



MY HOLIDAY PACKAGE MADE ME SICK

You purchase a holiday package from a travel agency. If you get sick during the trip in question, can the agency be held liable for the resulting damages?

THE FACTS

A couple buy a holiday package from a travel agency for two weeks in the Dominican Republic. During their trip, the couple regularly ate their meals at the hotel buffet. After one such meal, the wife came down with gastro-enteritis caused by eating contaminated food. From the evidence, which included photos, the contamination was caused by wild birds that ate from the same buffet. The couple therefore claimed the price of the holiday package as well as damages for the inconveniences that they suffered. They argued that the hotel did not meet normal safety standards. The trip organizer and the travel agency contended that the hotel where the couple stayed was safe.

THE ISSUE

Does the couple have any recourse against the trip organizer and the travel agency?

THE DECISION

The action was allowed in part.

THE GROUNDS

Judge Landry stated that the contracts between the couple, the trip organizer and the travel agency are service contracts. According to legal doctrine and caselaw, the organizer and the travel agent have an «obligation of results». That legal concept limits the defenses that they can raise in the case of superior force. Also, the *Consumer Protection Act* governs such contracts because they are entered into between a merchant and a consumer. The Act provides that the organizer and travel agent have a

«warranty of conformity», namely that the «services provided must conform to the description made of them in the contract» and «to any statement or advertisement» made by the organizer and the travel agent. Also, under the travel contract they had a «duty of information and safety» towards their clients, who must be informed of the risks to which they may be exposed during their trip and of all material facts that could influence their decision whether or not to purchase the package.

In addition to their duty of information, the organizer and travel agent must take all necessary measures to ensure that the trip proceeds in accordance with normal safety conditions. In this case, the judge held that the trip organizer and the travel agency had breached their duty of information and safety, and therefore granted the plaintiffs application for a full refund of the package. He also partly allowed the action in damages claimed for the trouble and inconvenience, including lost wages, sustained by the couple.

References

Leblanc v. Voyage Guertin (1975) ltée, Hull 550-32-011862-049, 2004/11/15, judge : Lynne Landry (J.E. 2005-112; available on the Web at the following address: www.jugements.qc.ca)

Civil Code of Québec, (S.Q. 1991, c. 64), sections 1470, 2100.

Consumer Protection Act, (R.S.Q. 1978, c. P-40.1), sections 34, 40, 41, 228, 253, 272.

The judgement discussed in this article was rendered based on the evidence submitted to the court.

Each situation is unique. If in doubt, we suggest you consult a legal aid lawyer.

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