

SUPERIOR COURT

CANADA
PROVINCE OF QUEBEC
DISTRICT OF LONGUEUIL

No: 505-17-014255-238

DATE: June 16, 2026

PRESIDING THE HONOURABLE THOMAS M. DAVIS, J.S.C.

9411-2471 QUÉBEC INC.
and
FIDUCIE FAMILIALE FRÉDÉRIC HUDON
2015
and
FRÉDÉRIC HUDON
and
IMMEUBLES AULAUFLO INC.

Plaintiffs

v.

HARMEK HOLDINGS INC.
and
2951291 CANADA INC.

Defendants

and

PAQUETTE & ASSOCIÉS, HUISSIERS DE
JUSTICE S.E.N.C.R.L., a general
partnership legally constituted having its head

office at 600-215 Saint-Jacques, city and
district of Montreal, province of Quebec,
H2Y1M6

Interested Party

JUDGMENT

OVERVIEW

[1] Seemingly victims of a very questionable conduct of their legal proceedings, Defendants, Harmek Holdings Inc. (« **Harmek** ») and 2951291 Canada inc. (collectively «**Harmek**») ask for the revocation of a judgment rendered by Justice Ian Demers on September 19, 2025. Justice Demers condemned Harmek to pay Plaintiffs the sum of \$1,000,000 plus interest and costs (**the Demers judgment**).

[2] Harmek alleges that their lawyer's negligence denied them the opportunity to present a defence. They invoke article 345 C.C.Q. and posit that allowing the judgment to stand would bring the administration of justice into disrepute.

[3] For the purposes of this judgment, the Court will not consider the revocation application. However, it is asked to suspend the execution of the Demers judgment. A judicial sale of certain of Harmek's assets has been set for June 17, 2026.

1. CONTEXT

[4] On November 5, 2021, the Plaintiffs and Harmek negotiated and concluded a Share Purchase Agreement pursuant to which Harmek acquired all outstanding shares in the capital stock of 2951291 Canada inc., previously owned by Plaintiffs. The purchase price was agreed to, but there was a balance of sale of \$1,000,000 (**the BOP**), which was the object of the Demers judgment.

[5] Harmek also instituted proceedings against Plaintiffs, seeking a reduction of the purchase price, on account of alleged breaches of the conditions of sale. Harmek's lawyer was supposed to join this action with Plaintiffs' action against Harmek. However, no such application was made until the eve of the trial. It was dismissed.

[6] Harmek alleges several failures of its former lawyer, over and above the failure to join the actions. The pre-trial examinations, provided for in the joint case protocol, did not take place, having seemingly been waived by the lawyer. Harmek was not advised of

the provisional role in January 2025, nor of the trial dates beginning on September 18, 2025, that were fixed at that time.

[7] Hence, Harmek's principals did not attend the trial, as they did not know about it.

[8] The minutes of the hearing indicate that the cross-examination of the Plaintiffs' representative lasted approximately one minute and that Harmek presented no evidence. Nor did it present a closing argument.

[9] While less relevant for this judgment, the lawyer filed a Notice of Appeal, but it was dismissed, as it was filed outside of the delays.

[10] On April 28, 2026, the Bailiffs served a Revised Notice of Execution to 2951291 Canada inc.. However, a seizure had already been executed on April 23.¹

[11] Not satisfied with the work of their former lawyer, Harmek retained new counsel. Harmek alleges that the new lawyers informed them of the Demers judgment on May 20, 2026, seemingly around the day when the new lawyers were retained.

2. THE LAW

[12] Article 350 C.C.P. allows the Court to suspend the execution of a judgment that is the object of an application to revoke it. However, the article does not set out the criteria that need to be present for a suspension to be granted. They are largely discretionary.

[13] Here is what Justice Barin opined in *Vention inc. c. Groupe MCA France* :

[25] Deuxièmement, les motifs pouvant justifier un sursis de l'exécution d'un jugement sujet à un pourvoi en rétractation n'ayant pas été spécifiés par le législateur, le tribunal peut dans l'exercice de son pouvoir judiciaire discrétionnaire, en évaluant la prépondérance des inconvénients à l'égard de chacune des parties et en évitant de créer une situation irrémédiable – et cela sans préavis s'il y a urgence – ordonner un tel sursis.

[26] Comme l'explique la Cour d'appel en confirmant les propos du juge de première instance dans l'affaire *Fédération des producteurs acéricoles du Québec c. 65707 New Brunswick inc.*, dans le cadre d'une demande en rétractation :

[4] Aux paragraphes 10 à 14, le juge a ensuite indiqué de quelle façon il devait aborder la question soumise à son attention :

[12] Évidemment, cette discrétion doit être exercée judiciairement. Il s'agit en fait de préserver l'existence des droits des uns, avant que ne soient définitivement confirmés ceux des autres ou, en d'autres termes, de maintenir le statu quo de la

¹ Exhibit R-11.

situation en attendant une décision finale et tenter d'éviter de créer une situation de fait à caractère irréversible ou, dit autrement encore, d'établir une sorte d'équilibre entre les intérêts d'un tiers potentiellement affecté par le jugement original.

[Soulignement ajouté]

[27] Bref, il y a lieu de souligner, comme le précise d'ailleurs la Cour d'appel, que ce ne sont pas les mêmes critères d'une demande de sursis qui est présentée dans le cadre d'un recours extraordinaire, telle qu'une demande en injonction provisoire par exemple, qui sont applicables.²

[References omitted]

[14] On the other hand, in *Fonds Azur Capital immobilier-Québec c. Morin*,³ Justice Dionne applied the criteria for the suspension of a decision of an inferior tribunal.

[15] Whether or not it is necessary for an applicant to demonstrate that the criteria to suspend an interlocutory proceeding or the decision of an inferior tribunal are met, for the Court to suspend the execution of a judgment, the Court must not exercise its discretion arbitrarily.

[16] The Court prefers the position of Justice Dionne and considers that, for the Court to exercise its discretion and suspend the execution of a judgment, the application in revocation must raise a serious issue to be considered on its merits. The other criteria, urgency, irreparable harm or serious prejudice and the balance of convenience are also appropriate to consider.⁴

3. HARMEK'S POSITION

[17] For Harmek, the fact that their lawyer's lack of transparency with them deprived them of the opportunity to present a defence before Justice Demers gives rise to a serious question to be decided. They argue that the alleged denial of *audi alterem partem* caused by the lawyer's apparent fault brings the administration of justice into disrepute.

[18] They first refer the Court to several judgments that discuss what situations might bring the administration of justice into disrepute.

[19] In its judgment in *Allianz Global Risks US Insurance Company c. SNC-Lavalin inc.*, the Court of Appeal was asked to revoke a judgment of a colleague, sitting alone, as she allegedly did not follow precedent established by other judgments of the Court. The Court stated the following:

² 2024 QCCS 3889.

³ 2017 QCCS 758.

⁴ *Ville de Montréal-Est c. Miclau-SRI inc.*, 2024 QCCS 932, par. 25.

[50] Allianz et Westport n'invoquent aucun des motifs précis de rétractation énumérés à cet article afin de justifier la rétractation du jugement Lavallée. Elles invoquent plutôt que ce jugement est « susceptible de déconsidérer l'administration de la justice » pour des motifs autres que ceux énumérés à l'art. 345 al. 1^{er} C.p.c., soit plus particulièrement que ce jugement contredirait la jurisprudence antérieure de la Cour et ordonnerait sans droit d'entreprendre des négociations de règlement.

[51] Les motifs précis de rétractation fondés sur la déconsidération de l'administration de la justice énoncés dans le *Code de procédure civile* sont : a) si le jugement a été rendu par suite du dol d'une autre partie; ou b) sur des pièces fausses; ou c) si la production de pièces décisives avait été empêchée par force majeure ou par le fait d'une autre partie. Bien que la rétraction fondée sur la déconsidération de l'administration de la justice puisse s'appliquer pour d'autres motifs qui ne sont pas précisément énumérés à l'art. 345 al. 1^{er} C.p.c., il doit néanmoins s'agir de cas qui s'y apparentent en gravité, c'est-à-dire qui permettent de conclure que le fondement même du jugement est gravement et irrémédiablement vicié. Ce n'est manifestement pas le cas en l'espèce.⁵

[20] They then refer the Court to several judgments that they posit underline the importance of a party being able to present a defence to an action.

[21] Justice Phillips stated the following in *Ville de Montréal-Est c. Miclau-SRI inc.*:

[34] En somme, le Tribunal estime que les intervenantes ont établi que, n'ayant pas été appelées en justice, elles n'ont pu participer au débat; qu'elles ont des arguments factuels et juridiques à faire valoir; qu'en l'absence d'ordonnance, elles subiraient un préjudice sérieux, voire irréparable; le tout dans un contexte d'urgence où la ville s'apprête à exécuter le jugement.⁶

[22] In *Municipalité de Wentworth-Nord c. Succession de Reid*, Justice Pérodeau also noted the importance of a party being heard:

[31] Le droit d'une partie d'être entendue est fondamental et constitue un principe plus important que celui de l'irrévocabilité des jugements. C'est pourquoi ce dernier doit lui céder priorité.⁷

[Reference omitted]

[23] The Supreme Court of Canada also acknowledged this in *Riddle v. Ivori*:

[30] The right to be heard cannot simply be disregarded by applying the principle of proportionality set out in art. 18 C.C.P. (*Sani-Terre Environnement inc. v. Villéco inc.*, at paras. 3-7). This right is a rule of procedural fairness that is of public order and that transcends the interests of the parties concerned, because

⁵ 2023 QCCA 666.

⁶ *Ville de Montréal-Est c. Miclau-SRI inc.*, *Supra* note 4.

⁷ 2025 QCCS 1645.

it safeguards the nature and integrity of the judicial process itself (*Robillard v. Commission Hydroélectrique de Québec*, 1954 CanLII 50 (SCC), [1954] S.C.R. 695, at p. 699; *Gestion Bon Conseil inc. v. Guèvremont*, 2006 QCCA 109, at para. 197). The *Code of Civil Procedure* does not provide for any specific sanction for failure to effect service. Such a breach is not, however, without consequences. When the irregularity is so serious that it undermines the innate fairness of the trial and compromises the integrity of the judicial process, it may have significant procedural consequences, such as the peremption of the application and loss of jurisdiction by the court. This is the case where the failure to effect service prejudices a party by depriving them of a real and meaningful opportunity to present their submissions.⁸

[24] Finally, in its recent judgment in *Lepêcheur c. Girard*, considering article 17 C.C.P. the Court of Appeal stated:

[12] L'article 17 du *Code de procédure civile* codifie deux garanties procédurales complémentaires et indissociables, soit le droit d'être entendu à son premier alinéa, et le principe de la contradiction à son second :

17. Le tribunal ne peut se prononcer sur une demande ou, s'il agit d'office, prendre une mesure qui touche les droits d'une partie sans que celle-ci ait été entendue ou dûment appelée.

Dans toute affaire contentieuse, les tribunaux doivent, même d'office, respecter le principe de la contradiction et veiller à le faire observer jusqu'à jugement et pendant l'exécution. Ils ne peuvent fonder leur décision sur des moyens que les parties n'ont pas été à même de débattre.

[Nos soulignements]

17. The court cannot rule on an application, or take a measure on its own initiative, which affects the rights of a party unless the party has been heard or duly called.

In any contentious matter, the court, even on its own initiative, must uphold the adversarial principle and see that it is adhered to until the judgment and during execution of the judgment. It cannot base its decision on grounds the parties have not had the opportunity to debate.

(Emphasis added)

[13] Cet article énonce le principe fondamental de justice naturelle *audi alteram partem* qui, comme l'a récemment rappelé la Cour suprême, « est une règle d'équité procédurale d'ordre public qui transcende les intérêts des parties en cause, puisqu'elle garantit la nature et l'intégrité du processus judiciaire en tant que tel ». Cette règle est fondamentale et essentielle à une saine administration de la justice, puisque le droit d'être entendu, soit celui de faire valoir ses moyens, vise essentiellement à assurer aux parties une possibilité raisonnable de présenter leurs arguments au soutien d'une demande en justice et de répondre à la preuve présentée contre elles lorsqu'elles sont plutôt poursuivies. Le respect de ce principe assure que le tribunal puisse véritablement avoir

⁸ 2026 SCC 9.

devant lui tous les arguments de part et d'autre et toutes les autorités nécessaires à une prise de décision éclairée et impartiale.⁹

[References omitted]

[25] It should be noted that in this matter the Appellants were present at trial but were not given the opportunity to present evidence.

4. PLAINTIFFS' POSITION

[26] Plaintiffs note that the balance of sale, which is the object of the Demers judgment, was due on November 5, 2024. Their action was produced on December 5, 2023. A case protocol was produced on January 26, 2024.

[27] The grounds of defence in the protocol are quite summary in nature. Harmek states that it is not in default, that the installments paid to date were accepted by Plaintiffs, and further, that the action brought against it is abusive.

[28] The protocol does not provide for a joinder of Harmek's action¹⁰ with the present one. Yet, Plaintiffs posit that it is important for the Court to consider the former.

[29] It is dated November 6, 2024, after the due date for the payment of the balance of sale. More importantly, in paragraph 14, Harmek's Originating Application acknowledges that a balance of sale was due to be paid on November 5, 2024, and seeks compensation between that amount and the damages they claim. While this application is not a model of drafting clarity, it was never disavowed by Harmek.

[30] Plaintiffs further argue that the criteria for the revocation of the Demers judgment are not present. Harmek was not denied the right to present a defence, as their representative was present.

[31] Given that Harmek acknowledged that the balance of sale was due on November 5, 2024, and given the lack of serious grounds of defence in the case protocol, one of the conditions for a revocation of judgment is not present, namely, a defence to Plaintiffs' action.

[32] Plaintiffs also point out that Harmek's Application to Revoke the Demers Judgment is presented well in excess of six months following its issuance and was served more than 30 days after the date on which Harmek ought to have been aware of the judgment. Plaintiffs note that the Notice of Judgment was sent on September 22, 2025. What is more, 2951291 Canada inc. was served with a Revised Notice of Execution on

⁹ 2926 QCCA 640.

¹⁰ Court file 505-17-014976-247; exhibit R-3.

April 28, 2026, but in fact the seizure was carried out on April 23, 2026.¹¹ Following this, on May 6, 2026, Harmek communicated with its then lawyer as follows:

Subject: HGC - to do

Hi Bruce,

Please follow up with the items below on a urgent basis:

1. [redacted]

2. Bailiff / Hudon - What is our plan here? Please advise asap, I do not want the same thing to happen again. You mentioned they wanted to speak, let's hear them out and see what they think but at the same time let's make our response. What is our next step?

3. [redacted]

Please push pressure on all 3 items, I do not want to be in the hot seat in any of them.¹²

[33] Then it followed up the next day:

Subject: Re: HGC - to do

Hi Bruce, just following up with this.¹³

[34] Harmek's allegation that it only became aware of the judgment on May 20, 2026, seems far-fetched. It was not impossible for Harmek to act sooner than it did, an element that is important given article 84 C.C.P.

5. ANALYSIS

[35] For the reasons that follow, the Court concludes that Harmek's Application to Suspend the Execution of the Demers judgment should be dismissed.

[36] While the Court agrees with Harmek that their lawyer's conduct of the proceedings was certainly questionable and perhaps actionable, it does not agree that they did not have the right to be heard. The mandated lawyer was present at the hearing before Justice Demers and made certain representations, though limited. But, what could the scope of those representations have been, given Harmek's acknowledgment that a balance of sale of \$1,000,000 was indeed due? Moreover, none of the lawyer's actions have been disavowed.

¹¹ Exhibit R-11.

¹² Exhibit R-12.

¹³ *Ibid.*

[37] While the Court is not in disagreement with any of the jurisprudence cited by Harmek, those judgments were rendered in different circumstances.

[38] In *Ville de Montréal-Est*, the Court was considering the failure of a plaintiff to implead a third party. In *Municipalité de Wentworth-Nord* the liquidator of a succession had been served in the local newspaper but had not taken cognizance of the notice. In *Riddle*, the issue was the failure of an insurer to serve an application to revoke a judgment declaring a person's death on the person who was declared to be deceased. Moreover, the appeal of the judgment declaring that the person had "returned" was dismissed, as the integrity of the judicial process was not compromised. Finally, in *Lepêcheur*, the Court held that the party, although in Court, had not been heard.

[39] In this matter, Harmek did have the opportunity to be heard through its mandated lawyer. If the integrity of the judicial process was compromised, it was not the result of a failure inherent in the system the failure of one party to properly notify a proceeding to the other, or a failure of Justice Demers but rather due to the conduct of Harmek's lawyer. This is not a situation where Justice Demers, deciding on the basis of the evidence with which he was presented, rendered a judgment that brings the administration of justice into disrepute. It is certainly not a case where the "*fondement même du jugement est gravement et irrémédiablement vicié*".¹⁴

[40] This is even more the case in that, in their proceedings, Harmek acknowledges that a balance of sale of \$1,000,000 was due on November 5, 2024, such that they do not appear to have a serious defence to Plaintiff's action. In their Application to Revoke the Demers judgment Harmek states:

However, the Defendants contest the payment of the BOP, as they consider that the Plaintiffs committed several breaches of the conditions of the sale that caused them significant damages exceeding the amount of the BOP...;

[41] Hence, the real issue was the failure of the lawyer to join the actions, but this is not a ground to revoke the Demers judgment. Moreover, Harmek's action is presumed discontinued, as it was not inscribed within the prescribed delays.

[42] What is more, it appears that the Application to Revoke the Judgment was served and presented outside of both the delay of 30 days after knowledge of the judgment and the six-month delay since the judgment.

[43] The Court noted that in their application, supported by a solemn declaration, Harmek alleges that they only became aware of the judgment on May 20, 2026. It understands that article 84 C.C.P. gives the Court the discretion to extend the time limit. However, a strict time limit may only be extended if the Court is "*convinced that it was impossible in fact for the party concerned to act sooner*".¹⁵ The Court is not convinced.

¹⁴ *Allianz Global Risks US Insurance Company c. SNC-Lavalin inc.*, par. 51; *Supra* note 5.

¹⁵ Article 84 C.P.C.

[44] Given the other evidence, particularly the Notice of Judgment of September 22, 2025, the seizure of April 23, 2026, the Revised Notice of Execution of April 28, 2026 and Harmek's emails of May 6 and 7, 2026, the allegation around Harmek's gaining knowledge of the judgment on May 20 indeed seems implausible. However, even if it is true, it does not suffice to meet the test of article 84 C.C.P. A reasonable party needs to act diligently:

[22] Cette façon de voir les choses rejoint celle de tous les arrêts qui se prononcent sur l'impossibilité d'agir, concept auquel renvoient diverses dispositions législatives en matière de prolongation de délais de procédure. Pensons ici, par exemple, aux articles 110.1, 484 ou 523 de l'ancien *Code de procédure civile* ou aux articles 84, 177 ou 363 du nouveau *Code de procédure civile*. Dans tous les cas, la diligence de celui ou celle qui allègue l'impossibilité d'agir fait partie des considérations essentielles de l'exercice d'appréciation auquel le tribunal doit se livrer. C'est à qui invoque l'impossibilité d'agir d'établir sa diligence personnelle, l'absence de celle-ci faisant obstacle à la reconnaissance de celle-là. Autrement dit, il n'y a d'impossibilité d'agir que si la partie personnellement, qu'elle soit représentée ou non, s'est montrée diligente. Par conséquent, n'est pas dans l'impossibilité d'agir celui ou celle qui a manqué de diligence ou qui aurait pu remédier aux effets d'un manquement (celui de son avocat par exemple), mais s'en est abstenu ou l'a négligé. On pourrait dire ainsi que la diligence est une condition *sine qua non* de l'impossibilité d'agir.¹⁶

[45] As of April 23, 2026, at the latest, Harmek should have been alerted to the existence of a judgment against them. There was no other reason for the seizure. Yet, the first written evidence that they contacted their lawyer is on May 6, some 11 days later. The evidence does not state exactly when Harmek's new lawyers were contacted but it seems to be on May 20. Why did Harmek wait two weeks from May 6 and almost a month from the first visit of the bailiff on April 23? Harmek has the burden of demonstrating that they were diligent. They have not met that burden.

6. CONCLUSIONS

[46] The above leads the Court to the conclusion that Harmek has failed to demonstrate a serious issue to be tried in its Application to Revoke the Demers judgment.

[47] Indeed, the pending judicial sale may cause them a certain prejudice, but Harmek could honour the judgment, avoid the judicial sale, and attempt to be relieved of its default in its own action. This could alleviate the potential prejudice. Moreover, no evidence has been offered to demonstrate that Harmek does not have the financial capacity to honour the judgment.

¹⁶ *Air Canada c. Agence du revenu du Québec*, 2016 QCCA 710.

FOR THESE REASONS, THE COURT:

[48] **DISMISSES** Defendants' Application to Suspend the Execution of the Judgment of Justice Ian Demers rendered on September 19, 2025;

[49] **With judicial costs.**

THOMAS M. DAVIS, J.S.C.

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Hearing date: June 11, 2026