

SUPERIOR COURT

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No: 500-06-001132-212

DATE: March 24, 2023

PRESIDED BY: THE HONOURABLE SILVANA CONTE, J.S.C.

GABRIEL BOURGEOIS

Applicant

v.

**ELECTRONICS ARTS INC.,
and
ELECTRONICS ARTS (CANADA),
and
ACTIVISION BLIZZARD INC.,
and
ACTIVISION PUBLISHING INC.,
and
BLIZZARD ENTERTAINMENT INC.,
and
TAKE TWO INTERACTIVE SOFTWARE INC.,
and
TAKE TWO INTERACTIVE CANADA HOLDINGS INC.,
and
2K GAMES INC.,
and
ROCKSTAR GAMES INC.,
and
WARNER BROS ENTERTAINMENT INC.,
and
WARNER BROS ENTERTAINMENT CANADA INC.,**

and
WARNER BROS. HOME ENTERTAINMENT INC.,
and
UBISOFT ENTERTAINMENT SA.,
and
UBISOFT INC.,
and
UBISOFT ENTERTAINMENT INC. / UBISOFT DIVERTISSEMENTS INC.,
and
MICROSOFT CORPORATION,
and
MICROSOFT CANADA INC.,
and
EPIC GAMES INC.,
and
EPIC GAMES CANADA ULC,
and
SCOPELY INC.,
and
NIANTIC INC.,
and
KING DIGITAL ENTERTAINMENT GROUP INC.,
and
KING.COM LTD.,
and
ZYNKA INC.,
and
ZYNKA GAME CANADA LTD

Respondents

JUDGMENT

[1] Applicant seeks leave to discontinue his Re-Amended Application for Authorization to Institute a Class Action & Obtain the Status of Representative Plaintiff against the Defendants Epic Games inc. and Epic Games Canada ULC further to an out of province class-wide settlement resolving the claims of Quebec residents.

[2] The Application was not contested.

Context

[3] On or about March 2, 2021, Applicant filed an Application for Authorization to Institute a Class Action & Obtain the Status of Representative Plaintiff on behalf of the following proposed class:

All Canadian customers of the Loot Box Foreign Respondents [...] who purchased or otherwise paid directly or indirectly for loot boxes in any of the games set out in Schedule A to this Application for Authorization between 2008 and the date this action is authorized as a class proceeding.

[4] Applicant argues that the design, development, offering and operation of the video games with loot boxes constitute unlicensed illegal gaming systems under Canadian law which contravene provisions in the *Civil Code of Québec*, the *Competition Act*¹, the *Québec Consumer Protection Act*², as well as other related legislation in other Canadian provinces.

[5] On October 25, 2021, due to the partial overlap of class members in parallel class action proceedings instituted in British Columbia, the Applicant sought leave to file an Amended Application for Authorization to Institute a Class Action & Obtain the Status of Representative.

[6] On December 7, 2021, the Court granted the application in part and modified the description of the proposed class as follows³:

All Canadian customers of the Lootbox Respondents (defined further below⁴) who purchased or otherwise paid directly or indirectly for loot boxes in any of the games set out in Schedule A to this Application for Authorization between 2008 and the date this action is authorized as a class proceeding, except such Canadian customers otherwise already included in class description in either one of the following cases *Cunningham et al v. Activision Blizzard Inc. et al* SCBC S-2013414, *Lussier et al v. Scopely Inc.*, SCBC S-2013510, *Pechnik et al v. Take Two Interactive Software Inc. et al*, SCBC S-211073, *Sutherland v. Electronic Arts Inc. et al*, SCBC S-209803, *Petty et al v. Niantic Inc. et al*, SCBC S 213723.

[7] On June 8, 2022, the Court authorized a further amendment to the description of the proposed class to limit same to residents of the province of Quebec with the exception

¹ RSC 1985, c. C-34.

² CQLR, c. P-40.1.

³ *Bourgeois v. Electronic Arts Inc.*, 2021 QCCS 5055.

⁴ "Loot boxes" are described in the Amended Authorization Application as a "game of chance inside a video game, by which a player pays for a digital 'roll of the dice' and the possibility of obtaining desirable virtual rewards." It is alleged that loot boxes are purchased either with real money or must be "unlocked" using a virtual "key" purchased with real money.

of the proposed class sought against Ubisoft, Activision, EA and Warner Bros. Entities, which remained a national class.

[8] On February 15, 2023, the Honourable Justice Majawa of British Columbia, approved a Canada-wide settlement resolving the matters at issue in this action against Epic, including Québec residents, in the parallel class action on the same issue in British Columbia Glenn Johnston v. Epic Games et al. (Court File No. S-220088)⁵.

[9] The multijurisdictional settlement provides for the following:

- 9.1. a global settlement in the amount of \$2,750,000, inclusive of disbursements, fees, administration and notice costs;
- 9.2. a maximum distribution of \$25.00 per valid class member, which represents the average amount spent by players on in-game purchases in Epic's video games⁶.
- 9.3. Court-approved notice of the proposed settlement disseminated widely across Canada in both French and English, through direct email notice, a social media campaign as well as dedicated settlement websites, with all settlement documents available in both languages, in conformity with Section 11.3 of the Settlement Agreement.
- 9.4. Publication of the notice in the Québec Registry of Class Actions in French and English.
- 9.5. Class Counsel located in Montréal to respond to incoming inquiries regarding the proposed settlement, including inquiries from potential class members residing in Québec residents and/or who were French speaking.
- 9.6. Finally, the Claims Administrator, Paiements Velvet Payments inc., is a Québec-based class actions administrator with fully bilingual operations based out of Montréal, Québec.

Analysis

[10] The Court's role in class actions is to protect the rights and interests of class members residing in Québec and, as such, as is the case for discontinuance post-authorization under article 585 C.P.C., authorization is required to discontinue a proposed class action. This is also supported by article 577 C.P.C. which provides that the Court may refuse the discontinuance of a proposed class action in favour of a multijurisdictional class action instituted outside of Québec.

⁵ Exhibit AP-1.

⁶ Exhibit AP-2.

[11] The Court must therefore ensure that the discontinuance is not prejudicial to the proposed class members and does not undermine the integrity of the judicial system. The Court of Appeal held as follows in *École Communautaire Belz v. Bernard*⁷:

[8] Son rôle, plaident-ils, se limite à deux choses : 1) s'assurer que le désistement ne cause pas de préjudice aux membres putatifs du groupe envisagé et 2) qu'il ne porte pas atteinte à l'intégrité du système de justice. Au-delà de cette analyse, le juge n'a pas à décider si le désistement est opportun, et, ainsi, n'a pas à évaluer la suffisance des raisons qui le motivent. La décision de se désister préalablement à l'autorisation, ajoutent-ils, appartient au requérant et à son avocat.

[9] La Cour est d'accord.

[12] In the present case, the discontinuance meets those limited conditions.

[13] The terms of the Court approved Canada-wide settlement are not prejudicial to Quebec residents. The settlement provides for a resolution of all class members claims, including the proposed Quebec resident members, on an equal basis. A bilingual settlement notice was disseminated widely and published in the Quebec Class Actions Registry affording all proposed class members, including those located in Québec, with the right to opt-out or object to the proposed settlement. The Quebec residents also have access to a bilingual Claims Administrator based in Quebec.

[14] Moreover, granting the discontinuance would not undermine the integrity of the justice system but rather would promote the principles of both judicial economy⁸ and interprovincial comity⁹.

[15] Finally, as the entirety of the class member claims were settled and there was already a bilingual settlement notice widely disseminated, the Court does not require the publication of this discontinuance.

FOR THESE REASONS, THE COURT:

[16] **AUTHORIZES** the Applicant to discontinue the Re-Amended Application for Authorization to Institute a Class Action & Obtain the Status of Representative Plaintiff against Epic Games Inc. and Epic Games Canada ULC;

⁷ *École communautaire Belz c. Bernard*, 2021 QCCA 905 (CanLII 2021 QCCA 905, at paras 8-9.

⁸ *Western Canadian Shopping Centres Inc. v. Dutton*, 2001 SCC 46 (CanLII), at para 27.

⁹ *Canada Post Corp. v. Lépine*, 2009 SCC 16 (CanLII), at para 57.

[17] **THE WHOLE** without costs.

SILVANA CONTE, J.S.C.

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