The Kravitz Case: A Procedural Leap?

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The Supreme Court's decision in *General Motors Products of Canada Ltd* v. *Kravitz*[1] appears to have aroused both interest and controversy in the months since it was rendered. That it should interest the legal community is no surprise since the questions raised in *Kravitz* had never been put to the Supreme Court in a case on appeal from Quebec, despite the increasing level of interest in consumer issues over the past few years. This controversy should be reassuring to those jurists who find themselves uncomfortable with the manner in which the result was reached.[2]

This comment is not intended to provide an assessment of the judgment's impact on the parties, nor even of its repercussions on consumers or manufacturers. For lawyers and judges entrusted with the care and keeping of our judicial system, it is rather the process of decision-making which must be evaluated, since the results in a given case will surely be fair if the judicial process is working as it should.

Mr Kravitz asked the Superior Court, at the conclusion of his pleadings, for three things:

1) that his tender of the vehicle be declared valid;
2) that the sale of the vehicle by the dealer Plamondon to him be cancelled and annulled; and
3) that the defendants Plamondon and General Motors be condemned jointly and severally to pay to him the sum of $6,133.71 with interest and costs.[3]

At trial, General Motors argued that it could not be held liable for the defects of which the plaintiff complained principally because Kravitz had not entered into a contract of sale with General Motors, and therefore that no buyer-seller relationship existed between the two parties. Since the conclusions quoted above would require a contract of sale between plaintiff and defendant, General Motors

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[1] [1979] 1 S.C.R. 790.

[2] If Mr Kravitz's Oldsmobile were in fact free of mechanical defects, this would perhaps be of anecdotal interest only at this late date. (It happens to be true, however; the said Oldsmobile itself bears witness to its suitability for intended use in conveying its new owner about town.)

[3] *Supra*, note 1, 794.

argued that it could not be condemned for breach of a contract it had not made — hardly a fantastic notion.

The Superior Court decided in favor of the plaintiff, Kravitz, holding that it was of little importance whether the fault committed by the defendant was delictual or contractual, and that furthermore, owing to the presumed knowledge of latent defects which is imputed to dealers and manufacturers, the defendants could not avoid legal warranties and liability for quasi-offences. The judgment of the Superior Court was affirmed by the Quebec Court of Appeal.

Nowhere in the proceedings or evidence is there any mention of a contract between General Motors and Plamondon; indeed, from Kravitz's standpoint, any allegation of the sort would have been irrelevant. His contention was that the contract of sale in his favour should be set aside because of Plamondon's breach of the warranty against latent defects owed by a vendor to a purchaser by the terms of article 1522 C.C. Thus, the issue before the Supreme Court concerned General Motors' liability to Kravitz under the contract between the latter and Plamondon. The vendor Plamondon had not appealed the decision of the Court of Appeal and was therefore not a party to the proceedings at its third and final level.

Mr Justice Pratte found "uncontradicted presumptions" that the vehicle was purchased by Plamondon from General Motors and that at the time of sale it suffered from the same "latent defects" as existed at the time of the sale to Kravitz.[4] The record in fact does not disclose who sold the vehicle to Plamondon, or even whether it was acquired by sale.[5]

The Court thus found that the contract to be cancelled was that presumed to exist between General Motors and Plamondon and not the contract to which Kravitz, the plaintiff, was a party. The Courts below, however, had set aside the contract between Kravitz and his vendor. What do we have, then, to this point? A contract never proved or referred to by either party is presumed to exist only to be resiliated without any demand for cancellation having been made in the pleadings, and this despite the fact that one of the parties to this presumed contract, Plamondon, was not before the Court!

The notion that a successor by particular title enjoys all the rights and remedies which his predecessor in title acquired for the direct benefit of the thing is both radical (for Quebec law) and

[4] *Ibid.*, 796.
[5] Sales of new vehicles between dealers are not uncommon.

controversial. It will no doubt elicit much academic and judicial comment. One may well question whether the *Kravitz* case, bringing two litigants before the Supreme Court for a decision on specific facts, in fact gave the Court the framework it needed for its decision.

In order to assist in transforming the conclusions sought by Kravitz into the type of action envisaged by the Court, Pratte J. had recourse to article 2 of the Code of Civil Procedure. On the basis of that article, he determined that the action was really one for cancellation of the sale between General Motors and Plamondon.[6]

Interestingly, the form of relief requested by Kravitz appears very similar, if not identical, to that sought by the plaintiff in the well-known case of *Gougeon* v. *Peugeot Canada Ltée*,[7] although Deschênes J. (then of the Court of Appeal) appears in that case to have effected a different transformation on the basis of article 2:

> Le premier juge a traité l'action de l'appelante contre Peugeot comme s'il s'agissait d'une action en annulation de la vente de l'automobile; mais ce n'est pas là du tout ce qu'alléguait l'appelante. Non seulement ne concluait-elle pas à l'annulation contre Peugeot, mais elle alléguait spécifiquement le contrat de garantie et arguait en toutes lettres de son droit à un recours contre le manufacturier. Il s'est glissé là une méprise fâcheuse qui a aiguillé le jugement *a quo* sur la mauvaise voie.[8]

On the basis of similar proceedings, therefore, the Supreme Court in *Kravitz* and the Court of Appeal in *Gougeon* came to diametrically opposite conclusions with respeet to the relief being sought.

The questions this raises about the process of civil litigation surely require consideration. Should parties to proceedings continue to make their decisions on the basis of the evidence, the proceedings and the law applicable thereto, or is the process changing to include new factors? In such a case, should these factors not be defined by the legislature?

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[6] *Supra*, note 1, 820.
[7] [1973] C.A. 824.
[8] *Ibid.*, 825.