the term does not arise. The obligation becomes exigible on the day specifically provided for by the parties (arts. 1508, 1509 and 1513 *C.C.Q.*). In the third

case, the question also does not arise if the future event on which the term depends occurs. On the other hand, if the event does not occur, arts. 1512 and 1510 *C.C.Q.* allow the term to be fixed judicially on a specific date (see Baudouin, Jobin and Vézina, at No. 565 *in fine*). The principles relating to the application of each article should be outlined.

(i) Conditions for the Application of Article 1512 *C.C.Q.*

[70] Article 1512 *C.C.Q.* reads as follows:

> **1512.** Where the parties have agreed to delay the determination of the term or to leave it to one of them to make such determination and where, after a reasonable time, no term has been determined, the court may, upon the application of one of the parties, fix the term according to the nature of the obligation, the situation of the parties and any appropriate circumstances.
>
> The court may also fix the term where a term is required by the nature of the obligation and there is no agreement as to how it may be determined.

[71] Article 1512 *C.C.Q.* allows one of the parties to apply to the court to have the term fixed. As this Court stated in *Uniprix inc. v. Gestion Gosselin et Bérubé inc.*, 2017 SCC 43, [2017] 2 S.C.R. 59, this provision "applies where there is no term or where the term is uncertain" (para. 66).

[72] Before I discuss the principles flowing from this provision in greater detail, it is important to note that art. 1512 *C.C.Q.* specifies that an application by one of the parties is required for this article to apply. In other words, art. 1512 *C.C.Q.* thus creates

"an independent remedy that must be specifically sought if it is to apply" (*Uniprix*, at para. 67).

[73] The two paragraphs of art. 1512 *C.C.Q.* presuppose different scenarios: the first paragraph applies where there is a term — a future and certain event — but where the date on which it will occur is undetermined, while the second paragraph applies where "there is no term" (*Uniprix*, at para. 66), that is, where there is an obligation whose nature requires a term and there is no agreement through which the term can be determined.

[74] The first paragraph contemplates a situation where the parties have decided on a term by reference to an event that is considered certain, without knowing when it will occur (Pineau et al., at No. 1359; Karim, at No. 358; G. Marchisio, "Le terme indéterminé: réflexions sur une modalité (pas si) simple!" (2022), 100 *Can. Bar Rev.* 254, at pp. 256-57; Lluelles and Moore, at No. 2505; Baudouin, Jobin and Vézina, at No. 565). Such terms are called [TRANSLATION] "indeterminate", "unknown", "uncertain" or "undatable" (Pineau et al., at No. 1357; M. Tancelin, *Des obligations en droit mixte du Québec* (7th ed. 2009), at para. 445; Marchisio, at p. 267; *Uniprix*, at para. 66).

[75] The classic example of the application of the first paragraph of art. 1512 *C.C.Q.* is the so-called better fortunes clause, in which a debtor undertakes to repay its debts [TRANSLATION] "when able to do so" (*Hiess*, at paras. 34-38, quoting *Tourangeau v. Gatowski*, 2004 CanLII 8105 (C.Q.), at paras. 20-29; *Richard v. Boucher*, 2013

QCCS 3142, at para. 35; F. Levesque, *Précis de droit québécois des obligations: Contrat, Responsabilité, Exécution et extinction* (2014), at para. 299; Pineau et al., at No. 1359; Marchisio, at p. 256; Lluelles and Moore, at No. 2505; *Commentaires du ministre de la Justice*, at p. 929). In such a situation, the event that the parties consider certain is the attainment by the debtor of sufficient financial capacity to repay its debt, even if the time when that sufficient financial capacity will be attained remains undetermined. Because capacity to pay is potestative, insofar as it depends at least in part on the conduct of one contracting party, the parties must be taken to "have agreed to delay the determination of the term or to leave it to one of them to make such determination" within the meaning of art. 1512 para. 1 *C.C.Q.* Conversely, art. 1510 *C.C.Q.* will not apply, because [TRANSLATION] "[i]t is still possible that the person will one day have the means to repay their debt" (Levesque, at para. 298).

[76] The first paragraph of art. 1512 *C.C.Q.* also requires that the parties have either agreed to delay the determination of the term or left it to one of them to make such determination, and that no term have been determined after a reasonable time. The condition that the time elapsed be reasonable prevents the parties from waiting too long before applying to the court. This condition also prevents anyone from proceeding hastily before, for example, the parties have finished negotiating to agree on a term or before the party with the obligation to fix a term has had the time to do so (Marchisio, at p. 261).

[77] Once these conditions are met, the court can fix the term. However, the exercise of fixing the term is not purely discretionary, because the court must consider "the nature of the obligation, the situation of the parties and any appropriate circumstances" (Marchisio, at p. 261). These broad criteria provide the court with sufficient flexibility, while also serving to prevent arbitrary outcomes (p. 261).

[78] The second paragraph of art. 1512 *C.C.Q.* applies where "there is no term" (*Uniprix*, at para. 66), that is, in a situation where the parties have not specified any term in their agreement but where a term is required by the nature of the obligation (Levesque, at para. 300; Karim, at No. 373; Pineau et al., at No. 1385). One example that comes to mind is a gardener who undertakes in January to come and clean up a customer's garden and who, because of the nature of his obligation, cannot be required to do so until the fine weather arrives (Lluelles and Moore, at No. 2510). Further, in fixing the term under the second paragraph of art. 1512 *C.C.Q.*, the court must consider the criteria set out in the first paragraph for this purpose, namely the nature of the obligation, the situation of the parties and any appropriate circumstances (*Péladeau v. Placements Péladeau inc.*, 2020 QCCS 1373, at para. 265).

(ii) Conditions for the Application of Article 1510 *C.C.Q.*

[79] Article 1510 *C.C.Q.* provides as follows:

> **1510.** If an event that was considered certain does not occur, the obligation is exigible from the day on which the event normally should have occurred.

[80] Three conditions must be met for the principle in art. 1510 to apply. First of all, the parties must have decided on a term by reference to an event that was considered certain. As we have already explained, this event need not be objectively certain; rather, the parties must have subjectively considered it a certainty that the event would occur.

[81] Next, because of the fact that art. 1510 *C.C.Q.* requires that the "day on which the event normally should have occurred" be identified, a second condition of art. 1510 *C.C.Q.* is that this day must be determinable (Karim, at No. 363). Indeed, the principle in art. 1510 *C.C.Q.* is intended to provide a solution [TRANSLATION] "[w]here the parties' expectations regarding the occurrence of a particular event are frustrated" (Pineau et al., at No. 1365). Thus, the court will be able to fix the term under art. 1510 *C.C.Q.* only if the circumstances show that the parties had contemplated the occurrence of the event that they considered certain at a time that was sufficiently precise and [TRANSLATION] "[was] in line with the original intention of the parties" (*Commentaires du ministre de la Justice*, at p. 927).

[82] Finally, the last condition for the application of art. 1510 *C.C.Q.* is that it has become impossible for the event that was considered certain to occur. The term is determinable, of course, but it remains indeterminate insofar as the parties have accepted some uncertainty about when it will occur. It will therefore be necessary to wait until the occurrence of the term has become impossible before fixing it. I note that the impossibility in question here is relative rather than absolute, since absolute

impossibility could [TRANSLATION] "produce situations in which the obligation remains dormant for an excessively long period of time, preventing the other contracting party from benefitting from it" (Marchisio, at p. 269). This period of time will necessarily be measured by reference to the determinable time when the term normally should have occurred. Furthermore, if the day is determinable, this means that the creditor of the obligation is able to know that, when the occurrence of the event considered to be certain becomes relatively impossible, it must act to protect its rights and prevent the operation of prescription against the obligation, which will begin to run at the time the event normally would have occurred (*Pellerin Savitz LLP v. Guindon*, 2017 SCC 29, [2017] 1 S.C.R. 575, at para. 12; Baudouin, Jobin and Vézina, at No. 1127).

[83] When these conditions are met, the court is able to rely on the sufficiently precise time contemplated by the parties for the occurrence of the event that they considered certain, and to fix the term on the day on which the event considered certain should have occurred.

(iii) Articles 1512 and 1510 *C.C.Q.* Are Mutually Exclusive

[84] It is apparent from the discussion of the principles in arts. 1512 and 1510 *C.C.Q.* that, while both of these provisions are concerned with situations involving terms whose date of occurrence is undetermined, the respective conditions for their application differ in two respects. First, art. 1510 *C.C.Q.* requires that the day on which the event should have occurred be determinable, whereas this is not the case for the

term contemplated by art. 1512 *C.C.Q.* Second, art. 1510 *C.C.Q.* requires that the occurrence of the event considered certain have become impossible, while art. 1512 *C.C.Q.* is based on the premise that, even though the parties decided on the term by reference to an event that was considered certain, they did not specify the day on which the term would expire (Karim, at Nos. 363-66; Baudouin, Jobin and Vézina, at No. 565; Marchisio, at pp. 268-69). For these reasons, arts. 1512 and 1510 are mutually exclusive.

(3) Application of the Principles Outlined

(a) *The City's Obligation Is an Obligation With a Suspensive Term, Not a Conditional Obligation*

[85] I agree with the Court of Appeal that the trial judge erred in focusing solely on the *objectively* uncertain nature of future cadastral operations by Larochelle or its subsidiaries in order to characterize the City's obligation. Indeed, to properly distinguish an obligation with a term from a conditional obligation in this case, it was important to consider the occurrence of the event in a subjective sense as well. More specifically, the question overlooked by the trial judge was whether, in the parties' minds, future cadastral operations were certain.

[86] In my view, the circumstances in which the agreement was entered into rather show that the parties intended to make the exigibility of the City's obligation, that is, effecting compensation for the credited area of land making up the bank,

dependent on future cadastral operations. This finding therefore weighs in favour of the existence of an obligation with a suspensive term.

[87] Before the agreement was entered into, Larochelle was in fact seeking compensation from the City for the excess land transferred. It defies belief that Larochelle would have renounced this and replaced it with a conditional claim. Larochelle asked to be reimbursed by the City, which said that it was unable to pay, and it was in this context that the parties reached a compromise: the creation of a land bank that included this "excess transfer" and that would be used when Larochelle or one of its subsidiaries made new applications for approval of a cadastral operation. In addition, the evidence indicates that the parties intended to continue the development of land and firmly believed that this was achievable. At the time they entered into the agreement, the parties were convinced that future real estate development projects would take place, including the one in the Du Moulin sector, which would allow some of the credits in the bank to be used. With respect to that development project, the bank was seen as a mere [TRANSLATION] "formality" for the "continuation of the development of Sainte-Julie that was going into [the Du Moulin] sector" (A.R., vol. V, at p. 178; A.R., vol. VI, at pp. 14-15). On the one hand, Larochelle was hoping at the time for dezoning in the short term so that it could use the bank (A.R., vol. VI, at p. 84). On the other, the City had high hopes that Larochelle would pursue new developments.

[88] Thus, the two parties had a common vision regarding future real estate developments on the City's territory and, by extension, regarding an impending use of

the "area bank". The events envisioned by the parties were therefore certain, which weighs in favour of an obligation with a suspensive term. The trial judge accordingly erred in characterizing the obligation as conditional.

(b) *The Term of the City's Obligation Consists of New Cadastral Operations, Even if the Times at Which They Are to Occur Are Not Determined*

[89] Before I set about fixing the term under art. 1512 *C.C.Q.*, it is important to note, with respect, and as the Court of Appeal also noted, that the trial judge made a palpable and overriding error in her alternative determination by implicitly defining the term as being limited to the cadastral operation that would result from the dezoning of the Du Moulin sector.

[90] In fact, if she had decided that the City's obligation was suspended until the expiry of a term, the trial judge would have fixed that term in 2012, after the failure of the applications for exclusion from the agricultural zone and the adoption of the MLUDP by the metropolitan regional community, thereby making the City's obligation exigible on that date. In these circumstances, the trial judge would have concluded that the action was prescribed.

[91] I agree with the Court of Appeal that there is a palpable and overriding error in that conclusion, because it rests on the premise that the "area bank" could be used only in relation to the agricultural zone land owned by Laroda in the Du Moulin sector. I will explain.

[92] In her analysis of the conditional obligation a few paragraphs before her analysis of the obligation with a term, the trial judge found that the bank could have been used following the dezoning of the Du Moulin sector or through the acquisition of land in a residential zone (para. 56). It is difficult to understand why, in her alternative analysis of the obligation with a term, the trial judge did not take this possibility into account. This error — a palpable one, in my opinion — is overriding as well because it led to the term being fixed in 2012 rather than 2015 and also led to an alternative conclusion that the action was prescribed.

[93] In this case, the uncontradicted evidence is to the effect that the area in the bank was not meant to be used solely for the Du Moulin sector, and the term therefore cannot be limited to just one future cadastral operation following the dezoning of this sector.

[94] Indeed, the parties' agreement in no way stipulates that a portion of the area in the bank must be used in connection with a specific parcel of land and therefore that the term is related to a cadastral operation in the Du Moulin sector. On the contrary, the resolution of the City's municipal council, which is an integral part of the agreement, states that "this agreement will create a bank for the purposes of parks or playgrounds for future approvals of cadastral operations" (A.R., vol. II, at p. 138 (emphasis added); see also Sup. Ct. reasons, at para. 37), without the times at which those operations would occur being specified.

[95] Moreover, since the bank's value was not linked to any particular parcel of land, but rather to an *area*, it could be used in its entirety for land other than that in the Du Moulin sector, provided that the land was on the City's territory. In this regard, article 5 of the agreement provides that Larochelle "has created a bank of 26,705.78 square metres" (A.R., vol. II, at p. 137).

[96] Furthermore, in addition to the content of the agreement, there is much other evidence showing that the area in the bank was not meant to be applied only to the Du Moulin sector. It may be noted, in particular, that the area of this land alone, and the value of the transfer for parks, playgrounds and green spaces that was to result from it pursuant to the municipal by-law, were not enough to exhaust the bank. In fact, given the area of this land, only 14,300 m^2 of the 26,705.78 m^2 making up the bank would have been used by the end of this cadastral operation.

[97] Lastly, neither of the two parties believes that the term was linked solely to the dezoning of the Du Moulin sector. The City acknowledges that, if the obligation is one with a term, the event relating to this term is the occurrence of [TRANSLATION] "new cadastral operations" (A.F., at para. 141). As for Laroda, its view is that the event is the development of a new parcel of land (R.F., at para. 128), which involves cadastral operations (A.R., vol. VI, at p. 5).

[98] As the Court of Appeal correctly noted, the bank could be used for compensation purposes in the context of transfers for parks, playgrounds and green spaces related to future development projects, on the basis of one of the following three

scenarios: (1) on a parcel of land owned by one of the companies in the Larochelle group, subject to first obtaining an exclusion from the agricultural zone from the CPTAQ; (2) through the acquisition by Larochelle or one of its subsidiaries of a parcel of land in the white zone, that is, outside the agricultural zone; or (3) through the transfer by the City to Larochelle of a parcel of land in the white zone, including as a result of expropriation or through any other form of transfer (para. 38).

[99] The ATQ's decision and the adoption of the MLUDP therefore did not exhaust two other possibilities for using the bank: Larochelle or its subsidiaries could acquire an immovable in the white zone, and/or the City could transfer to Larochelle or its subsidiaries a parcel of land that it acquired by expropriation or otherwise.

[100] The evidence shows that the first option proved difficult to achieve after 2012 because of the increasingly significant constraints on the dezoning of agricultural land on the territory of the regional county municipality to which the City belongs. However, it may be noted that at least one application for dezoning in the agricultural zone made by persons who are not parties to the litigation was approved in 2013 so that a real estate development could be carried out on the City's territory (A.R., vol. IX, at pp. 85-87). In addition, the City and Laroda submitted a new project in 2016 in order to obtain an exclusion from the agricultural zone, which suggests that this option remained possible.

[101] With regard to the option of acquiring an immovable in the white zone, Mr. Larochelle acknowledged in his pre-trial examination that white-zoned land owned

by a certain Mr. Trudeau near autoroute 20 could still be developed (A.R., vol. V, at pp. 76-77).

[102] Next, with regard to the option of a transfer to Laroda of a parcel of land acquired by the City through expropriation, an employee of the City stated that, if this had been attempted, it was not impossible that the municipal council would expropriate Mr. Trudeau's land (A.R., vol. X, at p. 87). There was nothing far-fetched about such an expropriation given that, as the City's employee acknowledged, the non-development of that land hindered the extension of the City's urban territory and there was no timetable in place for developing it (A.R., vol. IX, at pp. 71-73; A.R., vol. X, at pp. 86-87).

[103] In short, the trial judge made a palpable and overriding error in her alternative determination by finding that the term is related solely to the Du Moulin sector, that it should be fixed in 2012 and that the action was prescribed.

(c) *Under Article 1512 C.C.Q., the Term Is Fixed on the Date of the Demand Letter, December 15, 2015*

[104] It is therefore art. 1512 *C.C.Q.* that must apply in this case, and I am of the view that the term must be fixed at the time of the demand letter, that is, at December 15, 2015.

[105] It is important at the outset to exclude the application of the second paragraph of art. 1512 *C.C.Q.*, given that the parties had agreed on a term. Indeed, the agreement specified a term based on events that were considered certain but whose time of occurrence was undetermined: the future cadastral operations.

[106] Moreover, I note that the first paragraph's conditions for fixing the term are met. First, in its originating application, Laroda asked the court to fix the term under art. 1512 *C.C.Q.* (A.R., vol. II, at p. 7). Next, the parties did not fix the date on which the term would occur and left it to themselves to make this determination later. The "bank" contract in this case, in a similar fashion to a [TRANSLATION] "*when able to do so*" payment clause (*Commentaires du ministre de la Justice*, at p. 929 (emphasis in original); Levesque, at paras. 298-99), cannot be performed until land is available to effect compensation. However, the term was potestative, insofar as the occurrence of the event that was considered certain depended on the parties' conduct; they had to take action in order for new cadastral operations to occur. Article 1512 *C.C.Q.* therefore applies. Lastly, the parties did not, after a reasonable time, establish when the term would occur. Fourteen years elapsed between the signing of the agreement and the demand letter, and no cadastral operation took place despite the parties' sustained efforts.

[107] This Court must now fix the term according to the nature of the obligation, the situation of the parties and any appropriate circumstances. In my view, the term must be fixed at the time of the demand letter, that is, at December 15, 2015. Until that

date, the parties, and Laroda in particular, took their principal steps and made a great effort to use the "area bank". As Laroda stated in its demand letter, the situation had gone on long enough by that date and had to be brought to an end. The jurisprudence allows for the possibility of fixing the term at the time of the demand letter, especially where, as here, it is the creditor — which complied with all of its obligations under the agreement by transferring a total area of 26,705.78 m^2 — that has the right to fix the term (Marchisio, at pp. 264-65; *Ratelle v. Chevrette*, 2014 QCCA 2070, at para. 4; *Sofilco inc. v. 9056-8544 Québec inc.*, 2012 QCCS 2191, at paras. 88-91).

[108] Pursuant to art. 1512 *C.C.Q.*, I therefore fix the term at December 15, 2015. Furthermore, Laroda's action is not prescribed, because it instituted its proceedings on December 13, 2018.

C. *To What Remedy Is the Respondent Entitled?*

[109] The question of the remedy to which Laroda is entitled must now be considered. On this point, the parties take issue with the fact that the Court of Appeal applied the restitution of prestations regime to establish the remedy to which the respondent is entitled. They argue that, contrary to what the Court of Appeal stated, the restitution of prestations regime was no longer applicable after the agreement was signed. Laroda therefore submits that it is the performance by equivalence regime that applies in this case, which the City concedes, to the extent that the respondent is entitled to such performance.

[110] It is true that the "excess transfer" of 3,898.27 m^2 was a debt owed by the City. Pursuant to art. 1492 *C.C.Q.*, initially this "excess transfer" by Larochelle — only this "excess transfer" and not the area of 22,807.5 m^2 — had to be returned by the City to Larochelle under the rules on restitution of prestations. However, since I have already found that the debt for the "excess transfer" of 3,898.27 m^2 was extinguished and that novation was effected, I am of the view that the circumstances of this case are not such as to make the restitution of prestations regime in arts. 1699 et seq. *C.C.Q.* applicable.

[111] Restitution of prestations takes place "where a person is bound by law to return to another person the property he has received, either without right or in error" or in other situations (art. 1699 para. 1 *C.C.Q.*). In *Montréal (City) v. Octane Stratégie inc.*, 2019 SCC 57, [2019] 4 S.C.R. 138, my colleague Brown J. and I, dissenting, but not on this point, described the three scenarios in which this regime applies:

> . . . (1) where a person has received property "without right or in error" (for example, the receipt of a payment not due: arts. 1554, 1491 and 1492 *C.C.Q.*), (2) where a person has received property "under a juridical act which is subsequently annulled with retroactive effect" (for example, the annulment of a contract: art. 1422 *C.C.Q.*), and (3) where a person has received property under a juridical act but the person's "obligations become impossible to perform by reason of superior force" (J.-L. Baudouin and P.-G. Jobin, *Les obligations* (7th ed. 2013), by P.-G. Jobin and N. Vézina, at No. 920; D. Lluelles and B. Moore, *Droit des obligations* (3rd ed. 2018), at No. 1227). [para. 102]

[112] In the case at bar, none of these scenarios applies. The City is not bound to return to Laroda "the property [it] has received, either without right or in error", no

party is seeking to have the 2001 agreement annulled, and the City's obligation did not become impossible to perform by reason of superior force (art. 1699 para. 1 *C.C.Q.*).

[113] Accordingly, it cannot be asserted, as the Court of Appeal did, that the City continued to have an obligation to return the excess area received to Larochelle. It is erroneous to say that the bank of 26,705.78 m² was "received in excess" by the City, as it instead represents the consideration agreed upon in the agreement, in settlement of the "excess transfer" and the financing of an additional parcel of land.

[114] In this context, it is appropriate to turn to the performance by equivalence regime set out in arts. 1607 et seq. *C.C.Q.*, which establishes the relevant rules for determining the remedy to which the respondent is entitled in this case.

[115] The City's obligation with a term became exigible on December 15, 2015. The parties concede that specific performance is impossible because of the circumstances that exist today. The fact is that a portion of the transferred land is being used for public purposes. It is therefore a circumstantial impossibility for the City to make specific performance of its obligation and not an absolute impossibility, since the agreement could theoretically still be carried out (through the development of a parcel of land acquired by Laroda in the white zone, a parcel of land transferred to Laroda by the City or a dezoned parcel of land already owned by Laroda).

[116] The agreement does not set out any applicable mechanism in the event that the bank becomes impossible to use. I also recognize that it does not state that the City

will reimburse the value of the land in question to Larochelle. That being said, the fact remains that the parties agreed that the City would compensate Larochelle for the value of the transferred land using a specific mechanism provided for in the agreement. It is important to note that the parties never contemplated or intended that the transfers would be gratuitous. Moreover, the City was able to use the land — and even sold part of it in 2010 — for the construction of a childcare centre.

[117] I refer again here to the letter of December 15, 2015, from Larochelle to the City (A.R., vol. III, at pp. 134-36), which the Superior Court judge described as [TRANSLATION] "clearly attest[ing] to the parties' state of mind at the time the Agreement was negotiated and entered into" (para. 55). In that letter, Larochelle states that when the bank was created, the parties anticipated that part of it would be used for development in the Du Moulin sector and that [TRANSLATION] "[t]he balance could have been paid either in money by the city or through the transfer of land" (A.R., vol. III, at p. 135). This is one more element showing that the parties intended to completely exclude the restitution of prestations regime.

[118] Where specific performance of an obligation is impossible, an alternative mode of performance is made available by Quebec civil law, namely performance by equivalence. This is provided for in arts. 1607 et seq. *C.C.Q.*, which give the creditor the right to obtain damages for injury caused by the debtor's failure to comply with its obligation. Article 1611 para. 1 *C.C.Q.*, for its part, provides that "[t]he damages due

to the creditor compensate for the amount of the loss he has sustained and the profit of which he has been deprived".

[119] In this case, the injury sustained by Laroda lies in being deprived of the value of the land transferred to the City, land that the City used without having to pay a single cent to acquire it. Specifically, if Larochelle had not transferred the area of 3,898.27 m^2 and the area of 45,615 m^2 to the City, it could have freely disposed of them and received their value, whether by sale or otherwise. The loss of this possibility justifies monetary compensation equivalent to the value of the land.

[120] However, the parties disagree on the determination of this value. The Court of Appeal, applying the legal mechanism of restitution by equivalence, stated that the City has an obligation to make restitution by equivalence for 26,705.78 m^2 based on the value on the property assessment roll for 2001, set at $1.00 per square foot, for a total of $287,458.51 in compensation (paras. 58-63). According to Laroda, on top of the error regarding the choice of regime and the area for which restitution is to be made (26,705.78 m^2 rather than 3,898.27 m^2 + 45,615 m^2, for a total of 49,513.27 m^2), the value should correspond to the fair market value of the land on the date on which the proceedings were heard by the Superior Court in 2021. As for the City, it submits that if compensation is to be awarded to Laroda, the applicable value must be that listed on the property assessment roll in force in 2001, at the time the agreement was entered into.

[121] In my view, the value of the compensation must correspond to the fair market value of the land making up the bank at the time the obligation became exigible, that is, on the date of the demand letter of December 15, 2015. With all due respect to the Court of Appeal, there is no reason to rely on the value on the property assessment roll for 2001 rather than the market value of the land in this case. It is important to note that the fact the land transferred by Larochelle in 2001 was likely to increase in value over time was a key incentive for Larochelle to enter into the agreement for the creation of the "area bank" with the City. Moreover, when the City, in 2010, sold a parcel of land that it had initially received from Larochelle to a childcare centre for the purposes of a park, it did so on the basis of the fair market value, not the value listed on the property assessment roll in 2001.

[122] That being said, the evidence in the record does not enable our Court to determine the market value, as of December 15, 2015, of an area of 26,705.78 m^2 of bulk land free of park fees on the territory of Ville de Sainte-Julie. Laroda filed expert valuation evidence in the record concerning the market value of such a bank at the time the proceedings were instituted on December 13, 2018, with an update to February 19, 2021. The City did not file any counter-valuation and relies on the value of the land transferred by Laroda as listed on the property assessment roll for 2001.

[123] The case should therefore be remanded to the Superior Court so that a finding can be made on a single question, namely the market value, as of December 15, 2015, of an area of 26,705.78 m^2 of bulk land free of park fees on the territory of Ville

de Sainte-Julie (*Supreme Court Act*, R.S.C. 1985, c. S-26, s. 46.1; *Quebec (Attorney General) v. Pekuakamiulnuatsh Takuhikan*, 2024 SCC 39, at para. 208).

VI. Conclusion

[124] For these reasons, I would dismiss the appeal; allow the cross-appeal in part; set aside the judgments of the Quebec Court of Appeal and the Quebec Superior Court; declare that the City's obligation is one with a suspensive term; fix the term at December 15, 2015; order the City to pay Laroda the market value as of December 15, 2015, of the area of 26,705.78 m^2 of bulk land free of park fees on the territory of Ville de Sainte-Julie provided for by the agreement; and remand the case to the Superior Court solely on the question of determining this market value as of December 15, 2015, with costs to Laroda throughout, including expert fees.

APPENDIX A

Full Text of the Agreement Entered Into by the Parties

[TRANSLATION]

AGREEMENT entered into at Sainte-Julie this 19th day of the month of February two thousand and one (2001).

BETWEEN: **PROMOTIONS M.G. LAROCHELLE INC.** . . .

Hereinafter referred to as "THE TRANSFEROR"

AND: **VILLE DE SAINTE-JULIE** . . .

Hereinafter referred to as "THE TRANSFEREE"

ARTICLE 1 — PURPOSE OF THE AGREEMENT

The transferor and the transferee hereby wish to establish the area of land to be transferred for the purposes of parks or playgrounds pursuant to the documents and by-law listed in article 2 of this agreement, following the cadastral operations carried out so far and to be carried out on lots P-295, P-296, P-309, P-311 and P-312 of the cadastre of the parish of Sainte-Julie, registration division of Verchères, on the transferee's territory.

ARTICLE 2 — BY-LAW AND DOCUMENTS

The documents and by-law applicable to this agreement are as follows:

(A) Cadastral compilation plan prepared by Jean-Luc Léger, land surveyor, file 3-10500 dated December 20, 1995.

(B) Urban development plan (zone H-506) approved by the Municipal Council on September 1, 1998, in a resolution bearing number 98-501.

(C) Reference table (Schedule 1) hereunder establishing the area.

(D) Subdivision by-law number 701 passed by the transferee's Municipal Council and in force since January 24, 1992.

ARTICLE 3 — AREA TO BE TRANSFERRED FOR THE PURPOSES OF PARKS OR PLAYGROUNDS UNDER THE MUNICIPAL BY-LAW

Under subdivision by-law number 701, there must be transferred, for the purposes of parks or playgrounds, an area equal to 10% of the land that has been or is to be the subject of a cadastral operation as from December 3, 1991.

The applicable area, as it appears in the document specified in article 2-A, is 760,926.3 square metres.

The transferor hereby declares that it will have to transfer, for the purposes of parks or playgrounds, an area of 76,092.63 square metres.

ARTICLE 4 — AREA TRANSFERRED AND TO BE TRANSFERRED FOR THE PURPOSES OF PARKS

Under article 4.1.2 of the document specified in article 2-B. The transferor undertakes to transfer 45,615 square metres, 50% of which is applicable to this protocol, that is, 22,807.5 square metres.

In addition, the transferor has already transferred the following area for the purposes of parks:

LOT	**AREA**
295-94	3,714.3
296-18	1,887.4
296-24	2,856.8
296-71	177.3
309-24	759.1
309-6 and 312-3	27,871.0
309-7	41,330.6
1062	1,394.4
Subtotal	**79,990.9 square metres**

For a **total area of 102,798.4 square metres**.

ARTICLE 5

The transferee agrees that the transferor has created a bank of **26,705.78 square metres**, as can be seen from Schedule 1 hereof.

APPENDIX B

Relevant Statutory Provisions of the *Civil Code of Québec*

1491. A payment made in error, or merely to avoid injury to the person making it while protesting that he owes nothing, obliges the person who receives it to make restitution.

However, a person who receives the payment in good faith is not obliged to make restitution where, in consequence of the payment, the person's claim is prescribed or the person has destroyed his title or relinquished a security, saving the remedy of the person having made the payment against the true debtor.

1492. Restitution of payments not due is made according to the rules for the restitution of prestations.

1497. An obligation is conditional where it is made to depend upon a future and uncertain event, either by suspending it until the event occurs or is certain not to occur, or by making its extinction dependent on whether or not the event occurs.

1508. An obligation with a suspensive term is an existing obligation that does not become exigible until the occurrence of a future and certain event.

1510. If an event that was considered certain does not occur, the obligation is exigible from the day on which the event normally should have occurred.

1512. Where the parties have agreed to delay the determination of the term or to leave it to one of them to make such determination and where, after a reasonable time, no term has been determined, the court may, upon the application of one of the parties, fix the term according to the nature of the obligation, the situation of the parties and any appropriate circumstances.

The court may also fix the term where a term is required by the nature of the obligation and there is no agreement as to how it may be determined.

1607. The creditor is entitled to damages for bodily, moral or material injury which is an immediate and direct consequence of the debtor's default.

1611. The damages due to the creditor compensate for the amount of the loss he has sustained and the profit of which he has been deprived.

Future injury which is certain and assessable is taken into account in awarding damages.

1660. Novation is effected where the debtor contracts towards his creditor a new debt which is substituted for the former debt, which is extinguished, or where a new debtor is substituted for the former debtor, who is discharged by the creditor; in such a case, novation may be effected without the consent of the former debtor.

Novation is also effected where, by the effect of a new contract, a new creditor is substituted for the former creditor, towards whom the debtor is discharged.

1661. Novation is not presumed; the intention to effect it must be evident

1662. Hypothecs attached to the former claim are not transferred to the claim substituted for it, unless they are expressly reserved by the creditor.

1663. Where novation is effected by substitution of a new debtor, the new debtor may not set up against the creditor the defenses which he could have raised against the former debtor, nor the defenses which the former debtor had against the creditor, unless, in the latter case, he may invoke the nullity of the act that bound them.

Furthermore, hypothecs attached to the former claim may not be transferred to the property of the new debtor; nor may they be reserved upon the property of the former debtor without his consent. However, they may be transferred to property acquired from the former debtor by the new debtor, if the new debtor consents thereto.

1664. Where novation is effected between the creditor and one of the solidary debtors, hypothecs attached to the former claim may only be reserved upon the property of the co-debtor who contracts the new debt.

1665. Novation effected between the creditor and one of the solidary debtors releases the other co-debtors with respect to the creditor; novation effected with respect to the principal debtor releases the sureties.

However, where the creditor has required the accession of the co-debtors, in the first case, or of the sureties, in the second case, the creditor's former claim subsists if the co-debtors or the sureties refuse to accede to the new contract.

1666. Novation which has been agreed to by one of the solidary creditors may not be set up against the other co-creditors, except for his share in the solidary claim.

1699. Restitution of prestations takes place where a person is bound by law to return to another person the property he has received, either without right or in error, or under a juridical act which is subsequently annulled with retroactive effect or whose obligations become impossible to perform by reason of superior force.

The court may, exceptionally, refuse restitution where it would have the effect of according an undue advantage to one party, whether the debtor or the creditor, unless it considers it sufficient, in that case, to modify the scope or modalities of the restitution instead.

Appeal dismissed and cross-appeal allowed in part, with costs throughout.

Solicitors for the appellant/respondent on cross-appeal: Poupart & Poupart avocats inc., Montréal.

Solicitors for the respondent/appellant on cross-appeal: Dunton Rainville, Laval.