



## **Am I responsible for my partner's debt?**

**Your partner dies while engaged in a contract of suretyship (endorser). As the universal legatee (heir), are you responsible for your partner's debt?**

### **THE FACTS**

In November 1996, the Caisse populaire loans \$95,000 to a company. Mr. Beaulieu intervenes in the contract to guarantee the debt. In April 1997, Mr. Beaulieu dies, bequeathing his estate to his spouse, Ms. Dion. In December 2000, the company declares bankruptcy. The Caisse populaire sues Ms. Dion, Mr. Beaulieu's heir, because he was the guarantor of the loan. Ms. Dion argues that the death of her spouse terminated the contract of suretyship and that any recourse on the part of the Caisse is stayed, because more than three years has gone by since Mr. Beaulieu's death. The Caisse argues that the estate is responsible for any outstanding debt at the time of the death. Further, the Caisse argues that they have the right to make a claim because the debt could not have been claimed before December 2000 in any event because bankruptcy had not been declared before that date.

### **THE ISSUE**

When a person who is contracted as a surety dies, are the heirs responsible for the debt?

### **THE DECISION**

The Court concludes that Mr. Beaulieu's heir is responsible for the debt and that the Caisse populaire is within the deadline for claiming the debt, because the stay of proceedings did not start until December 2000, or the date of the bankruptcy.

### **THE GROUNDS**

The law clearly states that the death of a surety or, a person who has guaranteed a loan, terminates the guarantee. However, the estate of the surety remains responsible for any existing debts at the time of the death. New debts may not be added but existing debts that were not paid remain in place. However, the Caisse could not have claimed payment of the balance of the debt from Mr. Beaulieu's estate before the principal borrower (in this case, the company) defaulted. The company in question had made the loan payments up to the time of the bankruptcy in December 2000. It was only after the company defaulted on the loan, which is to say following the declaration of bankruptcy, that the Caisse populaire could then claim the balance of the debt from Mr. Beaulieu. However, given that he had passed away, the claim had to be made against the estate.

### **References**

*Caisse populaire de la Vallée de l'or v. Dion (september 24, 2001), J.E. 2001-1886.*

*Civil code of Québec, L.Q. 1991, c. 64, art. 2361, 2364, 2880, 2925.*

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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