

Livent founders fail to quash damage award

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Supreme Court of Canada refuses to hear appeal of judgment ordering them to pay \$36.6-million

Garth Drabinsky and Myron Gottlieb suffered an expensive legal blow Thursday when the Supreme Court of Canada refused to hear an appeal in a long-running shareholder lawsuit launched against the co-founders of live theatre company Livent Inc.

The decision leaves Mr. Drabinsky and Mr. Gottlieb required to pay a \$36.6-million (U.S.) judgment stemming from a suit launched by U.S. investors after Livent's collapse in 1998. The court also ordered Mr. Drabinsky and Mr. Gottlieb to pay the legal costs of the shareholders for the appeal challenge.

Lawyer **Jasmine Akbarali** of Toronto law firm Lerner LLP, who represented the U.S. shareholder group, said the amount owed by the two men will likely exceed \$40-million when interest and legal costs are included.

She said shareholders do not know yet if Mr. Drabinsky and Mr. Gottlieb have enough money to cover the judgment. In an unrelated legal action launched by Mr. Gottlieb in 2006, he said he had been ruined by Livent's collapse, stating he had been forced to sell his family's country home and his Toronto residence in the posh Forest Hill neighbourhood.

"We're still figuring out what we can do to enforce the judgment - that's one of the 'remains to be seen' points," **Ms. Akbarali** said.

"[Mr. Gottlieb] says what he says, and now we have to satisfy ourselves. That's the next step - to figure out what's there and what's available, and how we can realize what we can realize."

Mr. Gottlieb's lawyer, Brian Greenspan, could not be reached for comment yesterday.

Lawyer **Dave Roebuck**, who acted for Mr. Drabinsky in the Supreme Court appeal, said Thursday that he could not comment on his client's ability to pay the judgment.

Mr. Roebuck said the Supreme Court's refusal to grant leave to appeal is not an endorsement of the decisions reached by the lower courts in the case, noting that appeals are heard by the court in about 75 cases from more than 1,000 requests a year.

"The court declines to take cases for many reasons unrelated to the merits of the particular case," Mr. Roebuck said, adding that the case will have no effect on other civil lawsuits launched in Canada against Mr. Drabinsky and Mr. Gottlieb, nor on their

long-running criminal trial.

The two men were charged with fraud and forgery in connection with misstatements of Livent's financial statements from 1993 to 1998. They pleaded not guilty, and a verdict in the case is expected March 24.

The U.S. shareholders launched their case in U.S. court in 1998, alleging they bought \$125-million in Livent notes based on false financial information in the offering prospectus.

A court ruled in their favour in 2005 after Mr. Drabinsky and Mr. Gottlieb refused to provide detailed responses to the plaintiff's claims, arguing that any comments they made in their defence could be used against them in a criminal trial. The two men subsequently unsuccessfully appealed the decision through the U.S. court system.

In 2006, the U.S. shareholders brought a motion in the Ontario Court to have the U.S. judgment enforced in Canada. The Ontario Court ruled in favour of enforcing the judgment in 2007, and the decision was upheld by the Ontario Court of Appeal last year. The two men filed an application with the Supreme Court of Canada last October, asking for leave to appeal the case.

Ms. Akbarali said the Supreme Court's decision brings an end to the legal odyssey because there is no further recourse in either country for the two men. "These guys have not been shy about exercising their appeal rights - they've appealed everything all the way along the line, and have lost at every stage," she said.

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