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***The Supreme Court dismisses the appeal of two company presidents who breached their contractual duty to act in good faith.***

In 2002, Antoine Ponce and Daniel Riopel became presidents of three Quebec companies in the insurance industry that were grouped under the name “Groupe Excellence”. A “Presidents’ Agreement” to that effect was entered into by the presidents and the companies’ majority shareholders, Michel Rhéaume and André Beaulne. The Agreement gave the presidents significant benefits, including incentive pay. It also formalized a business relationship between the parties that was based on their commitment to work toward the common goal of ensuring the success of Groupe Excellence, even with a view to a potential sale.

In 2005, while the Agreement was still in force, the presidents learned that a third party, Industrial Alliance Insurance and Financial Services Inc., was interested in acquiring the companies. Rather than revealing this to the shareholders, the presidents decided to buy the whole of the shareholders’ stakes themselves and then resell them to the third party. This earned them a substantial profit.

The shareholders blamed the presidents for not disclosing the interest expressed by the third party in acquiring the companies and, as a result, depriving them of that business opportunity. They claimed that the presidents had breached their obligation to perform the Agreement in accordance with the requirements of good faith. The presidents answered that contractual loyalty did not require them to subordinate their interests to those of the shareholders.

In Quebec civil law, contractual good faith is an implied obligation resulting from the combination of articles 1375 and 1434 of the *Civil Code of Québec (Code)*. Article 1375 states that “[t]he parties shall conduct themselves in good faith both at the time the obligation arises and at the time it is performed or extinguished”. Article 1434 provides that a validly formed contract binds the parties “as to what they have expressed in it but also as to what is incident to it according to its nature and in conformity with usage, equity or law”.

The Quebec Superior Court judge ruled in the shareholders’ favour. He found that the presidents had used their roles to obtain information for their own benefit. By doing so, they had breached the duties of honesty and loyalty they owed to Groupe Excellence as company directors, duties that could be extended to the shareholders because of the Agreement. The judge ordered the presidents to pay the shareholders approximately \$12 million, an amount equal to the profits earned on the resale of the group to the third party.

The presidents appealed that decision to the Quebec Court of Appeal, which confirmed the trial judge’s conclusions. It specified, however, that the obligations breached by the presidents, that is, the obligation to act in good faith and the obligation to inform, were only contractual obligations arising from the Agreement. The presidents appealed to the Supreme Court of Canada.

The Supreme Court has dismissed the appeal.

**The presidents’ non-disclosure of the third party’s interest in acquiring the group was wrongful.**

Writing for a unanimous Court, Justice Kasirer ruled that the presidents’ failure to inform the shareholders of the third party’s interest in acquiring the group was a breach of the requirements of good faith. The presidents breached contractual loyalty linked to good faith, which was an implied obligation under the contract through the combined effect of articles 1434 and 1375 of the *Code*. While the presidents did not have to subordinate their interests to those of the shareholders, the requirements of good faith in the performance of the Agreement included a duty for the presidents to inform the shareholders of the third party’s interest.

Justice Kasirer added that the Agreement also involved an implied obligation to inform that required the presidents to provide the shareholders with all information relevant to making an informed decision about the sale of their shares. He specified that this implied obligation flowed from the nature of the Agreement, which

reflected the presumed intention of the parties, in accordance with article 1474 of the *Code*. In short, the Agreement was intended to “formalize a mutually beneficial business relationship between the [presidents] and the shareholders”.

Since the presidents did not show any palpable error in the trial judge’s conclusion that the shareholders’ lost gain was equivalent to the profits made by the presidents, Justice Kasirer did not interfere with the assessment of the damages to be paid to the shareholders.

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**Breakdown of the decision: *Unanimous*:** Justice [Kasirer](#) dismissed the appeal (Chief Justice [Wagner](#) and Justices [Karakatsanis](#), [Rowe](#), [Jamal](#) and [O’Bonsawin](#) agreed)

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