SUPERIOR COURT

(Civil Division)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No.: 500-17-129674-241

DATE: December 29, 2025

BY THE HONOURABLE JEFFREY EDWARDS, J.S.C.

9510-8528 QUÉBEC INC.
and
9506-6213 QUÉBEC INC.
Plaintiffs/Cross-Defendants
v.
ARE-CANADA NO. 5 HOLDINGS, ULC
Defendant/Cross-Plaintiff
and

ALEXANDRIA REAL ESTATE EQUITIES, INC.
Defendant
and

IAN QUINT
and
RICHARD STERN
Forced Intervenors/Cross-Defendants

JUDGMENT
(DECLINATORY EXCEPTION (ART. 167 C.C.P.), EXCEPTION TO DISMISS (ART. 168(2) C.C.P.), ABUSE (ART. 51 C.C.P.)

2025 QCCS 4705 (CanLII)

Table of Contents

1. Overview....2
2. Questions in Issue....3
3. Context....4
3.1 Originating Application and Procedural Context....4
3.2 Plaintiffs' Theories of Defendants' Liability....4
4. Analysis and decision....9
4.1 Is Alexandria's Declinatory Exception based upon article 167 C.C.P. well founded?....9
4.2 Is Alexandria's Application to Dismiss based upon Article 168(2) C.C.P. well founded?....11
4.3 Is Alexandria's Application to Dismiss based upon Abuse under Article 51 C.C.P. well founded?....17
FOR THESE REASONS, THE COURT:....20

2025 QCCS 4705 (CanLII)

1. OVERVIEW

[1] 9510-8528 Quebec Inc. and 9506-6213 Quebec Inc. (**Plaintiffs**) are suing ARE-Canada No. 5 Holdings, ULC (**Are-Canada**) and Alexandria Real Estate Equities, Inc. (**Alexandria**) for the amount of $600,000,000 (**Originating Proceeding**). The Plaintiffs allege that Are-Canada and Alexandria have committed various legal faults with respect to them. In particular, Plaintiffs claim Defendants Are-Canada and Alexandria concluded an agreement to enter into a commercial lease for premises located in the Province of Quebec (**Leases Premises**) and then reneged on that agreement.

[2] Alexandria presents an Application to Dismiss the Originating Proceeding taken against it (**Application**). Are-Canada does not make such an application. Alexandria presents three grounds in support of the Application.

[3] First, Alexandria presents a declinatory exception pursuant to Article 167 of the *Code of Civil Procedure* (**C.C.P.**). Alexandria pleads that its head office is located in Pasadena, California, United States of America and that the allegations contained in the Originating Proceeding are insufficient to grant jurisdiction to the Quebec Courts for the claim taken against it. Article 3148(3) of the *Civil Code of Quebec* (**C.C.Q.**) states that the Quebec courts have jurisdiction notably when a fault was committed in Quebec, when an injury was suffered in Quebec or when an injurious act or omission occurred in Quebec.

[4] At this stage, for an Exception for Declinatory Exception, the allegations contained in the Originating Proceeding are presumed to be true. Furthermore, Alexandria has not submitted any convincing evidence to counter the allegations contained in the Originating Proceeding. Moreover, Alexandria's application is not supported by an affidavit of one of its representatives. In the Court's view, the Plaintiffs'

allegations in the Originating Proceeding are consistent with the criteria found at Article 3148(3) C.C.Q. Accordingly, Alexandria's first ground of dismissal is unfounded.

[5] Second, Alexandria presents an Exception to Dismiss, pursuant to Article 168(2) C.C.P. on the basis that the Originating Proceeding is unfounded in law even if the facts alleged are true. At this stage, the role of the court is not to decide on whether Plaintiffs will be able to discharge their burden of proof with respect to these allegations. For the purposes of an application under Article 168(2) C.C.P., Plaintiffs' allegations are deemed to be true.

2025 QCCS 4705 (CanLII)

[6] On the hypothetical basis that the allegations contained in the Originating Proceeding are true, they are sufficient to support Plaintiffs' claims that various breaches were committed by Alexandria. As such, the conclusions sought by Plaintiffs against Alexandria could potentially be granted. For this reason, Alexandria's second ground for dismissal is unfounded.

[7] Third, Alexandria claims that the Originating Proceeding is abusive, pursuant to Article 51 C.C.P. Alexandria pleads that the Originating Application contains no allegation that could support Plaintiffs' claims, and as such, it is clearly unfounded and frivolous.

[8] As mentioned, Alexandria did not file an affidavit in support of the application alleging that the Originating Proceeding is abusive. Alexandria refused to allow Plaintiffs to examine a representative of Alexandria regarding Plaintiffs' allegations with respect to Alexandria.

[9] In these circumstances, the evidence before the Court is manifestly incomplete. Alexandria has not satisfied its burden to demonstrate that the Originating Proceeding is abusive, clearly unfounded or frivolous, as required by Article 51 C.C.P. The judge sitting on the merits, after hearing the evidence of the parties, will be in a better position to decide whether Plaintiffs' allegations with respect to Alexandria are well founded or not. Therefore, Alexandria's third ground of dismissal is also unfounded.

2. QUESTIONS IN ISSUE

1. Is Alexandria's Declinatory Exception based upon Article 167 C.C.P. well founded?

2. Is Alexandria's Exception to Dismiss based upon Article 168(2) C.C.P. well founded?

3. Is Alexandria's Application to Dismiss based upon abuse under Article 51 C.C.P. well founded?

3. CONTEXT

3.1 Originating Application and Procedural Context

[10] On April 22, 2024, Plaintiffs filed their initial originating application. At the time, Plaintiffs only sued Are-Canada. Subsequently, Plaintiffs amended the originating application five times[1]. On each occasion, Plaintiffs' right to make the amendments sought was not contested. The Originating Application contains approximately 150 paragraphs. In support of the Originating Application, Plaintiffs have filed 70 exhibits[2].

[11] On August 5, 2024, Are-Canada filed a "*Summary of Grounds of Defence; Cross-Application and De Bene Esse Declaration of Forced Intervention of Ian Quint and Richard Stern*". The Summary of Grounds of Defence contains 24 paragraphs. Are-Canada filed 32 exhibits. Are-Canada also made, in support of its defence, a Cross-Application against Plaintiffs for $328,000. Furthermore, Are-Canada sued Ian Quint and Richard Stern by way of Forced Intervention. Mr. Quint and Mr. Stern are the shareholders of the Plaintiffs.

[12] On December 20, 2024, Plaintiffs added Alexandria as a Co-Defendant in the Re-Re-Amended Originating Proceeding.

[13] On March 14, 2025, Alexandria, represented by the same attorneys as those of Are-Canada, filed the present *Application for Declinatory Exception, Dismissal and Abuse of Procedure*.

[14] On March 18, 2025, Plaintiffs filed an *Application to Dismiss the Application for Declinatory Exception, Dismissal and Abuse of Procedure*.

[15] At the hearing before the undersigned, each party filed extensive written argument in support of its position. Alexandria's plan of argumentation contains 165 paragraphs. Plaintiffs' plan of argumentation contains 116 paragraphs. Each plan of argument refers to exhibits, an examination on discovery as well as authorities.

3.2 Plaintiffs' Theories of Defendants' Liability

[16] Pursuant to the Originating Proceeding, as amended, Plaintiffs allege the following in support of their claims against Are-Canada and Alexandria:

> 1. The Plaintiffs, 9510-8528 Québec Inc. ("9510") and 9506-6213 Québec Inc. ("9506") (collectively, the "Plaintiffs") are seeking damages against

[1] The Originating Application was amended as follows: *Amended Application*: May 22, 2024; *Re-Amended Application*: October 1, 2024; *Re-Re-Amended Application*: December 20, 2024; *Re-Re-Re-Amended Application*: March 18, 2025; *Re-Re-Re-Re-Amended Application*: September 15, 2025.

[2] Plaintiffs' List of Exhibits dated September 15, 2025. Note that several exhibits include many sub-exhibits.

2025 QCCS 4705 (CanLII)

2025 QCCS 4705 (CanLII)

ARE-Canada No. 5 Holdings, ULC. and Alexandria Real Estate Equities, Inc. (“AREs” or “Defendants”) for breaches of their contractual obligations.

2. In February 2024, representatives of the parties entered into a lease agreement for the premises located at 7300 Transcanada Highway, in Pointe-Claire, Québec (the “Leased Premises”).

3. As further set forth below, said lease agreement was concluded by the representatives of the parties following a multiday negotiation process. Relying upon the agreement reached with the Defendants, the Plaintiffs agreed to buy the assets, equipment and shares of Capcium Inc., *i.e.* the Defendants’ former lessee.

4. From the very outset of the negotiations, the representatives of the Plaintiffs made it very clear to the Defendants that under no circumstances could they, or would they, buy the assets and the shares of Capcium unless and until they reached an agreement with the Defendants with respect to the Leased Premises.

5. Despite the fact that **a clear and unequivocal agreement** was reached, the Defendants **abusively refused to honour it**, and prevented the Plaintiffs from operating their business, thereby depriving them of the value of said business.

[Emphasis added]

[17] Plaintiffs allege various theories of liability of Alexandria. These are set out at paragraphs 12.1 to 12.18 of the Originating Proceeding, as amended:

12.1 Alexandria Real Estate Equities, Inc. is a US-based real estate company incorporated in 1994 that specializes in renting out infrastructure in the life science industry. It was incorporated under the laws of Maryland but is currently headquartered in Pasadena, California, the whole as appears from excerpts of the company’s website, communicated herewith as Exhibit P-4A, and from an excerpt from the Maryland company registry, communicated herewith as Exhibit P-5A.

12.2 As set forth above (Exhibit P-4), it is the parent company of ARE-Canada No. 5 Holdings, and ARE-Canada No. 5 Holdings, ULC. is the *alter ego* of Alexandria Real Estate Equities, Inc. which, as further described herein, **acted abusively and in bad faith** against the Plaintiffs.

12.3 Alexandria Real Estate Equities, Inc. has international operations, including multiples properties across Canada (which included the Leased Premises until December 23, 2024). It files federal, foreign, state and local tax return for all of its subsidiaries, including ARE-Canada No. 5 Holdings, ULC. in Canada, as it notably appears from the company’s Annual report, dated December 31, 2024, communicated herewith as Exhibit P-5D.

12.4 **At all material times, Alexandria Real Estate Equities, Inc. was also a co-lessor to the lease agreement entered upon by the Parties. Indeed, and as further set forth herein, all communications relating to the lease agreement entered upon into by the parties were with representatives of Alexandria Real Estate Equities, Inc., as ARE-Canada No. 5 Holdings, ULC. has no employees nor any listed addresses in the province of Quebec.**

12.5 During his pre-trial examination, Mr. Eddie Rose acknowledged under oath that ARE-Canada No. 5 Holdings, ULC ("ARE-5") has virtually no operational footprint in the Province of Québec or elsewhere in Canada. He confirmed that the entity employed, at most, two (2) individuals assigned exclusively to routine property-management functions and that the sole Canadian office previously maintained in Laval has been closed for approximately one (1) year, leaving ARE-5 with no staff presence in Quebec, the whole as appears from the transcripts of the pre-trial examination of Edward Joseph Rose dated June 17, 2025, at p. 44-45, communicated herewith as Exhibit P-5E.

12.6 Mr. Rose further testified that his own employment relationship is with Alexandria Real Estate Equities, Inc., not with ARE-5. He was unable to say which corporate entity actually pays his salary and conceded that his employment agreement, if any, is with Alexandria. He likewise acknowledged that he commenced his career some twenty (20) years ago with Alexandria and has at all times reported to Messrs. Larry Diamond and Joel Marcus—both senior executives of Alexandria— rather than to any officer of ARE-5, the transcripts of the pre-trial examination of Edward Joseph Rose at pp. 21-22, 33, 35 and 37 (Exhibit P-5E), and as appears from Larry Diamond's profile on Alexandria's website, communicated herewith as Exhibit P-5F, and Joel Marcus' profile on Alexandria's website, communicated herewith as Exhibit P-5G.

12.7 **With respect to contractual documentation, Mr. Rose confirmed that lease agreements, amendments and other instruments relating to immovables were negotiated on Alexandria's standard-form templates and executed by Alexandria's in-house counsel, Mr. Gregory Kay, Senior Vice-President, Real Estate Legal Affairs**. No document was signed on behalf of ARE-5 by an ARE-5 officer, nor does ARE-5 possess its own template forms, as appears from Exhibit P-7 and the transcripts of the pre-trial examination of Edward Joseph Rose at pp. 39-41, 43-44 and 55 (Exhibit P-5E), and as appears from the LinkedIn profile of Gregory Kay, communicated herewith as Exhibit P-5H.

12.8 In fact, Mr. Rose even admitted that in the negotiation surrounding the Initial Lease dated October 28, 2021 (Exhibit P-7) between Capcium and ARE-5, he was assisted by Messrs. Marcus and Diamond, among other senior management of Alexandria, as appears from the transcripts of the pre-trial examination of Edward Joseph Rose at pp. 48-49 (Exhibit P-5E).

2025 QCCS 4705 (CanLII)

12.9 **The contracting counterparties therefore dealt, in substance and appearance, with Alexandria rather than with ARE-5.**

12.10 Mr. Rose equally conceded that ARE-5 has no autonomous finance department. All financial modelling, credit analysis, budgeting and approval of Québec transactions are therefore undertaken by Alexandria's Finance team, to whom Mr. Rose systematically submits each file. He was unable to identify any ARE-5 finance personnel, ultimately acknowledging that "ARE has [no] Finance team" distinct from Alexandria, thereby confirming that ARE-5 thus lacked the financial independence normally associated with a genuine, arm's-length corporate entity, as appears from the transcripts of the pre-trial examination of Edward Joseph Rose at pp. 57-58 (Exhibit P-5E).

12.11 Taken together, these sworn admissions reveal a complete overlap of personnel, forms, infrastructure and decision-making between Alexandria and ARE-5:

a) the same senior executives (Messrs. Diamond and Marcus) direct Mr. Rose's activities for both entities;

b) the same legal staff prepare and sign all Québec lease and sale documents;

c) the same finance department controls every monetary aspect of Canadian operations; and

d) the (now-closed) Quebec premise housed the only two ARE-5 employees, whose duties were limited to basic property management.

12.12 Moreover, for the purposes of these very proceedings—in blatant conflict with Alexandria's denial that it is subject to this Court's jurisdiction—Alexandria itself (and not ARE-5) retained Ankura Consulting Group, LLC ("Ankura") to render sophisticated "*Data & Technology services, including forensic data collection, eDiscovery processing and document review hosting*." Said services were performed in compliance with an order from this Court directing the parties to submit a sworn statement explaining the steps taken to provide requested preundertakings. This fact is confirmed by Mr. Brandon Jessup, Ankura's employee, in unambiguous terms at paragraph 1 of his sworn declaration dated June 2, 2025, communicated herewith as Exhibit P-5I.

12.13 It appears that no mandate letter, work order or statement of work was executed by, or on behalf of, ARE-5. Alexandria assumed—directly and without the intermediation of its Canadian subsidiary—both the legal responsibility and the financial burden associated with the engagement of Ankura in the course of these very proceedings, just as it does for every other critical function relating to Canadian operations. Alexandria's decision to contract in its own name for the forensic collection and

2025 QCCS 4705 (CanLII)

processing of Canadian custodians' data is wholly irreconcilable with its position that it is a mere "stranger" to the underlying dispute.

12.14 The Plaintiffs have repeatedly requested disclosure of the Ankura engagement agreement in the ordinary course of documentary discovery. Despite acknowledging its existence, the Defendants have thus far not responded nor provided the document, depriving the Plaintiffs—and ultimately this Honourable Court—of evidence that would further illuminate the manner in which Alexandria continues to dominate and control all aspects of the Canadian file, as it notably appears from the emails of Mtre Philippe Dubois dated August 18 and 21, 2025, communicated herewith as Exhibit P-5J.

12.15 The refusal to produce the agreement is entirely consistent with Alexandria's broader strategy of obfuscating the true nature of its relationship with ARE-5.

12.16 The foregoing facts establish that ARE-5 is nothing more than a nominal titleholder, devoid of employees, offices, finance, or independent will, and that it functions exclusively as an instrument or "alter ego" of Alexandria for the purpose of holding Canadian real-estate assets. **The corporate veil separating the two entities is therefore illusory; Alexandria directs and benefits from all material decisions concerning the Lease and the Property**.

12.17 Alexandria Real Estate Equities, Inc. also shares the same controlling director (and other directors), namely Mr. Joel S. Marcus, that of ARE-Canada No. 5 Holdings ULC., while the two shareholders of ARE-Canada No. 5 Holdings, ULC. are holding companies that share the same directors, as it notably appears from the BC Registry Services, communicated herewith as Exhibit P-5B.

12.18 Lastly, its presence as a co-defendant is even more important given the Defendants' admitted intention to divest and offload underperforming real estate assets and properties "*not integral to their mega campus strategy*", like the Leased Premises, as it notably appears from a recent news article from Promodo and Alexandria Real Estate Equities, Inc.'s Quarterly Report for the period ended September 30, 2024, submitted to the United States Securities Exchange Commission, communicated herewith as Exhibit P-5C, en liasse.

[Emphasis added]

2025 QCCS 4705 (CanLII)

4. ANALYSIS AND DECISION

4.1 Is Alexandria's Declinatory Exception based upon article 167 C.C.P. well founded?

[18] Alexandria pleads that the allegations contained in the Originating Proceeding do not show a ground for jurisdiction of the Quebec Courts.

[19] The relevant rule regarding jurisdiction is found at Article 3148 C.C.Q.:

> In personal actions of a patrimonial nature, Québec authorities have jurisdiction in the following cases:
>
> 1° the defendant has his domicile or his residence in Québec;
>
> 2° the defendant is a legal person, is not domiciled in Québec but has an establishment in Québec, and the dispute relates to its activities in Québec;
>
> **3° a fault was committed in Québec, injury was suffered in Québec, an injurious act or omission occurred in Québec or one of the obligations arising from a contract was to be performed in Québec;**
>
> 4° the parties have by agreement submitted to them the present or future disputes between themselves arising out of a specific legal relationship;
>
> 5° the defendant has submitted to their jurisdiction.
>
> *Agreement of parties*
>
> However, Québec authorities have no jurisdiction where the parties have chosen by agreement to submit the present or future disputes between themselves relating to a specific legal relationship to a foreign authority or to an arbitrator, unless the defendant submits to the jurisdiction of the Québec authorities.
>
> [Emphasis added]

[20] Plaintiffs invoke paragraph 3 of Article 3148 C.C.Q. They plead that, according to the allegations contained in the Originating Proceeding, the parties, including Alexandria, agreed to conclude a lease regarding the Leased Premises located in Quebec and that, as such, the Defendants, including Alexandria, were obliged to execute the legal contracts and documentation in Quebec in order to give effect to that agreement. The Plaintiffs allege that the agreement was made by Alexandria. They allege that Alexandria was bound to require that Are-Canada, its subsidiary, comply, respect and fulfill that agreement. Plaintiffs allege that the breach of the obligation to respect the agreement occurred in Quebec with respect to the Leased Premises, which are located in Quebec. Furthermore, Plaintiffs allege that the breach caused them damages in Quebec including losses resulting from Plaintiffs' being unable to carry on the business at the Leased Premises.

2025 QCCS 4705 (CanLII)

2025 QCCS 4705 (CanLII)

[21] In the case of *Spar Aerospace*, the Supreme Court held that, at the stage of a declinatory exception, the facts alleged in the originating proceeding are held as true[3]. The Supreme Court also held that Article 3148 C.C.Q. should receive a wide and liberal interpretation conferring upon Quebec Courts a solid jurisdictional basis.

[22] It is also settled law and acknowledged by all of the parties that individually any of the criteria enunciated at Article 3148(3) C.C.Q., namely a fault, including a contractual breach in Quebec, injury suffered in Quebec, an injurious act or omission in Quebec or an obligation arising from a contract to be performed in Quebec, is sufficient to confer jurisdiction upon the Quebec Courts[4]. It is therefore not necessary that each of the criteria stated in Article 3148(3) C.C.Q. be established.

[23] Furthermore, the Quebec Court of Appeal has held that when parties are acting together, carry out interconnected actions in relation to the criteria found at Article 3148(3) C.C.Q., the terms of that article are satisfied and that Quebec Courts have jurisdiction to adjudicate[5].

[24] Alexandria's Declinatory Exception is not supported by an affidavit. Plaintiffs were not given the opportunity to examine a representative of Alexandria regarding its contestation of the jurisdiction of the Quebec Courts.

[25] In light of the above, the Court concludes that the allegations contained in the Originating Proceeding, deemed as true at this stage, are sufficient to satisfy the conditions set out at Article 3148(3) C.C.Q. Accordingly, the Superior Court of Quebec has jurisdiction to hear and adjudicate the dispute between the Plaintiffs and Alexandria.

[26] Plaintiffs also argue that Alexandria has voluntarily submitted to the jurisdiction of the Quebec Courts in accordance with Article 3148(5) C.C.Q. Plaintiffs argue that by presenting an Exception to Dismiss and an Application for Abuse of Procedure, along with a Declinatory Exception, Alexandria has in fact and law consented to the jurisdiction of the Quebec Courts[6]. Alexandria vigorously contests that argument and states that it is based upon an incorrect interpretation of the relevant case law. Given the Court's previous conclusion regarding the application of Article 3148(3) C.C.Q. in the circumstances, it is not necessary to decide on that supplemental issue.

[27] For these reasons, the Court dismisses Alexandria's Declinatory Exception.

---

3 *Spar Aerospace Ltd* v. *American Mobile Satellite Corp.*, 2002 SCC 78, para. 31, 58. See also *Conseil de bande de Pessamit* v. *Rock*, 2024 QCCA 1532, para.30.

4 *Partner Reinsurance Company Ltd.* v. *Optimum Réassurance inc.*, 2020 QCCA 490.

5 *Transax Technologies inc.* v. *Red Baron Corp. Ltd.*, 2017 QCCA 626, para. 34-36. See also *Consult Overseas Ltd.* v. *Bora Capital Partners SPC*, 2021 QCCS 920, para. 31.

6 *Barer* v. *Knight Brothers LLC*, 2019 SCC 13, para. 52, 53, 58, 69-72, 80-81.

4.2 Is Alexandria's Application to Dismiss based upon Article 168(2) C.C.P. well founded?

2025 QCCS 4705 (CanLII)

[28] Alexandria requests that the Originating Proceeding be dismissed summarily based on Article 168(2) C.C.P. That article reads as follows:

> The party may also ask that an application or a defence be dismissed if it is unfounded in law **even if the facts alleged are true**. Such an exception may pertain to only part of the application or defence.
>
> [Emphasis added]

[29] The legal principles regarding the conditions required for an application to succeed under this article are well known and settled.

[30] In *Bohémier* v. *Barreau du Québec*, the Court of Appeal summarized the legal principles as follows:

> [17] La juge de première instance a correctement énuméré les principes juridiques qui sous-tendent l'irrecevabilité d'un recours sous l'article 165(4) *C.p.c.* au paragraphe 66 du jugement attaqué :
>
> > [66] Les principes juridiques liés à l'irrecevabilité sont les suivants :
> >
> > • Les allégations de la requête introductive d'instance sont tenues pour avérées, ce qui comprend les pièces déposées à son soutien;
> >
> > Seuls les faits allégués doivent être tenus pour avérés et non pas la qualification de ces faits par le demandeur;
> >
> > Le Tribunal n'a pas à décider des chances de succès du demandeur ni du bien-fondé des faits allégués. Il appartient au juge du fond de décider, après avoir entendu la preuve et les plaidoiries, si les allégations de faits ont été prouvées;
> >
> > Le Tribunal doit déclarer l'action recevable si les allégations de la requête introductive d'instance sont susceptibles de donner éventuellement ouverture aux conclusions recherchées;
> >
> > La requête en irrecevabilité n'a pas pour but de décider avant procès des prétentions légales des parties. Son seul but est de juger si les conditions de la procédure sont solidaires des faits allégués, ce qui nécessite un examen explicite mais également implicite du droit invoqué;
> >
> > On ne peut rejeter une requête en irrecevabilité sous prétexte qu'elle soulève des questions complexes;
> >
> > En matière d'irrecevabilité, un principe de prudence s'applique. Dans l'incertitude, il faut éviter de mettre prématurément à un procès;
> >
> > En cas de doute, il faut laisser au demandeur la chance d'être entendu au fond.

[31] Alexandria submits that it is a distinct entity from Are-Canada. It submits that that distinct status is a fundamental principle of corporate, commercial and civil law and must be respected. Alexandria submits that the grounds of liability with respect to Alexandria, set out in the Originating Proceeding at paragraphs 12.1 to 12.18, even if the facts alleged therein are true, cannot give rise to a condemnation of liability of Alexandria.

2025 QCCS 4705 (CanLII)

[32] Alexandria alleges that it was understood between the parties that the Plaintiffs were only dealing with Are-Canada. On that basis, Are-Canada alone would be responsible for any alleged breach. Alexandria pleads that the allegations contained in the Originating Proceeding are insufficient to support the remedy of lifting the corporate veil, as codified at Article 317 C.C.Q. That article reads as follows:

> The juridical personality of a legal person may not be invoked against a person in good faith so as to dissemble fraud, abuse of right or contravention of a rule of public order.

[33] Alexandria pleads that the allegations contained at paragraphs 12.1 to 12.18 do not show any of the grounds required by Article 317 C.C.Q., namely that Alexandria acted in such a way as to dissemble fraud, abuse of right or contravention of a rule of public order.

[34] Plaintiffs argue that the factual grounds alleged, deemed true at this stage, amply justify the lifting of the corporate veil and the attendant liability of Alexandria.

[35] Plaintiffs allege that Alexandria abused its rights in not honouring the concluded agreement with full knowledge of the damages to be suffered by Plaintiffs, and that Alexandria is now attempting to hide behind its wholly owned Canadian subsidiary.

[36] In addition to paragraphs 12.1 to 12.18 of the Originating Proceeding, Plaintiffs refer the Court to other paragraphs of the Originating Proceeding that allege that Alexandria abused its rights when it forbade access to the Leased Premises by Plaintiffs, its representatives and employees of the business that Plaintiffs were in the process of acquiring.

[37] In this regard, the Originating Proceeding alleges:

> 5. Despite the fact that a clear and unequivocal agreement was reached, the Defendants **abusively refused to honour it**, and **prevented the Plaintiffs from operating their business**, thereby depriving them of the value of said business.
>
> […]
>
> 44. The consequences of the Defendants' **illegal and abusive conduct** are therefore now final and extremely significant.

44.1 Notwithstanding the foregoing, the Plaintiffs nevertheless proceeded to acquire the licences in order to be in a position to operate the business, which it could and would have done but for the Defendants' refusal to honour the Lease agreed between the parties, as appears from a copy of the sales agreement between the Plaintiffs and Raymond Chabot, trustee for Capcium, communicated herewith as Exhibit P-29A.

44.2 That said, the Defendants' faulty conduct did not stop there. On May 15, 2024, counsel to the Defendants wrote to the Plaintiffs' counsel to demand confirmation, within 48 hours, that the Assets would be removed from the Leased Premises before May 31, 2024.

44.3 Notwithstanding this unreasonably short deadline, the Defendants stated that a failure to respond would result in the Defendants considering the Assets as abandoned, in which case they would proceed to sell and retain the full value thereof for their sole benefit, the whole as appears from the letter from Me Bogdan Catanu dated May 15, 2024, communicated herewith as Exhibit P-30 (…).

44.4 The Defendants' letter further confirms their **abusive and bad faith behavior**, notably in light of the following:

> a) Firstly, the Defendants had full knowledge that 9506 only agreed to buy the Assets and pay their substantial purchase price once it had an agreement in place with the Defendants for the Leased Premises. Despite this, **they refused to** honour the agreement reached and ignored repeated demands to comply with their obligations and **permit the Plaintiffs' representatives to access the Leased Premises** and allow them to take possession thereof;
>
> b) Secondly, the Defendants clearly knew that it would have been impossible to fully remove the Assets by May 31, 2024, all the more evidently in light of the fact that they have at all times prevented the Plaintiffs' representatives from accessing the Leased Premises;
>
> c) Thirdly, the Defendants were well aware that 9506 would never abandon the Assets for which it paid a substantial price only a few weeks prior.

44.6 On May 18, 2024, *i.e.* merely three days after it demanded the urgent removal of all the Assets from the Leased Premises (failing which it threatened to consider them "abandoned" and proceed with their sale for its sole benefit), counsel to the Defendants responded to the Plaintiffs **to invoke new onerous and abusive conditions** which the Plaintiffs would have to accept in order to gain access to the Assets and remove them, including notably:

[…]

2025 QCCS 4705 (CanLII)

2025 QCCS 4705 (CanLII)

> 46. As companies operating in the same industry are generally valued at approximately 10 times EBITDA, this implies that the value of the business would have reached $600,000,000.
>
> 47. As the Defendants' actions directly prevented the business from being operated, the Defendants are responsible for, and must be held liable for, depriving the Plaintiffs of the full value of the business, which value shall be finally established by Plaintiffs' financial experts.
>
> [Emphasis added]

[38] As stated, the factual allegations contained at paragraphs 12.1 to 12.18 and the paragraphs referred to above of the Originating Proceeding, pursuant to an exception to dismiss under Article 168(2) C.C.P., are deemed to be true. On that basis, the Court is unable to conclude that Plaintiffs' request to lift the corporate veil is doomed to fail.

[39] With respect to exceptions to dismiss regarding legal recourses against a parent or a related company on the basis of lifting the corporate veil, the jurisprudence has acted in general with caution. The conditions surrounding the lifting of the corporate veil involve complex questions of mixed fact and law. In general, in such circumstances, the appropriate person to decide the accuracy and validity of such allegations is the trier of fact, namely the judge sitting on the merits.

[40] In *Arteau* v. *9196-0906 Québec inc.*, the Superior Court of Quebec held:[7]

> [30] **Peut-être que les demanderesses auront raison de prétendre que la théorie de l'alter ego n'est d'aucun secours aux défenderesses. Il demeure que pour disposer de cet argument, il faut nécessairement entendre la preuve au fond.** Tenant pour avérées les allégations à cet égard, force est de conclure qu'elles sont susceptibles de donner éventuellement ouverture aux conclusions recherchées.
>
> [31] Quant à la levée du voile fiduciaire, peut-être que les allégations de fait au soutien de cet argument ne sont pas explicites. Cependant, les défenderesses soutiennent que Choquette aurait délibérément mis sur pied une opération visant à les concurrencer et qu'il aurait aussi sollicité des clients et des employés. **Cela pourrait mener le tribunal à conclure à la mauvaise foi de Choquette et permettre la levée du voile fiduciaire.**
>
> CONCLUSION
>
> [32] **Les demanderesses souhaitent que le Tribunal dispose immédiatement des questions entourant les liens entre Fiducie Choquette et Choquette alors qu'il n'a pas eu l'opportunité de prendre connaissance de toute la preuve**, incluant le bénéfice des témoignages, et qu'il conclut à toute absence de tel lien pour qu'elles puissent réclamer le solde dû à Fiducie Choquette sans subir les contrecoups du non-respect des engagements restrictifs souscrits par Choquette

[7] 2018 QCCS 1146.

dans le cadre de la vente « des parts de celui-ci à Champoux » dans Béton de l'Estrie.

[33] Comme l'a indiqué la juge de première instance dans l'affaire Bohémier précitée, propos repris par la Cour d'appel : « *La requête en irrecevabilité n'a pas pour but de décider avant procès des prétentions légales des parties. Son seul but est de juger si les conditions de la procédure sont solidaires des faits allégués, ce qui nécessite un examen explicite, mais également implicite du droit invoqué.* »

[34] Il est loin de s'agir d'un cas clair d'irrecevabilité. Bien que de telles demandes favorisent une gestion saine et efficace des ressources judiciaires en permettant l'élagage des recours qui sont voués à l'échec, **le Tribunal doit faire preuve de circonspection avant de rejeter un recours à un stade préliminaire et, selon les termes de la Cour suprême du Canada, «** ***… seule une absence claire et manifeste de fondement juridique mènera au rejet d'une action à cette étape des procédures.*** **» La Cour d'appel souligne qu'il faut donc «** ***éviter de mettre fin prématurément à un procès au stade d'une requête en irrecevabilité, à moins d'une situation claire et évidente, considérant les graves conséquences qui découlent du rejet d'une action sans que la demande soit examinée au mérite.*** **»**

[35] **Aussi, le Tribunal n'a pas à ce stade-ci à apprécier le degré de difficulté qu'aura une partie à prouver ses allégations. Il est possible qu'elle rencontre des problèmes à cet égard voire qu'elle ne réussisse pas à établir les éléments à l'appui de sa demande. Cela n'est cependant pas pertinent dans le cadre de l'analyse d'une demande en irrecevabilité fondée sur l'article 168 C.p.c**.

[36] **Au stade préliminaire, le Tribunal doit se montrer prudent avant de déclarer qu'une demande est irrecevable. En cas de doute, il doit être laissé à toutes les parties la chance d'être entendues au procès.** Le recours ne doit pas être déclaré irrecevable, à moins que tous les éléments à considérer apparaissent à la demande et que l'application de la règle de droit à ces éléments ne soit pas discutable, ce qui n'est pas ici le cas.

[Emphasis added]

[41] In *Ministry of Energy Industry and Tourism of the Republic of Cyprus* v. *3878422 Canada inc.*, the Superior Court held:[8]

[30] Dans *Buanderie centrale de Montréal inc. c. Montréal (Ville de)*, le juge Gonthier, au nom de la Cour suprême du Canada, précise que parmi tous les facteurs servant à déterminer si une société est l'alter ego d'une autre, celui du contrôle est le plus explicite :

> À la lumière des décisions précitées, une corporation peut être considérée comme l'*alter ego* d'une autre lorsqu'on retrouve entre celles-ci une relation si intime que ce qui, en apparence, relève des affaires de l'une appartient, en réalité, aux activités de l'autre. Un nombre important de facteurs peut certes être identifié pour déterminer l'existence d'une telle relation; à mon sens, toutefois,

8 2017 QCCS 3803.

2025 QCCS 4705 (CanLII)

> l'élément le plus explicite et le plus susceptible d'englober la réalité du concept est le contrôle.
>
> (soulignement dans l'original)
>
> [31] **Les défenderesses plaident que MAPI est une entité corporative indépendante de 3878422. Peut-être, mais il s'agit là d'une question de fait que le juge du procès devra déterminer.** Pour l'instant, même si la demande ne pêche pas excès de détails, on y retrouve néanmoins suffisamment d'éléments pour supporter la théorie de l'alter ego.
>
> […]
>
> [36] **La demanderesse a donc une cause d'action valable. Il lui reste à prouver les faits donnant ouverture aux conclusions recherchées**.
>
> [Emphasis added]

[42] Furthermore, the Originating Proceeding is not entirely based on the theory of *alter ego* and the lifting of the corporate veil of Are-Canada or Alexandria.

[43] Plaintiffs also allege that they entered into a direct contractual agreement with Alexandria.

[44] The Originating Proceeding contains the following allegations in support of the theory of the conclusion of a contract between Plaintiffs and Alexandria:

> 1. The Plaintiffs, 9510-8528 Québec Inc. […] and 9506-6213 Québec Inc. […] (collectively, the "Plaintiffs") are seeking damages against ARE-Canada No. 5 Holdings, ULC. and Alexandria Real Estate Equities, Inc. […] for breaches of their **contractual obligations**.
>
> […]
>
> 12.4 At all material times, Alexandria Real Estate Equities, Inc. was **also a co-lessor to the lease agreement** entered upon by the Parties. Indeed, and as further set forth herein, **all communications relating to the lease agreement entered upon into by the parties were with representatives of Alexandria Real Estate Equities, Inc.**, as ARE-Canada No. 5 Holdings, ULC. has no employees nor any listed addresses in the province of Quebec.
>
> […]
>
> 12.9 **The contracting counterparties therefore dealt, in substance and appearance, with Alexandria rather than with ARE-5**.
>
> [Emphasis added]

2025 QCCS 4705 (CanLII)

2025 QCCS 4705 (CanLII)

[45] Alexandria vigorously denies that these allegations are well founded in fact or supported by the documentary evidence. However, under Article 168(2) C.C.P. the factual correctness of these allegations is deemed to be true.

[46] Furthermore, Plaintiffs filed correspondence on negotiations regarding the alleged agreement with respect to a commercial lease[9].

[47] It appears that the person with whom Plaintiffs dealt, Mr. Eddie Rose, held himself out as a representative of Alexandria.

[48] According to the exhibits filed, Mr. Rose's job title is:

Eddie Rose
Senior Vice-President – Asset Services
Alexandria Real Estate Equities, Inc.
946 Clopper Road
Gaithersburg, MD 20878

[Emphasis added]

[49] It may well be that if a contractual agreement was concluded, Alexandria was not to be a co-lessor under the lease. However, it may be that there was a contractual agreement concluded between Plaintiffs and Alexandria, pursuant to which the latter, as the controlling authority and ultimate parent company of Are-Canada, would direct and require Are-Canada to enter into a commercial lease with Plaintiffs. The Plaintiffs allege that Alexandria breached its contractual obligations to have Are-Canada sign such a commercial lease.

[50] Plaintiffs allege direct contractual agreements with Alexandria under the Originating Proceeding. Whether or not Plaintiffs will be able to prove the existence of such a legal agreement between Plaintiffs and Alexandria is a mixed question of fact and law which should be determined by the judge sitting on the merits.

[51] The Court concludes therefore that Alexandria's second ground for dismissal is not well founded.

4.3 Is Alexandria's Application to Dismiss based upon Abuse under Article 51 C.C.P. well founded?

[52] The legal principles regarding an application to dismiss under Article 51 C.C.P. for reasons of abuse are also well known and settled.

[53] The jurisprudence has decided that[10]:

---

[9] Exhibits P-11 and P-14 to P-18.

1. If the recourse has no chance of success, it may be declared abusive and dismissed on a preliminary basis;

2. The court must be prudent and only when a meticulous examination of the file leads to the conclusion that the recourse is clearly unfounded and frivolous should it be dismissed;

3. The court may, in its analysis, examine all of the proceedings, exhibits and examinations on discovery.

2025 QCCS 4705 (CanLII)

[54] In the previous section regarding Article 168(2) C.C.P., the Court already decided that, on the hypothetical basis that the facts alleged in the Originating Proceeding are true, Plaintiffs' recourse would not be entirely unfounded in law. An application under Article 51 C.C.P. allows the Defendant to go further and demonstrate that the facts alleged in the proceeding are clearly unfounded and frivolous.

[55] That can be done in various ways. An examination of a party may show that the facts alleged are clearly untrue. In the present case, that has not been done. Alexandria did not file into the Court record an examination of a representative of Plaintiffs and does not refer to any excerpt of such an examination.

[56] In support of its contestation of Alexandria's Application to Dismiss, Plaintiffs filed the transcript of the examination taken of Are-Canada's representative, Eddie Rose.[11] In light of the exhibits filed in support of the Originating Proceeding, it is likely that Mr. Rose would also be required by Plaintiffs to be examined as the representative of Alexandria since his name appears on the exhibits as the representative of Alexandria.[12]

[57] However, when Mr. Rose was examined, counsel for Defendants entered a preliminary objection and systematically refused any question with respect to the connection between Mr. Rose and Alexandria as well as the role of Alexandria as described by Plaintiffs in the Originating Proceeding. At the outset of the examination, counsel for Defendants stated:[13]

> Me BOGDAN CATANU, lawyer for the Defendant/Cross-Plaintiff [Are-Canada] and Defendant [Alexandria]:

---

[10] *C.L.* v. *Commission des normes, de l'équité, de la santé et de la sécurité du travail*, 2021 QCCS 4292; *Hrabovskyy* v. *Université de Montréal*, 2021 QCCS 3015; *Beauregard* v. *Ville de Montréal*, 2020 QCCS 4470; *Ville de Thurso* v. *Devcore Construction (QC) inc.*, 2019 QCCS 4273; *Desprès* v. *Poirier*, 2018 QCCS 4242; *Fruits de mer Lagoon inc.* v. *Réfrigération, plomberie & chauffage Longueuil inc. (Zero-C)*, 2016 QCCS 1647; *S. Fournier Excavation inc.* v. *Krivicky*, 2017 QCCS 982; *Harvey* v. *Lavoie*, 2021 QCCA 1024; *Lacour* v. *Construction D.M. Turcotte TRO inc.*, 2019 QCCA 1023.

[11] Exhibit P-5E.

[12] Exhibits P-11 and P-14 to P-18.

[13] Exhibit P-5E, p. 15-17.

> Me Liben, before you start your examination, I have a few remarks I'd like to state on the record as a preface to the examination.
>
> […] **Furthermore, as I wrote to you before the start of the examination, the witness is here — Mr. Rose — in his sole capacity as representative of Defendant ARE-Canada No. 5 Holdings, ULC. Alexandria Real Estate Equities, Inc. is not a party to the proceedings at this stage. We are objecting in advance to any question that might create confusion as to the procedural status of Alexandria Real Estate Equities, Inc. Mr. Rose's participation in the examination does not constitute an acknowledgement of jurisdiction over Alexandra Real Estate Equities, Inc.**
>
> […] **We hereby object to any questions that would be directed to Mr. Rose in any capacity other than as an officer and representative of the Defendant ARE-Canada No. 5 Holdings, ULC. And we will insist that all questions pertaining to Mr. Rose's employment or capacity, or those of any colleagues of his, be restricted in scope to ARE-Canada No. 5 Holdings, ULC.**
>
> [Emphasis added]

2025 QCCS 4705 (CanLII)

[58] That objection was reiterated throughout the examination. As such, neither Plaintiffs nor Defendants proceeded to a fulsome examination of the role of Alexandria in the alleged circumstances and the alleged liability of Alexandria.

[59] Although the Court can understand that Alexandria's counsel took that position in order to avoid any conduct which could be interpreted as accepting the Court's jurisdiction over Plaintiffs' legal suit against Alexandria, the result is that Plaintiffs have not had an opportunity to question Alexandria's denial of the allegations contained in the Originating Proceeding.

[60] The result is that the Court file is manifestly incomplete regarding the factual basis of either Plaintiffs' grounds of Alexandria's liability or Alexandria's grounds of contestation of these grounds.

[61] Finally, Alexandria's Application to Dismiss pursuant to Article 51 C.C.P. is not supported by an affidavit of a representative of Alexandria. Plaintiffs argue that this is a fatal defect of procedure of Alexandria's application[14].

[62] At this stage, there is no evidence before the Court that the factual assertions presented in the Originating Proceeding in support of Plaintiffs' claims against Alexandria are unfounded. Alexandria has therefore failed to demonstrate to the Court that Plaintiffs' claims against Alexandria are clearly unfounded and frivolous, as required by Article 51 C.C.P.

---

[14] *Beauregard* v. *Gestion de portefeuille Natcan inc.*, 2010 QCCS 2665.

[63] Counsel for Alexandria states to the Court that it decided not to file an affidavit in support of the Application since it sought to avoid an examination of a representative of Alexandria pursuant to Article 105(3) C.C.P.

[64] The fact remains that Alexandria's allegations that Plaintiffs' claims against Alexandria are clearly unfounded and frivolous do not satisfy the high standard of certainty required for an application under Article 51 C.C.P.

[65] The judge sitting on the merits, having the advantage of hearing and examining all the evidence, would be the appropriate person to decide whether Plaintiffs' claims against Alexandria are well founded or not, in fact and in law.

[66] At the hearing before the undersigned, the focus of Alexandria's submissions was on liability. Alexandria's attorneys also mentioned that the amount claimed by Plaintiffs – $600,000,000 – is abusive. They submit that the amount claimed is without factual or documentary foundation and chosen in order to exert pressure on Alexandria, which must disclose publicly the amount of this lawsuit.

[67] An important weakness of Alexandria's representations in this regard is that these submissions are not supported by an affidavit of a representative of Alexandria or other proof.

[68] Plaintiffs' attorneys submit that the amount claimed is an estimate based upon information currently available. Plaintiffs' attorneys state that they have given a mandate to a forensic accounting firm to determine the amount of damages allegedly suffered. Plaintiffs state that if the accountants determine a lower amount, they will reduce the amount claimed by amendment to the Originating Proceeding.

[69] At this stage, given the incomplete state of the record on this point, the Court is unable to determine whether the amount claimed is abusive.

[70] The Court will reserve Alexandria's right to resubmit an application for abuse under Article 51 C.C.P with regard to the amount of damages claimed by the Plaintiffs. After Plaintiffs have filed the promised specific evidence in support of the amount claimed, including an expertise, Defendants may choose to submit a new application depending on the content of the expertise and an amendment by Plaintiffs to the Originating Proceeding, as the case may be.

FOR THESE REASONS, THE COURT:

[71] **DISMISSES** Alexandria Real Estate Equities, Inc.'s *Application for Declinatory Exception, Dismissal and Abuse of Procedure*;

[72] **RESERVES** Alexandria Real Estate Equities, Inc.'s right to resubmit an application for abuse under Article 51 C.C.P. with regard to the amount of damages claimed by Plaintiffs, in accordance with paragraph 70 of the present judgment;

2025 QCCS 4705 (CanLII)

[73] **WITH LEGAL COSTS**.

JEFFREY EDWARDS, J.S.C.

Me Matthew Liben
Me Philippe Dubois
Me John Chedid
BLAKE, CASSELS & GRAYDON, LLP
Attorneys for the Plaintiffs

Me Bogdan Catanu
Me Sebastian L. Pyzik
Me Gabrielle Ross
Woods, LLP
Attorneys for the Defendants

Hearing date: September 25, 2025

2025 QCCS 4705 (CanLII)