

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

(Class Actions)
SUPERIOR COURT

NO: 500-06-000888-178

JAMES GOVAN

Representative Plaintiff

v.

LOBLAW COMPANIES LIMITED
and
LOBLAWS INC.
and
GEORGE WESTON LIMITED
and
WESTON FOOD DISTRIBUTION INC.
and
WESTON FOODS (CANADA) INC.
and
METRO INC.
and
SOBEYS QUEBEC INC.
and
SOBEYS CAPITAL INCORPORATED
and
SOBEYS INC.
and
WAL-MART CANADA CORP.
and
CANADA BREAD COMPANY, LIMITED
and
GIANT TIGER STORES LIMITED

Defendants

APPLICATION TO TEMPORARILY STAY THE CLASS ACTION
(ARTS. 18, 49, 158 & 577 C.C.P.)

**TO THE HONOURABLE MARTIN F. SHEEHAN, J.S.C., DESIGNATED JUDGE TO
HEAR THE PRESENT CLASS ACTION, THE PARTIES JOINTLY SUBMIT AS
FOLLOWS:**

I. INTRODUCTION

1. By judgment rendered on December 19, 2019 (as rectified on April 22, 2020), the Court authorized this class action on behalf of the following class:

All persons, partnerships and associations resident in Québec who purchased at least one package of bread in between January 1, 2001 and December 19, 2019; The word “bread” in the class description means bread products and bread alternatives, produced or retailed by any of the Defendants, excluding bread frozen when sold and bread baked on-site in the establishment where it is retailed;	Toutes les personnes, sociétés et associations, résidant au Québec, qui ont acheté au moins un emballage de pain à partir du 1er janvier 2001 et jusqu’au 19 décembre 2019; Le mot « pain » dans la description du groupe signifie les produits de pain et les produits alternatifs, produits ou vendus au détail par l’une ou l’autre des défenderesses, à l’exclusion du pain vendu surgelé et du pain cuit sur place dans l’établissement où il est vendu au détail;
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2. The Representative Plaintiff has diligently advanced this file. Notably, following authorization, the Originating Application was duly served and filed, notices have been published, the case protocol was established and accepted by the Court, the Representative Plaintiff was examined by all of the Defendants and the Defendants have partially communicated documents to the Representative Plaintiff (a debate on this last issue was scheduled for March 31, 2023);
3. By judgment rendered on June 30, 2022, the Court granted the Representative Plaintiff’s request to examine the CEO of the Loblaw/Weston Defendants, Mr. Galen Weston;
4. On August 23, 2022, the Honourable Robert M. Mainville, J.C.A., dismissed the leave application filed by the Loblaw/Weston Defendants, thereby confirming the first instance judgment ordering the examination of Mr. Weston. On November 25, 2022, the Honourable Geneviève Marcotte, J.C.A., dismissed the request to suspend the execution of this judgment;
5. Following a case management conference held on November 30, 2022, the Court rendered a judgment which included the following:

[32] In the meantime, the Court orders that the examination of Mr. Weston be scheduled prior to March 30, 2023. Indeed, while Plaintiff had originally asked that the objections to its document request be adjudicated prior to the deposition, they no longer wish to delay the deposition and are willing to proceed with the deposition before the objections are decided.

6. During the hearing held on January 13, 2023, the parties suggested the examination of Mr. Weston be held on April 4, 2023. The Court accepted this date and fixed the examination of Mr. Weston accordingly;

II. RECENT DEVELOPMENTS

7. On February 16, 2023, counsel for the Representative Plaintiff informed the Court by email that class counsel in the Quebec bread class action (along with class counsel in the rest of Canada) and the Loblaw/Weston Defendants had just scheduled a mediation before Chief Justice Geoffrey B. Morawetz of the Ontario Superior Court of Justice, which will be held at the end of July 2023, as it appears from the Court record;
8. In that same email, class counsel respectfully asked the Court to grant their request to postpone the deposition of Mr. Weston until after the mediation is held (in the event that mediation is unsuccessful). In the circumstances, proceeding with the deposition would not be the best use of judicial resources and may actually have the effect of negatively affecting the parties' obligation to cooperate actively in searching for a resolution pursuant to the well-known principles enshrined in the CCP;
9. On February 17, 2023, counsel for the Loblaw/Weston Defendants responded by email to the Court which included the following, as it appears from the Court record:

“The mediation to be held before Chief Justice Morawetz is a private mediation. It is not part of the Ontario Court process. It should not be surprising to the other defendants that they were not involved in these discussions as settlement discussions are covered by settlement privilege between the Plaintiffs and our clients. However, we felt it was incumbent upon us to inform the Court of this upcoming mediation once it was scheduled and the participation of Quebec counsel was agreed, **as it would not be a good use of the Court’s resources to move forward with some aspects of the present litigation which could no longer be necessary, such as oral discovery by the Plaintiffs, should the mediation be successful as a result of the cooperation that is typically secured in any settlement.** As noted, this development is consistent with the obligation to cooperate actively in searching for resolution per the principles of procedure applicable to private dispute prevention and resolution processes in the *Code of civil procedure*. The resources of those parties involved in the settlement process will require the dedication of their efforts towards

preparing for the mediation, including various pre-mediation steps and settlement of matters that will make best use of the opportunity to resolve the matter as between the Plaintiffs and our clients.”

10. On February 24, 2023, counsel for the other retail Defendants (Metro, Sobeys, Walmart and Giant Tiger) sent a letter to the Court by email, notably stating that, in light of the mediation announced by the Representative Plaintiff and the Loblaw/Weston Defendants “*les Détaillants sont d’avis qu’il serait opportun de suspendre l’instance jusqu’à la fin juillet 2023*”, as it appears from the Court record;
11. On February 24, 2023, counsel for the remaining Defendant, Canada Bread, confirmed by email to the Court that it is in agreement with the proposed suspension, as it appears from the Court record;
12. On February 24, 2023, counsel for Representative Plaintiff responded by email, notably confirming that they were inclined to support the position of staying this proceeding until the end of July in light of the pending mediation, as it appears from the Court record;

III. TEMPORARY STAY (arts. 49 and 577 al. 2 C.C.P.)

13. Considering the representations made by all the parties as alleged herein, and in particular the email sent to the Court by counsel for the Loblaw/Weston Defendants (reproduced at para. 8 above), the parties jointly request a stay of the proceedings until the end of July 2023;
14. As indicated in its email to the Court on February 24, 2022, Class counsel agrees that a suspension is in the best interests of Class members and also supports the most efficient use of judicial resources;
15. The Court can temporarily stay the class action under articles 49 and 577 al. 2 C.C.P. if it is in the interest of class members;
16. The Representative Plaintiff therefore respectfully requests to stay this class action until July 31, 2023, or earlier as may be further requested by the Representative Plaintiff or ordered by the Court;
17. The present request to stay is consistent with the principles of proportionality, judicial economy and will save important costs for all parties;
18. Class counsel undertakes to provide this Court with an update on the status of the mediation upon its completion in July 2023, or of any significant development that may affect the course of this class action.

POUR CES MOTIFS, PLAISE AU TRIBUNAL :	FOR THESE REASONS, MAY IT PLEASE THE COURT:
1. SUSPENDRE la présente action collective jusqu'au 31 juillet 2023, ou plus tôt si le demandeur le demande ultérieurement ou si la Cour l'ordonne;	1. STAY the present class action until July 31, 2023, or earlier as may be subsequently requested by the Representative Plaintiff or ordered by the Court;
2. PRENDRE ACTE de l'engagement des avocats du groupe à fournir à cette Cour une mise à jour sur le statut de la médiation à son achèvement en juillet 2023, ou de tout développement significatif qui pourrait affecter le cours de cette action collective;	2. TAKE ACT of Class Counsel's undertaking to provide this Court with an update on the status of the mediation upon its completion in July 2023, or of any significant development that may affect the course of this class action;
3. LE TOUT , sans frais de justice.	3. THE WHOLE , without costs.

Montreal, March 6, 2023

Montreal, March 6, 2023

(s) LPC Avocat Inc.

LPC AVOCAT INC.

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