COURT OF APPEAL FOR ONTARIO

CITATION: Schnarr v. Blue Mountain Resorts Limited, 2018 ONCA 313
DATE: 20180328
DOCKET: C63305 and C63351

Doherty, Brown and Nordheimer JJ.A.

BETWEEN

David Schnarr

Plaintiff (Respondent)

and

Blue Mountain Resorts Limited

Defendant (Appellant)

AND BETWEEN

Elizabeth Woodhouse

Plaintiff (Appellant/
Respondent by cross-appeal)

and

Snow Valley Resorts (1987) Ltd. aka Ski Snow Valley (Barrie), Snow Valley Barrie, Snow Valley Ski Resort, Snow Valley, 717350 Ontario Ltd.

Defendants (Respondents/
Appellants by cross-appeal)

John A. Olah and Robert A. Betts, for the appellant, Blue Mountain Resorts Limited

Edward Chadderton, Patricia E. Graham, and Jeffrey Belesky, for the respondents/appellants by cross-appeal, Snow Valley Resorts (1987) Ltd. aka

Ski Snow Valley (Barrie), Snow Valley Barrie, Snow Valley Ski Resort, Snow Valley, and 717350 Ontario Ltd. (collectively, “Snow Valley”)

Paul J. Pape, Shantona Chaudhury, and Peter Cho, for the respondent, David Schnarr

Paul J. Pape, Shantona Chaudhury, Marc Lemieux, and Ryan Hurst, for the appellant/respondent by cross-appeal, Elizabeth Woodhouse

Peter Pliszka and Zohar Levy, for the interveners, Conservation Halton, Credit Valley Conservation, and Toronto Region Conservation

Robert Love, Edona Vila, and Samantha Bonanno, for the interveners, The Ontario Federation of Snowmobile Clubs and Ontario Cycling Association

Jim Tomlinson and Garett Harper, for the intervener, Canadian Defence Lawyers

Thomas Curry and Ahmad Mozaffari, for the intervener, Tourism Industry Association of Ontario

Judie Im and Baaba Forson, for the intervener, Minister of Government and Consumer Services

Derek Nicholson, for the intervener, Ontario Trial Lawyers Association

Heard: February 7-8, 2018

On appeal from the orders of Justice E. Ria Tzimas of the Superior Court of Justice, dated January 6, 2017 with reasons reported at 2017 ONSC 114, and of Justice John R. McCarthy of the Superior Court of Justice, dated January 13, 2017 with reasons reported at 2017 ONSC 222.

Nordheimer J.A.:

[1] These two appeals were heard together as they raise common issues. In both cases, the plaintiffs were patrons of the defendant ski resorts who purchased ski tickets. In both cases, those patrons executed the ski resorts’ waivers of liability as a condition of their tickets. And in both cases, the patrons were injured on the ski resorts’ premises. The patrons sued.

[2] On a r. 21 motion under the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 in the case of Mr. Schnarr, the parties agreed that there was a "consumer agreement" (as defined under s. 1 of the *Consumer Protection Act, 2002*, S.O. 2002, c. 30, Sched. A ("*CPA*")) between Mr. Schnarr and Blue Mountain Resorts Limited ("Blue Mountain"). On that basis, Tzimas J. held that Blue Mountain's waiver under s. 3(3) of the *Occupiers' Liability Act*, R.S.O. 1990, c. O.2 ("*OLA*") partially offended ss. 7(1) and 9(3) of the *CPA*. She held that Blue Mountain's waiver, insofar as it purported to waive liability in contract, was void and severed from the consumer agreement. In a similar vein, in the case of Ms. Woodhouse on a r. 22 motion, McCarthy J. held that Snow Valley's waiver was void in respect of both tort and contract claims. However, he held that a court nevertheless had the equitable power to enforce a void waiver in a consumer agreement pursuant to s. 93(2) of the *CPA*. It is important to note that, aside from the agreed statement of facts submitted by the parties, none of the underlying facts have yet been proven in court.

[3] Blue Mountain and Ms. Woodhouse appeal. Snow Valley cross-appeals. Foremost, these appeals raise the question of whether the *CPA* or the *OLA* governs the relationship between the parties. Specifically, the appeals present a case of first impression as to whether ss. 7 and 9 of the *CPA* vitiate or void an otherwise valid waiver of liability under s. 3 of the *OLA*, where the party seeking

to rely on the waiver is both a “supplier” under the *CPA* and an “occupier” under the *OLA*.

[4] In my view, when applied to the instant context, ss. 7 and 9 of the *CPA* fundamentally undermine the purpose of s. 3 of the *OLA*. The statutes are irreconcilable and conflict. As such, and as I shall explain below, the more specific provision in the *OLA* prevails over the general provisions in the *CPA*.[1] I would therefore allow both Blue Mountain’s appeal and Snow Valley’s cross-appeal for the reasons that follow. On the separate issue of the application of s. 93(2) of the *CPA*, I would also allow Ms. Woodhouse’s appeal.

Background Facts – Schnarr v. Blue Mountain Resorts Limited

[5] Mr. Schnarr purchased a 2010-2011 season ski pass from Blue Mountain's website on April 29, 2010. As part of his online transaction, Mr. Schnarr executed a Release of Liability Agreement, Waiver of Claims, Assumption of Risk and Indemnity Agreement (the “Blue Mountain waiver”).[2]

[6] On March 26, 2011, while skiing down a ski run called "Smart Alec", Mr. Schnarr allegedly collided with a piece of debris from a broken ski pole. He lost control, struck a tree, and sustained injuries.

---

1 This principle is captured by the Latin maxim *generalia specialibus non derogant*.

2 Relevant portions of the Blue Mountain waiver are reproduced in Appendix A to these reasons.

[7] The Blue Mountain waiver contained a number of provisions purporting to shield Blue Mountain from certain liabilities and preclude Mr. Schnarr from suing. One heading, set out in bold type in a yellow box with a red border, specifically instructed the customer to “PLEASE READ CAREFULLY!” and cautioned Mr. Schnarr that by executing the document, he was giving up certain legal rights.

[8] The waiver specifically provided that in consideration for Blue Mountain accepting his application for a season pass, Mr. Schnarr agreed both to waive any and all claims against the ski area operator and others, and to release them from liability for any damages that he may suffer.

[9] On October 13, 2011, Mr. Schnarr commenced an action in negligence against Blue Mountain. Mr. Schnarr claimed general damages in the sum of $200,000 and special damages in the sum of $100,000.

[10] On January 4, 2016, Mr. Schnarr amended his statement of claim. Under the heading “Applicable Statutes”, he claimed for the first time that the season ski pass was a consumer transaction. He also alleged that Blue Mountain had breached the “reasonably acceptable quality” standard under s. 9(1) of the *CPA*. The particulars of this alleged breach were identical to the alleged breaches of the standard of care in the tort of negligence as advanced in the original statement of claim. In addition, in his amended statement of claim, Mr. Schnarr also pleaded that he was relying on s. 7(1) of the *CPA* to vitiate the entirety of the

Blue Mountain waiver. He did not plead any additional or different facts to support his allegation that Blue Mountain failed to provide a reasonably acceptable quality of service.

[11] Although the trial was originally scheduled to start in January 2016, Tzimas J. concluded that, due to the amendment of the statement of claim and the novel issue of law raised, the case should first proceed by way of a r. 21 motion. Justice Tzimas ordered a determination of a question of law under r. 21.01(1)(a) based on the pleadings before trial. Justice Tzimas did not receive any evidence other than the parties' agreed statement of facts.

[12] On January 6, 2017, Tzimas J. released her reasons on the r. 21 motion. Justice Tzimas held that there was no conflict between the impugned sections of the *CPA* and *OLA*, and that the relevant provisions could be read harmoniously under modern principles of statutory interpretation. She concluded that, by operation of ss. 7(1), 9(1), and 9(3) of the *CPA*, the defendant could not disclaim liability for any breach of the deemed warranty of providing services of a "reasonably acceptable quality". She went on to determine that Mr. Schnarr would be allowed to advance two distinct causes of action: one for negligence and the second for breach of warranty. She found that the negligence claim would be subject to the Blue Mountain waiver but that the breach of warranty claim would not be subject to that waiver since the portions purporting to waive

liability for breach of warranty would be void and severed under ss. 9(3) and (4) of the *CPA*.

[13] Blue Mountain appeals from that decision.

Background Facts – *Woodhouse v. Snow Valley*

[14] On December 23, 2008, Ms. Woodhouse went skiing with her husband and grandson at Snow Valley. Ms. Woodhouse purchased a beginner ski package from Snow Valley, which included a lift ticket, equipment rental, and a lesson.

[15] The lift ticket itself contained a Release of Liability. Moreover, Ms. Woodhouse was also required to execute a Rental Agreement and Release of Liability on December 23, 2008 when she purchased the beginner ski package (the "Snow Valley waiver").[3] That document contains a section entitled "Waiver of Claims".

[16] The release on the lift ticket and the content of the Snow Valley waiver were never explained by Snow Valley to Ms. Woodhouse. However, prior to attending Snow Valley on December 23, 2008, Ms. Woodhouse reviewed the Snow Valley waiver's wording on Snow Valley's website. Nevertheless, Ms. Woodhouse was neither informed of nor aware of the *CPA* or any rights it afforded her on or prior to December 23, 2008.

---

[3] Relevant portions of the Snow Valley waiver are reproduced in Appendix B to these reasons.

[17] After signing the Snow Valley waiver, Ms. Woodhouse and her family took a ski lesson on December 23, 2008. After the ski lesson, Ms. Woodhouse and her family used the ski facilities for several hours. Ultimately, while using a tow rope, Ms. Woodhouse allegedly sustained injuries.

[18] On May 9, 2012, Ms. Woodhouse commenced an action in negligence for the injuries that she suffered. The parties eventually agreed to bring a r. 22 special case motion that raised five questions of law, all relating to the applicability of the *CPA* to Ms. Woodhouse's injuries allegedly sustained at Snow Valley.

[19] On January 13, 2017, McCarthy J. released his reasons on the r. 22 special case motion. He held that the *CPA* applied to the instant case. Consequently, he concluded that the Snow Valley waiver was presumptively void and, therefore, Ms. Woodhouse was entitled to proceed with her claim. Importantly, McCarthy J. held that s. 9 of the *CPA* voided the Snow Valley waiver in respect of both tort and contract claims. Justice McCarthy found that the *OLA*'s provisions did not supersede the *CPA*'s. However, he also held that a court could nonetheless order that Ms. Woodhouse was bound by the Snow Valley waiver by virtue of s. 93(2) of the *CPA*.

[20] Ms. Woodhouse appeals from the McCarthy J.'s conclusion regarding the applicability of s. 93(2) of the *CPA*. Snow Valley cross-appeals from the

conclusion that s. 9 of the *CPA* voids an otherwise valid waiver under s. 3 of the *OLA*.

Issues on Appeal

[21] The parties framed their grounds of appeal in various ways. However, in my view, they can all be grouped into the following broad issues:

(a) Does s. 9 of the *CPA* conflict with s. 3 of the *OLA*, or can the impugned provisions be read harmoniously?

(b) If they conflict, how should each statute be interpreted and what effect should be given to the impugned provisions?

(c) In any event, does s. 93(2) of the *CPA* allow a court to hold a consumer bound to a voided waiver under s. 9(3) of the *CPA*?

Analysis

[22] At the outset, I note that the parties agree that the statutory interpretation issues raised by these appeals involve questions of law and thus the standard of review is correctness.

[23] With respect to the general principles of statutory interpretation, the Supreme Court has repeatedly reaffirmed the modern approach espoused in E. A. Driedger, *Construction of Statutes*, 2nd ed. (Toronto: Butterworths, 1983), at p. 87 that "the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament": *Bell ExpressVu Ltd. Partnership v. Rex*, 2002 SCC 42, [2002] 2 S.C.R. 559, at para. 26; and *Indalex*

Ltd., Re, 2013 SCC 6, [2013] 1 S.C.R. 271, at para. 136. I analyze both statutes in greater detail below to explain the relevant scheme and objects of the *OLA* and *CPA*, as well as the legislative intent.

(i) *Occupiers' Liability Act*

[24] I begin with the origins of the *OLA*. The *OLA* came into force in 1980. It was enacted following the Ontario Law Reform Commission's 1972 *Report on Occupiers' Liability*, which recommended that the common law duty of care owed by occupiers[4] be replaced with one generalized statutory duty.

[25] That recommendation came into effect with the passage of the *OLA*. It is evident from the provisions of the *OLA* that the legislation was intended to establish a single primary duty of care that an occupier would owe to persons entering upon their premises. Section 3 of the *OLA* also prescribes a default standard of care that requires an occupier to take such care as is reasonable in the circumstances to keep entrants and their property reasonably safe on the premises. The breach of that statutory standard of care would make the occupier liable for injuries sustained by those entrants. As Lewis N. Klar and Cameron Jeffries say in their text, *Tort Law*, 6th ed. (Toronto: Thomson Reuters, 2017), at p. 723:

---

[4] The common law standard of care for occupiers varied depending on whether the person entering the premises was an invitee, licensee, trespasser, or contractual entrant.

> It seems irrefutable that the legislation was intended to be exclusive and comprehensive, in so far as the liability of occupiers is concerned.

[26] This intention is made clear by s. 2 of the *OLA* which reads:

> Subject to section 9, this Act applies in place of the rules of the common law that determine the care that the occupier of premises at common law is required to show for the purpose of determining the occupier's liability in law in respect of dangers to persons entering on the premises or the property brought on the premises by those persons.

[27] The two critical sections of the *OLA*, for the purpose of these appeals, are ss. 3 and 4. I refer to the following portions of those two sections:

> 3(1) An occupier of premises owes a duty to take such care as in all the circumstances of the case is reasonable to see that persons entering on the premises, and the property brought on the premises by those persons are reasonably safe while on the premises.
>
> (2) The duty of care provided for in subsection (1) applies whether the danger is caused by the condition of the premises or by an activity carried on on the premises.
>
> (3) The duty of care provided for in subsection (1) applies except in so far as the occupier of premises is free to and does restrict, modify or exclude the occupier's duty.
>
> 4(1) The duty of care provided for in subsection 3(1) does not apply in respect of risks willingly assumed by the person who enters on the premises, but in that case the occupier owes a duty to the person to not create a danger with the deliberate intent of doing harm or damage to the person or his or her property and to not

> act with reckless disregard of the presence of the person or his or her property.

[28] When considering the purpose of the *OLA*, it is of some importance to recognize that part of the rationale for including s. 4 in the statute was to encourage private landowners to voluntarily make their property available for recreational activities by limiting their liability. This was made clear in the *Discussion Paper on Occupiers' Liability and Trespass to Property* issued by the Ministry of the Attorney General in May 1979. It was also referred to by Allen M. Linden and Bruce Feldthusen in their text, *Canadian Tort Law*, 10th ed. (Toronto: LexisNexis Canada, 2015), at §18.66:

> This provision was included for the purpose of protecting the interests of the agricultural community and to promote the availability of land for recreational activities. The Ontario Law Reform Commission's draft Act did not contain this particular section.
>
> [Citation omitted.]

[29] Moreover, although s. 3(1) of the *OLA* prescribes the primary duty and standard of care, the *OLA* also expressly preserves situations where a higher obligation or standard may apply because of specific legislation or the common law under s. 9(1):

> Nothing in this Act relieves an occupier of premises in any particular case from any higher liability or any duty to show a higher standard of care that in that case is incumbent on the occupier by virtue of any enactment or rule of law imposing special liability or standards of care on particular classes of persons including, but without

> restricting the generality of the foregoing, the obligations of,
>
> (a) innkeepers, subject to the *Innkeepers Act*;
>
> (b) common carriers;
>
> (c) bailees.

[30] Thus, while the Legislature left to itself the right to establish a higher liability or duty of care for occupiers in specific situations, it did not see fit to amend the *OLA* to include obligations under the *CPA*. Moreover, as I will explain in my reasons below, the potentially "higher" obligations under s. 9 of the *CPA* cannot be read into this section.

(ii) *Consumer Protection Act*

[31] I now turn to the origins of the *CPA*. The *CPA* was enacted in 2002. It was adopted to modernize consumer law in Ontario. Prior to the enactment of the *CPA*, consumer protection was found in nine different statutes. The purpose of the *CPA* was to consolidate those statutes and update the law to provide protections for newer businesses and newer forms of transactions that were entering the marketplace.

[32] Two sections of the *CPA* are of particular importance to these appeals. One is s. 7(1) which reads:

> The substantive and procedural rights given under this Act apply despite any agreement or waiver to the contrary.

The other is s. 9 which reads in relevant parts:

> 9(1) The supplier is deemed to warrant that the services supplied under a consumer agreement are of a reasonably acceptable quality.
>
> […]
>
> (3) Any term or acknowledgement, whether part of the consumer agreement or not, that purports to negate or vary any implied condition or warranty under the *Sale of Goods Act* or any deemed condition or warranty under this Act is void.
>
> (4) If a term or acknowledgement referenced in subsection (3) is a term of the agreement, it is severable from the agreement and shall not be evidence of circumstances showing an intent that the deemed or implied warranty or condition does not apply.

[33] With respect to these sections, I should note that there is no disagreement between the parties that the plaintiffs are consumers, the defendants are suppliers, and that the contracts that they entered into are consumer agreements.

[34] Prior to the enactment of the *CPA*, the Ministry of Consumer and Commercial Relations (now the Ministry of Government and Consumer Services, the "Ministry") circulated a consultation paper entitled "Consumer Protection for the 21st Century". It explained the reasoning behind the proposed enactment of the *CPA*. Two salient facts can be drawn from that consultation paper.

[35] First, Proposal 4(a) at p. 9 of the consultation paper points out that "consumer law should not apply to transactions already governed under

regulatory regimes that adequately address consumer protection." The paper expands on this point, at pp. 9-10:

> Although any transaction in which individuals pay for anything is in some sense a consumer transaction, there are several areas in which other specialized legal regimes apply instead of consumer law […] The Ministry is not proposing that general consumer law apply to these sectors.
>
> The proposed broader definition of consumer transactions would also call into question its application to areas that are already regulated by industry- and sector-specific legislation...
>
> In such cases, having two applicable legal regimes could be confusing, both for the public and the regulated sector. Similarly, having two regulatory bodies creates duplication…
>
> [Emphasis added.]

[36] Second, the consultation paper discusses all of the industry and sector specific concerns that drove the goal of introducing new consumer protection legislation. Yet there is no commentary at any point in the consultation paper that identifies problems with the current state of legislation relating to occupiers, or problems with consumer transactions involving occupiers insofar as they provide their premises for the use of consumers engaging in recreational activities.

[37] Indeed, on a fair reading of the consultation paper and the *CPA* itself, it is evident that the principal concern was with respect to financial transactions, and the potential for scams to operate to the detriment of consumers. There is nothing to suggest that changing the existing framework governing liability for

personal injuries sustained by persons availing themselves of premises for recreational activities was in any way an objective of the *CPA*.

[38] Mr. Schnarr and Ms. Woodhouse, and the intervener Ministry, point to the fact that the *CPA* exempts certain statutes under s. 2(2) and the *OLA* is not one of them. The thrust of this argument is based on *expressio unius est exclusio alterius*. However, as I will explain in my reasons below, the principle that things are implicitly excluded when others are expressly enumerated is not an absolute rule. Key to this analysis is the fact that when one looks at the types of exemptions provided by the *CPA*, both in s. 2(2) and in O. Reg. 17/05, it is clear that they are primarily directed at financial transactions and professional services. They are not directed at the type of activities covered by the *OLA*.

[39] There is nothing in the background to the passage of the *CPA*, or in the provisions of the *CPA* itself, that would suggest that it was intended to regulate duties of care of the type stipulated by the *OLA*, or that it was intended to regulate liability arising from the use of premises that are subject to the *OLA*. This conclusion is consistent with the consultation paper, which makes it clear that it was not the intention of the *CPA* to apply to areas that were "already regulated by industry- and sector-specific legislation."

[40] Having set out the background objects of the *CPA* and the *OLA*, I turn now to analyze whether they conflict.

(a) Does s. 9 of the *CPA* conflict with s. 3 of the *OLA*?

[41] The Supreme Court set out the principles of statutory interpretation with respect to the analysis of conflicting statutes in *Thibodeau v. Air Canada*, 2014 SCC 67, [2014] 3 S.C.R. 340, at paras. 88ff. In that case, Air Canada failed to provide services in French on some international flights as required under the *Official Languages Act*, R.S.C. 1985, c. 31 (4th Supp.). The applicant applied to the Federal Court for a remedy of damages but Air Canada contended that the *Carriage by Air Act*, R.S.C. 1985, c. C-26 precluded such liability. In analyzing whether a conflict existed between the two statutes, the Supreme Court held at para. 92:

> First, courts take a restrictive approach to what constitutes a conflict in this context. Second, courts find that there is a conflict only when the existence of the conflict, in the restrictive sense of the word, cannot be avoided by interpretation. Overlap on its own, does not constitute conflict in this context, so that even where the ambit of two provisions overlaps, there is a presumption that they both are meant to apply, provided that they can do so without producing absurd results. This presumption may be rebutted if one of the provisions was intended to cover the subject matter exhaustively. Third, only where a conflict is unavoidable should the court resort to statutory provisions and principles of interpretation concerned with which law takes precedence over the other.

[42] I recognize that the above rules of statutory interpretation urge an approach that avoids a finding that two statutes conflict. This approach is

premised upon the "presumption of perfection".[5] However, those interpretive rules still recognize that conflicts will arise. For example, courts have held that a conflict between two statutes arises where:

(a) provisions are so inconsistent or "repugnant" to each other that they are "incapable of standing together" (*Reference re Broadcasting Act, S.C. 1991 (Canada)*, 2012 SCC 68, [2012] 3 S.C.R. 489, at paras. 41-45);

(b) the application of one provision must implicitly or explicitly preclude the application of another (*Lévis (Ville) v. Côté*, 2007 SCC 14, [2007] 1 S.C.R. 591, at paras. 48-49); or

(c) two pieces of legislation are "directly contradictory or where their concurrent application would lead to unreasonable or absurd results" (*Lévis*, at para. 47 and *Thibodeau*, at para. 95).

[43] In this case, as I have already alluded to, there is a clear and direct conflict between the *OLA* and the *CPA* – and it is an unavoidable one. The *OLA* permits an occupier to obtain a waiver of liability. The *CPA* precludes a supplier from obtaining a waiver of liability. In other words, what the *OLA* permits, the *CPA* prohibits.

---

[5] Sometimes also referred to as the "presumption of coherence".

[44] The problem with the presumption of perfection is, of course, that it ignores the practical realities in which legislation is enacted. As Ruth Sullivan says in her text, *Sullivan on the Construction of Statutes*, 6th ed. (Toronto: LexisNexis Canada, 2014), at 11.32:

> This analysis ignores the realities of the way legislation is made and the way the statute book evolves. It ignores, for example, the fact that legislative schemes are developed, introduced and implemented by different departments with different legislative priorities. It ignores the tight timelines and political pressures under which much legislation is drafted.

[45] That observation has direct application to the situation here. The *OLA* is administered by the Ministry of Tourism, Culture and Sport. The *CPA* is administered by the Ministry of Government and Consumer Services. The two statutes were enacted by two different governments more than twenty years apart. Further, as I mentioned above, there is nothing in the consultation paper relating to the *CPA*, or otherwise in the record before this court, that suggests that, in enacting the *CPA*, any consideration was given to the *OLA* or to the impact that any of the provisions in the *CPA* might have on the *OLA*.

[46] Mr. Schnarr and Ms. Woodhouse try to avoid the reality of a conflict between the statutes by submitting that there is a distinction between the ability of a party to sue either in contract or in tort. On that point, with due respect to Tzimas J., suggesting that the waiver is valid with respect to the tortious negligence claims, but invalid with respect to the contractual warranty claims, is a

distinction without a difference. In this regard, Mr. Schnarr and Ms. Woodhouse relied heavily on the decision in *BG Checo International Ltd. v. British Columbia Hydro and Power Authority*, [1993] 1 S.C.R. 12. With respect, that decision does not support their position because they mischaracterize the nature of the issue that was engaged in that case. There is no doubt that the decision in *BG Checo* holds that a party has the choice whether to sue in contract or in tort. Indeed, they may decide to sue in both. No one disputes that principle.

[47] In this case, however, we are not dealing solely with duties arising from tort or contract. Here we are dealing with a duty of care imposed by statute: *Mackay v. Starbucks Corp.*, 2017 ONCA 350, 413 D.L.R. (4th) 220, at paras. 10 and 46. It is the *OLA*'s statutorily imposed duty that all occupiers must meet, regardless of whether the occupier has a relationship with an injured party that is founded in contract or in tort. The decision in *BG Checo* does not assist Mr. Schnarr and Ms. Woodhouse in this regard. Indeed, it arguably assists Blue Mountain and Snow Valley because the decision recognizes that parties can contractually alter the rights that might otherwise be imposed upon them by the common law. As LaForest and McLachlin JJ. said, at p. 27:

> The rule is not that one cannot sue concurrently in contract and tort where the contract limits or contradicts the tort duty. It is rather that the tort duty, a general duty imputed by the law in all the relevant circumstances, must yield to the parties' superior right to arrange their rights and duties in a different way.

[48] The *OLA* permits an occupier to "restrict, modify or exclude" the duty imposed by the statute regardless of whether a claim is founded in contract or in tort. The waivers in the instant appeals dealt with both Blue Mountain's and Snow Valley's contractual and tort obligations. The effort to avoid a conflict between the statutes on the basis that the *OLA* deals with tort liability and the *CPA* deals with contractual liability is not only artificial, it does not reflect the fact that the duty of care originates from the statute itself, nor does it take into account that the statute allows for the modification of the duty and liability arising therefrom. Moreover, adopting such a restricted interpretation of s. 3(3) of the *OLA* would go against the development trends in private law. As the majority noted in *BG Checo*, at p. 21, "the law should move towards the elimination of unjustified differences between the remedial rules applicable to the two actions [tort versus contract], thereby reducing the significance of the existence of the two different forms of action".

[49] Indeed, I agree with Tzimas J.'s observation, at para. 99 of her reasons:

> On their face, the statutes take different approaches to waivers. This is so because they have very different legislative purposes. Waivers in the OLA are designed to shield occupiers. The rejection of waivers in the CPA is designed to shield consumers. A conflict in the application of both statutes arises when consumers clash with suppliers who are also occupiers.

[50] In my view, despite Mr. Schnarr's and Ms. Woodhouse's best efforts to advance the contrary proposition, there can be no reasonable conclusion other

than that the two statutes conflict when one attempts to apply them to occupiers under the *OLA* who also happen to be suppliers under the *CPA*. Simply put, under the *OLA*, an occupier can obtain a waiver of liability (within limits as defined by the common law)[6] from any person coming onto their premises. However, that same occupier, if they are also a supplier under the *CPA*, cannot obtain an equivalent waiver. This, despite the fact that the factual foundation for both tort and contract causes of action are the same. A plain reading of the amended statements of claim allows for no other conclusion.

[51] As the instant appeals amply demonstrate, the result is a clear conflict. On the one hand, Blue Mountain and Snow Valley have lawful waivers that would exclude their liability for the injuries suffered by Mr. Schnarr and Ms. Woodhouse, respectively, and yet they are told that those waivers are of no effect by virtue of the *CPA*. It is of no practical comfort to Blue Mountain and Snow Valley to be told that their waivers protect them from the negligence claims but not from the warranty claims. The result for the ski resorts is the same. They will be held liable for something that they thought they had lawfully protected themselves against. In my view, such a result is both a direct contradiction and an absurd result.

---

6 See Department of Justice, *Report on Occupiers' Liability* (Ontario: Ontario Law Reform Commission, 1972), at pp. 14-16 where the report states "the words 'where an occupier is free to' [under s. 3(3)] are used to ensure that an occupier's power to extend, restrict, modify or exclude his duty shall be no greater than it was under common law."

(b) If the *CPA* and the *OLA* conflict, how should the conflict be resolved?

[52] The principles of statutory interpretation urge an approach that allows both statutes to maintain their maximum application and effectiveness. The principles affecting the analysis with respect to which statute should take precedence include:

(i) where a class of things is modified by general wording that expands the class, the general wording is usually restricted to things of the same type as the listed items (*ejusdem generis*);

(ii) when one or more things of a class are expressly mentioned, others of the same class are excluded (*expressio unius est exclusio alterius)*;

(iii) the exhaustiveness doctrine;

(iv) the provisions of a general statute must yield to those of a special one (*generalia specialibus non derogant*); and

(v) the absurdity doctrine.

[53] I will discuss each in turn.

Class of things

[54] Section 9(1) of the *OLA* provides that the statute does not restrict the imposition of a higher liability or standard of care upon occupiers. It provides innkeepers, common carriers, and bailees as examples of where a higher liability

or standard of care would apply even if those classes of persons are simultaneously occupiers. The class of persons is not exhaustive in s. 9(1). However, in my view, the type of situations that would impose a "special liability or standards of care" on occupiers under s. 9(1) should be read *ejusdem generis* and be restricted to situations that are similar to the enumerated examples.

[55] Indeed, the situations in which Ontario courts have imposed a higher standard of care upon an occupier are squarely analogous to the enumerated classes in s. 9(1). For example, in *Miaskowski (Litigation guardian of) v. Persaud*, 2015 ONCA 758, 393 D.L.R. (4th) 237, at para. 40, this court held that occupiers who are also landlords remain subject to the duties imposed on landlords under the *Residential Tenancies Act, 2006*, S.O. 2006, c. 17. And in *Miller v. Canada (Attorney General)*, 2015 ONSC 669, at para. 24, Leach J. held that the Crown's duty to take reasonable and adequate measures to protect an inmate from a reasonably foreseeable risk of injury and predictable dangers supplemented the Crown's duties under the *OLA* as an owner and occupier of penitentiaries.

[56] The *CPA* does not purport to apply a special liability or higher standard of care for actions that are incidental to the role of an occupier. Rather, the *CPA* seeks to regulate the entirely separate category of consumer transactions between a supplier and consumer. As such, reading the section pursuant to the principle of *ejusdem generis*, it is clear that the application of any special

liabilities or higher standards imposed by the *CPA* were not meant to be preserved under s. 9(1) of the *OLA*.

Express mention

[57] As alluded to above, the fact that s. 2(2) of the *CPA* and its subordinate regulations do not include the *OLA* in its prescribed list of exemptions is not the end of the matter. The interpretive rule that the express mention of one thing means the implied exclusion of another is rebuttable, and has not been accepted by the courts where the proposed interpretation disregards the underlying objectives of the statute: *Copthorne Holdings Ltd. v. Canada*, 2011 SCC 63, [2011] 3 S.C.R. 721, at para. 111. Indeed, this court has cautioned against overreliance on the maxim: *Fleming v. Massey*, 2016 ONCA 70, 128 O.R. (3d) 401, at paras. 41-43.

[58] In these appeals, there is no evidence in the record that in drafting the *CPA* and the *OLA*, the Legislature turned its mind to the interplay of these two statutes. There is no basis for expecting an express reference to the *OLA* in the *CPA*'s exemptions. As such, there is little value to the *expressio unius* argument in these appeals and it provides no basis to infer that the Legislature intended for the *CPA* to supersede the *OLA*.

Exhaustiveness

[59] As mentioned above, the *OLA* was a statutory scheme that replaced the common law with respect to occupiers' liability. Significantly, it replaced the different common law standards of care applicable to entrants on premises (including contractual entrants) with a single, unified statutory duty to take reasonable care to see that entrants and their property are reasonably safe on the occupiers' premises. Furthermore, the *OLA* expressly allows for the restriction, modification, or exclusion of the statutory duty.

[60] In my view, the *OLA* was therefore intended to be an exhaustive scheme at least in relation to the liability of occupiers to entrants on their premises flowing from the maintenance or care of the premises. The very purpose of this legislative scheme would be undermined if the *CPA* were allowed to reintroduce another novel contractual duty that purports to subject occupiers to an obligation to warrant that their premises are of a "reasonably acceptable quality". As such, the fact that s. 9 of the *CPA* undermines the very purpose of the *OLA* is a factor that militates towards holding that the *OLA* supersedes the *CPA*.

Specific overrules general

[61] I appreciate that determining whether legislation is general or specific can be a difficult, and perhaps a somewhat theoretical, exercise. Indeed, it may very well be driven by the vantage point of the observer who is asked to make the

determination. The arguments made by the parties in these appeals reflect that divergence.

[62] However, in my view, in this factual situation, the *OLA* must be reasonably seen as dealing directly with the core issue, that is, the ability of occupiers of premises to obtain waivers of liability. In contrast, the *CPA* deals generally with all forms of consumer transactions. Buying a ski pass is but one of a myriad of consumer transactions to which the *CPA* could apply. The *OLA*, on the other hand, deals directly, and substantially, with activities on premises (as defined), including the operation of recreational activities on premises. Indeed, as I have explained above, part of the rationale for permitting occupiers to obtain waivers of liability was to promote the use of their properties by others for those very activities.

[63] Adopting this approach does not invalidate the *CPA* or otherwise render it of no force or effect. Rather, this result simply recognizes that the *OLA* carves out consumer transactions that relate to activities covered by the *OLA* from the application of the *CPA*. Put another way, to the extent that an occupier engages with members of the public for the use of the occupier's premises in return for payment, and thus creates a consumer agreement, the provisions of the *CPA* do not apply to that agreement. At the same time, insofar as parties who are occupiers engage with members of the public and create consumer transactions that do not relate to "persons entering on premises or the property brought on the

premises by those persons" (*OLA*, s. 2), then the *CPA* would still apply to those consumer transactions.

[64] This result is consistent with the approach taken in *R. v. Greenwood* (1992), 7 O.R. (3d) 1 (C.A.), 70 C.C.C. (3d) 260 where, in commenting on the application of the principle of *generalia specialibus non derogant*, Griffiths J.A. said, at p. 266:

> Applying this maxim of construction, the provisions of the special statute are not construed as repealing the general statute, but as providing an exception to the general.

Avoiding absurdity

[65] The application of the principle that the specific overrules the general, along with the exhaustiveness principle in these appeals is also consistent with the objective of avoiding an absurdity, which is what I view the positions adopted by the motion judges below to result in. It is clear that one of the purposes of the *OLA* was to provide protection to occupiers who permitted persons to come onto their lands for the purpose of recreational activities. The result of the decisions below is that one of the fundamental purposes of the *OLA* is defeated, not through an intentional amendment to the *OLA*, but through an interpretation of the *CPA* that results in an indirect and implied amendment.

[66] I am reinforced in my conclusion in this regard by the actions of the Legislature in 2016 when it enacted the *Ontario's Trails Act, 2016*, S.O. 2016, c.

8, Sched. 1. This legislation, among other things, amended the *OLA* to provide protection to occupiers who permitted their premises to be used by members of the public for recreational trails, including hiking, portaging, or snowmobiling trails. These amendments resulted from concerns expressed by landowners of being exposed to liability as a result of allowing access to trails on their land. Volunteer non-profit clubs and associations taking care of those trails also voiced similar concerns.

[67] The Minister of Tourism, Culture and Sport explained the purpose of the legislation at the time that it was being debated. He said, in part:

> One of the key pieces to this legislation is increasing the number of trail users by adding clarity to the Occupiers' Liability Act. That's an important piece that we think needs to be put in place here in Ontario. We know that trail tourism in the province of Ontario is part of a larger tourism sector in the province, which is a $28-billion; sector.
>
> […]
>
> Currently there exists some legal ambiguity around what standard of care is owed to the users of trails. For example, if an ATV club charges membership fees for coordinating rides on a portion of an Ontario trail network, it is legally questionable what level of care is required from the business and from the owner of the trail. If Bill 100 is passed, it will clarify legislation, encouraging further participation between businesses and the owners of trails.

[68] It is difficult to accept that the Legislature went through the exercise of amending the *OLA* for the purpose of clarifying the liability of occupiers, and to

encourage them to open their property for use by members of the public, all to have it rendered of no force or effect because of the existence of the *CPA*. Indeed, the fact that the Legislature, in this instance, amended the *OLA* to address liability issues surrounding the recreational use of property, with no mention of or reference to the *CPA*, strikes me as clear evidence that the Legislature did not view the *CPA* as having any role to play in this area.

[69] The conclusion that the *CPA* does not operate within the sphere of activities governed by the *OLA* does not undercut the effectiveness of the *CPA*, nor does it offend public policy. Rather, it allows for the commercial flexibility necessary to promote the goal of encouraging landowners to permit their premises to be used for recreational activities. This objective was noted by the Supreme Court in *BG Checo*, where La Forest and McLachlin JJ. said, at p. 27:

> This principle is of great importance in preserving a sphere of individual liberty and commercial flexibility. Thus if a person wishes to engage in a dangerous sport, the person may stipulate in advance that he or she waives any right of action against the person who operates the sport facility: *Dyck v. Manitoba Snowmobile Association Inc.,* [1985] 1 S.C.R. 589.

[70] I note that, in *Dyck*, the court held that there were no grounds of public policy that would lead to the striking down of a waiver of claims clause.

[71] This conclusion also does not offend the principle that consumer protection legislation should be interpreted generously. That principle only applies where the legislation operates validly. It does not apply to expand the jurisdiction of

consumer protection legislation to occupy an area that is already covered by other specific legislation. Decisions such as *Seidel v. TELUS Communications Inc.*, 2011 SCC 15, [2011] 1 S.C.R. 531 and *Weller v. Reliance Home Comfort Limited Partnership*, 2012 ONCA 360, 110 O.R. (3d) 743 do not assist in determining the central point at issue in these appeals.

[72] Finally, this conclusion is also consistent with the principle that broad language in legislation may be given a restricted interpretation where necessary in order to avoid an absurdity. As Blair J.A. said in *Blue Mountain Resorts Ltd. v. Bok*, 2013 ONCA 75, 114 O.R. (3d) 321, at para. 51:

> It is also consistent with the principle that broad language in a statute may be given a somewhat restricted interpretation where necessary in order to avoid absurdity and to give the words their appropriate meaning, having regard to their context, the purpose of the Act, and the intention of the Legislature.

[73] As such, I would conclude that ss. 7 and 9 of the *CPA* do not operate to void otherwise valid waivers executed under s. 3(3) of the *OLA*.

(c) Does s. 93(2) of the *CPA* allow a court to hold a consumer bound to a voided waiver under s. 9(3)?

[74] Ms. Woodhouse's appeal raises a separate issue with respect to McCarthy J.'s conclusion that s. 93(2) of the *CPA* might be used as a mechanism to hold a consumer to a waiver of liability, even if s. 9(3) of the *CPA* voided the waiver. While Tzimas J. did not make any direct finding on this issue, I believe a fair

reading of her reasons suggests that she reached the opposite conclusion. While it is technically unnecessary for me to address this issue in light of my conclusions above, I will deal with it for the sake of completeness, especially since the issue was fully argued by the parties. I believe that the issue can be dealt with briefly.

[75] Section 93 of the *CPA* reads:

> (1) A consumer agreement is not binding on the consumer unless the agreement is made in accordance with this Act and the regulations.
>
> (2) Despite subsection (1), a court may order that a consumer is bound by all or a portion or portions of a consumer agreement, even if the agreement has not been made in accordance with this Act or the regulations, if the court determines that it would be inequitable in the circumstances for the consumer not to be bound.

[76] In concluding that the court could rely on s. 93(2) to hold a consumer to a waiver of liability, notwithstanding that such waiver would be void under s. 9 of the *CPA*, McCarthy J. said, at para. 43 of his reasons:

> I conclude therefore, that in situations where a consumer agreement contains terms or acknowledgments rendered presumptively void by operation of s. 9(3) and where the parties cannot agree to sever those offending terms from the consumer agreement under s. 9(4), the court may exercise its jurisdiction to sever the offending terms of the consumer agreement. It may do so as part of its s. 93(2) inquiry into whether it would be inequitable in the circumstances for the consumer not to be bound by the original agreement, including those terms and

> acknowledgments that would be void but for the equitable jurisdiction of the court.

[77] In my view, the motion judge erred in so concluding. The purpose behind s. 93(2) is to avoid situations where a consumer, who has received the benefit of a consumer agreement, attempts to retain those benefits without performing his or her side of the agreement because of a technical breach of the *CPA*. Section 93(2) is not intended to permit the court to hold a consumer to a consumer agreement that violates one of the basic tenets of the *CPA*, especially when the provision is void.

[78] In that regard, it is important to observe, and give effect to, the exact wording of s. 9(3) of the *CPA*. It reads:

> Any term or acknowledgement, whether part of the consumer agreement or not, that purports to negate or vary any implied condition or warranty under the *Sale of Goods Act* or any deemed condition or warranty under this Act is void.

[79] Two points can be taken from that wording. One is that it applies to any term or acknowledgment whether it is part of the consumer agreement or not. Thus, s. 9(3) has a very broad reach. It is clear that it was intended to catch any attempt to negate or vary the deemed warranty provided by s. 9(1) of the *CPA*, even if the attempt is outside of the consumer agreement itself. The other is that s. 9(3) renders any such term or acknowledgement void. A term that is void is a term that is a nullity. It is different in kind from a term that is voidable. A term that

is void has no legal force or effect and there is nothing to be saved by a curative provision: *Price v. Turnbull's Grove Inc.*, 2007 ONCA 408, 85 O.R. (3d) 641, at paras. 34-37.

[80] Adopting a purposive interpretation of the *CPA*, there is nothing that would suggest that the Legislature intended that, notwithstanding the direct language used in s. 9(3), courts would be able to hold a consumer to a waiver of the deemed warranty provided by s. 9(1) of the *CPA*. Indeed, it would be hard to conceive of a factual situation where it would be equitable to do so in light of the fundamental purpose of the *CPA*.

[81] I conclude therefore that s. 93(2) cannot be used to give effect to a waiver that is voided by s. 9(3) of the *CPA*.

Conclusion

[82] The two appeals and the cross-appeal are all allowed. The orders below are set aside. Mr. Schnarr is bound by the Blue Mountain waiver and Ms. Woodhouse is bound by the release in her lift ticket and the Snow Valley waiver. This is so regardless of whether their claims are in tort or for breach of warranty. The proceedings are remitted back to the Superior Court of Justice to proceed in accordance with these reasons.

[83] The parties may make written submissions on the matter of costs. Blue Mountain and Snow Valley shall file their submissions within 10 days of the

release of these reasons. Mr. Schnarr and Ms. Woodhouse shall file their submissions within 10 days thereafter. No reply submissions are to be filed without leave of the court. None of the costs submissions shall exceed five pages in length.

[84] There will be no order for costs either in favour of or against any of the interveners.

Released: “DD” MAR 28 2018

“I.V.B. Nordheimer J.A.”
“I agree. Doherty J.A.”
“I agree. David Brown J.A.”

APPENDIX A
Blue Mountain Waiver

RELEASE OF LIABILITY AGREEMENT, WAIVER OF CLAIMS,
ASSUMPTION OF RISKS AND INDEMNITY AGREEMENT
BY AGREEING TO THE TERMS OF THIS DOCUMENT YOU WILL WAIVE
CERTAIN LEGAL RIGHTS, INCLUDING THE RIGHT TO SUE
PLEASE READ CAREFULLY!

1. **TO WAIVE ANY AND ALL CLAIMS** that I have or may in the future have against the **SKI AREA OWNERS AND OPERATORS** and Blue Mountain Ski Club (1940)Inc., and the Terrain Park sponsor and its affiliates and their respective directors, officers, employees, agents, representatives, successors and assigns (all of whom are hereinafter collectively referred to as "THE RELEASEES"), and **TO RELEASE THE RELEASEES** from any and all liability for any loss, damage, expense or injury including death that I may suffer, or that my next of kin may suffer resulting from either my use of or my presence on the Facilities or travel beyond the ski area boundary, DUE TO ANY CAUSE WHATSOEVER, INCLUDING NEGLIGENCE, BREACH OF CONTRACT, OR BREACH OF ANY STATUTORY OR OTHER DUTY OF CARE, INCLUDING ANY DUTY OF CARE OWED UNDER THE **OCCUPIERS' LIABILITY ACT**, ON THE PART OF THE RELEASEES, AND ALSO INCLUDING THE FAILURE ON THE PART OF THE RELEASEES TO SAFEGUARD OR PROTECT ME FROM THE RISKS, DANGERS AND HAZARDS OF SKIING AND SNOWBOARDING REFERRED TO ABOVE;

APPENDIX B
Snow Valley Waiver

The "Fine Print"... PLEASE READ CAREFULLY!

By signing this document you will waive certain rights including the right to sue.

RENTAL AGREEMENT

1. I accept full responsibility for the care of the rental equipment ("the Equipment") listed on this form and I agree to replace at FULL RETAIL VALUE any equipment damaged or not returned. OR, I choose to purchase insurance to cover damage to the Equipment. DCA Initial
2. I have made no misrepresentations in regards to my height, weight, age or skier/snowboarder type. (This information is required in order to properly adjust the ski boot/binding settings.) DCA Initial
3. I understand that the rental technicians are able to answer any questions I may have as to the proper use of the Equipment. DCA Initial

ASSUMPTION OF RISKS

1. I am aware that skiing/snowboarding/skiboarding (snowblading) involves risks, dangers and hazards and that injuries are a common and ordinary occurrence of the sport. I understand that the ski boot/binding system will not release at all times or under all circumstances, that it is not possible to predict every situation in which the system will release, and that the system is no guarantee that the user will not be injured. I understand that as the snowboard/skiboard boot/binding system is a non-release system it will not reduce the risk of injury during a fall and is therefore no guarantee of my safety. I freely accept and fully assume all risks, dangers, and hazards associated with the use of the Equipment.
2. I am aware that Snow Valley Resorts (1987) Ltd. has for rent or sale snow sport helmets. While I understand that snow sport helmets are intended to reduce the risk of serious head injury, I understand and agree that no helmet can eliminate or prevent this, nor can a helmet eliminate or prevent injury to the neck or spinal cord. I understand that this helmet must fit properly to maximize its performance including use of the chin strap and acknowledge that it has been properly fit by the provider. If the helmet experiences any impact I agree to return it to the shop for inspection. I agree to notify the provider if this helmet is involved in an accident of any kind.
3. As a condition of my use of the ski area facilities I assume all risk of personal injury, death or property loss resulting from any cause whatsoever including but not limited to the inherent risks of skiing, snowboarding, and ski boarding, the use of ski lifts, collision with natural or manmade objects or other skiers or snowboarders, travel within or beyond the ski area boundaries, or negligence, breach of statutory duty of care or breach of the Occupiers' Liability Act on the part of Snow Valley Resorts (1987) Ltd., its employees and agents.

WAIVER OF CLAIMS

I HEREBY AGREE: 1. TO WAIVE ANY AND ALL CLAIMS that I have or may have in the future against Snow Valley Resorts (1987) Ltd. and the manufacturer and distributor of the Equipment and their directors, officers, employees, agents and representatives (all of whom are hereinafter collectively referred to as "the Releasees") and 2. TO RELEASE THE RELEASEES from any and all liability for any loss, damage, injury, or expense that I may suffer, or that my next of kin may suffer as a result of or arising out of any aspect of my use of the Equipment, DUE TO ANY CAUSE WHATSOEVER, INCLUDING NEGLIGENCE, BREACH OF CONTRACT OR BREACH OF WARRANTY ON THE PART OF THE RELEASEES in respect of the design, manufacture, selection, installation, maintenance, or adjustment of the Equipment, or in respect of the provision of or the failure to provide any warnings, directions, instructions or guidance as to the use of the Equipment. 3. That Snow Valley Resorts (1987) Ltd., its employees and agents, shall not be liable for any such personal injury, death or property loss and releases Snow Valley Resorts (1987) Ltd., its employees and agents and waives all claims with respect thereto. 4. This Agreement shall be governed by and interpreted in accordance with the laws of the Province of Ontario and any litigation involving the parties to this Agreement shall be brought within Ontario.

5. I have read and understood this agreement and am aware that by signing this agreement I am waiving certain legal rights which I or my heirs, next of kin, executors, administrators and assigns may have against the releasees.

No. 38125

February 7, 2019

BETWEEN:

David Schnarr

Applicant

- and -

Blue Mountain Resorts Limited

Respondent

AND BETWEEN:

Elizabeth Woodhouse

Applicant

- and -

Snow Valley Resorts (1987) aka Ski Snow Valley (Barrie), Snow Valley Barrie, Snow Valley Ski Resort, Snow Valley and 717350 Ontario Ltd.

Respondents

JUDGMENT

The motion to join two Ontario Court of Appeal files in a single application for leave

Le 7 février 2019

ENTRE :

David Schnarr

Demandeur

- et -

Blue Mountain Resorts Limited

Intimée

ET ENTRE :

Elizabeth Woodhouse

Demanderesse

- et -

Snow Valley Resorts (1987) aka Ski Snow Valley (Barrie), Snow Valley Barrie, Snow Valley Ski Resort, Snow Valley et 717350 Ontario Ltd.

Intimées

JUGEMENT

La requête pour joindre deux dossiers de la Cour d'appel de l'Ontario dans une seule

to appeal is granted. The application for leave to appeal and the two conditional applications for leave to cross-appeal from the judgments of the Court of Appeal for Ontario, Numbers C63305 and C63351, 2018 ONCA 313, dated March 28, 2018, and Numbers C63305 and C63351, 2018 ONCA 400, dated April 25, 2018, are dismissed with costs to the respondents, Snow Valley Resorts (1987) aka Ski Snow Valley (Barrie), Snow Valley Barrie, Snow Valley Ski Resort, Snow Valley and 717350 Ontario Ltd.

demande d'autorisation d'appel est accueillie. La demande d'autorisation d'appel et les deux demandes conditionnelles d'autorisation d'appel incident des arrêts de la Cour d'appel de l'Ontario, numéros C63305 et C63351, 2018 ONCA 313, daté du 28 mars 2018, et numéros C63305 et C63351, 2018 ONCA 400, daté du 25 avril 2018, sont rejetées avec dépens en faveur des intimées, Snow Valley Resorts (1987) aka Ski Snow Valley (Barrie), Snow Valley Barrie, Snow Valley Ski Resort, Snow Valley et 717350 Ontario Ltd.

J.S.C.C.
J.C.S.C.