

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

(Class Action)
SUPERIOR COURT

NO: 500-06-001192-224

ARNAUD VERDIER
and
ALEXANDRE LEVKOVSKY

Petitioners

v.

ROGERS COMMUNICATIONS CANADA INC.
ROGERS COMMUNICATIONS INC.
and
FIDO SOLUTIONS INC.

Respondents

CANADA
PROVINCE OF QUEBEC
DISTRICT OF QUEBEC

(Class Action)
SUPERIOR COURT

NO: 500-06-001212-220

LÉCHÉ DESSERTS INC.

Petitioner

v.

INTERAC CORP.
and
ROGERS COMMUNICATIONS CANADA INC.

Respondents

APPLICATION TO SUSPEND PROCEEDINGS

(Arts. 18, 19, 25, 49 and 577 *C.C.P.*)

**TO THE HONOURABLE JUSTICE LUKASZ GRANOSIK, J.S.C., DESIGNATED TO
HEAR THE PRESENT CLASS ACTIONS, THE PETITIONERS MR. VERDIER AND MR.
LEVKOVSKY STATE AS FOLLOWS:**

I. The Verdier/Levkovsky Action – Court file no. C.S.M. 500-06-001192-224

1. On July 11, 2022, the Petitioner, Arnaud Verdier, filed his “*Application to Authorize the Bringing of a Class Action and to Appoint the Status of Representative Plaintiff*” against the Respondents Rogers Communications Canada Inc. and Rogers Communications Inc. on behalf of the following proposed groups:

Class:

All consumers who had a service contract with Rogers, Fido Mobile or Chatr Mobile and who did not receive the services (including 9-1-1 services) on July 8 and/or July 9, 2022.

Subclass:

All persons in Quebec on July 8 and/or July 9, 2022, who could not operate with their own device or make transactions because of the Rogers outage on July 8 and/or July 9, 2022.

the whole as appears more fully from the Court record;

2. On July 29, 2022, Mr. Verdier notified and filed his “*Amended Application to Authorize the Bringing of a Class Action and to Appoint the Status of Representative Plaintiffs*”, notably adding Mr. Levkovsky as a Co-Applicant and adding Fido Solutions Inc. as a Defendant (hereinafter the “**Verdier/Levkovsky Action**”). The proposed groups were modified as follows:

Class:

All consumers and businesses who had a service contract with Rogers, Fido Mobile, Cityfone or Chatr Mobile and who did not receive wireline or wireless services (including 9-1-1 services) as of July 8, 2022, and until the services were fully restored;

Subclass:

All natural and legal persons who could not operate with their own device or make personal or business transactions/operations (including paying with **or receiving payment by Interac**), because of the Rogers outage on July 8, 2022, and until the Rogers network was fully restored;

(Emphasis in bold for the purpose of this application)

3. The Amended Authorization Application was filed with an Application for Permission to Amend, as it appears from the Court record;
4. The Defendants did not contest the amendments and on September 1, 2022, the newly named defendant, Fido Solutions Inc., filed its Answer, as appears from the Court record;

5. By judgment rendered on October 25, 2022, the Court granted the Application for Permission to Amend according to its conclusions, as it appears from procès-verbal of that date;
6. By judgment rendered on November 21, 2022, the Court granted Mr. Verdier/Levkovsky's *Application to Suspend Proceedings* and stayed the *Registre* action (C.S.M. 500-06-001193-222) because of *lis pendens* and because the Verdier/Levkovsky Action was first to file;
7. On December 8, 2022, the Court approved the timetable between the parties and set a hearing on June 22, 2023, for the debate on the Defendants' *preuve appropriée* or the authorization itself, as it appears from the Court record;
8. On February 24, 2023, counsel for Verdier/Levkovsky wrote to the Court stating that he was of the view that the authorization hearing could take place on June 22, 2023, and that proceeding in this manner is in the best interest of Class members, as it appears from the Court record;
9. On February 24, 2023, counsel for the Respondents wrote to the Court notably stating that the filing of a new class action by *Léché Desserts Inc.* on December 15, 2022, in S.C.M. 500-06-001212-220 (the "**Léché Action**") could cause delays to the Verdier/Levkovsky Action because, according to him: "no authorization hearing in the *Verdier* case can take place until the question of *litis (sic) pendens* with the *Léché Desserts* action has been resolved", as it appears from the Court record;
10. Therefore, to avoid further delays and to proceed expeditiously toward an authorization hearing on June 22, 2023, Mr. Verdier/Levkovsky bring the present application to stay the Léché Action;

II. The Léché Action – Court file no. S.C.M. 500-06-001212-220

11. On December 15, 2022, Léché Desserts Inc. filed the significantly later-in-time Léché Action titled: "*Demande pour autorisation d'exercer une action collective et pour se voir attribuer le statut de représentant*" on behalf of the following overlapping group:

« Toutes les personnes physiques et morales qui dans le cadre d'activités commerciales (en ligne ou en succursales), ont été privées des services de paiements Interac : débit et virement et/ou par cartes de crédit, le 8 et/ou 9 juillet 2022 »

the whole as appears more fully from the Court record;

12. Although Interac Corp. is added as a co-Defendant, the Court of Appeal has already ruled in no uncertain terms that *lis pendens* still exists, hence the present application (*Dorion (Ville) c. Union canadienne compagnie d'assurance*, 1992 CanLII 3649 (QC

CA)):

[5] La litispendance comme la chose jugée se base sur l'existence des trois identités classiques : parties, cause et objet. Devant nous, l'Union Canadienne soutient qu'ici il y a identité d'objet mais pas identité de parties ni de cause.

[6] Pas d'identité de parties parce que dans la deuxième action on ajoute une défenderesse, la ville de Vaudreuil. Je ne partage pas cet argument. **Il faut considérer ici le seul cas de Dorion. Que l'on ajoute d'autres défendeurs, sa situation demeure la même. Elle est partie à deux actions entreprises par la même demanderesse et portant sur le même objet. Elle peut en principe être condamnée deux fois ou faire l'objet de jugements contradictoires.**

III. Reasons for Suspension

13. Both claims seek to authorize a class action and then ask for damages with regard to the same:
 - a) Respondent, i.e. Rogers Communications Canada Inc. (the impact of the inclusion of Interac Corp. as a Defendant in the Léché Action is discussed below);
 - b) event, i.e. the Rogers outage of July 8, 2022;
 - c) allegations, i.e. that Rogers breached its service agreements with Class members and also committed an extracontractual fault vis-à-vis Subclass members, and are therefore liable for damages.
14. As it concerns Rogers Communications Canada Inc., both the Verdier/Levkovsky and Léché Actions have an identical cause, object and parties – there is therefore *lis pendens* between these two cases;
15. Further, it should be noted that it is uncontested that Mr. Verdier is the “*first to file*” by more than 6 months;
16. As it concerns Interac Corp., even a cursory reading of the Léché Action confirms that the action cannot exist without the direct implication of Rogers, either as co-defendant or a defendant in warranty (should Léché Desserts Inc. decide to amend and remove Rogers as a Defendant). A sound administration of justice therefore warrants suspending the second action that has triple identity on its face (at worst) or is doomed to have triple identify by way of an action in warranty (at best);
17. But there is more;

18. Interac Corp. is actually a member of the Subclass in the Verdier/Levkovsky Action as defined at paragraph 2 above and as notably appears from the allegation at paragraph 84 of the L  ch   Action;
19. Although it is obvious that the L  ch   Desserts Action cannot proceed against Rogers due to *lis pendens*, allowing that action to proceed against Interac Corp. only is contrary to the interest of justice and of the Class members because a Class member would effectively be a plaintiff in one class action and a Defendant in another class action, meaning that there would always be the triple identity (and in particular identity of parties) one way or another;
20. It is also appropriate to stay the L  ch   Action because every single member of the proposed group in the L  ch   Action is subsumed and included in the Verdier/Levkovsky Subclass such that no putative member can be left out;
21. Indeed, the Verdier/Levkovsky Subclass is broader, more complete and subsumes the class proposed in the L  ch   Action;
22. It is respectfully submitted that the Court must first decide the outcome of the Verdier/Levkovsky Action, because if these Plaintiffs succeed, then all Class and Subclass members of that action (including every putative member of the L  ch   Action) will receive full compensation, making the L  ch   Action moot. Accordingly, it is also in the interest of justice that L  ch   Action be stayed;
23. In accordance with the well-established rules as notably set out in *Schmidt c. Johnson & Johnson inc.*, 2012 QCCA 2132, *Hotte c. Servier Canada inc.*, [1999] R.J.Q. 2598 (C.A.), *Badamshin c. Option Consommateurs*, 2017 QCCA 95, *Gagn   c. Vid  otron*, 2018 QCCS 2669, *Lepage Forbes c. Procureur g  n  ral du Qu  bec*, 2017 QCCS 1572 and *Grondin c. Volkswagen Group Canada Inc.*, 2016 QCCS 2423, the first action filed must be heard (the Verdier/Levkovsky Action) and the subsequent action (the L  ch   Action) must be suspended;

FOR THESE REASONS, MAY IT PLEASE THIS HONOURABLE COURT TO:

GRANT Petitioners' Verdier and Levkovsky's application to stay;

SUSPEND the L  ch   Action under Court file number 500-06-001212-220 until final judgment has been rendered in the Verdier/Levkovsky Action under Court file number 500-06-001192-224;

THE WHOLE without costs, unless contested, in which case legal and extrajudicial costs will be claimed.

Montreal, February 27, 2023

(s) LPC Avocat Inc.

LPC AVOCAT INC.

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TAKE NOTICE that the present *Application to Suspend Proceedings* will be presentable for adjudication before the Honourable Lukasz Granosik, J.S.C., at the Montreal Courthouse, located at 1 Notre-Dame Street East, on a **date, time and room to be announced**.

Montreal, February 27, 2023

(s) LPC Avocat Inc.

LPC AVOCAT INC.

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ORIGINAL

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