C A N A D A	**S U P E R I O R C O U R T** **(Class Actions Division)**
PROVINCE OF QUEBEC **DISTRICT OF MONTRÉAL** **N°: 500-06-000920-187**	**ADAM CHARLES BENJAMIN** **Plaintiff** **-v.-** **CRÉDIT VW CANADA INC., *et. al.*** **Defendants**

DEFENCE OF DEFENDANT TOYOTA CREDIT CANADA INC.
(Articles 170 and ff. C.C.P.)

IN CONTESTATION OF PLAINTIFF'S MOTION TO INSTITUTE PROCEEDINGS, DEFENDANT TOYOTA CREDIT CANADA INC. RESPECTFULLY SUBMITS THE FOLLOWING:

1. Toyota Credit Canada Inc. ("**TCCI**") admits paragraphs 14, 15, 39, 46, 47, 48, and 121 of the Motion to Institute Proceedings filed by Plaintiff Adam Charles Benjamin (the "**Application**").

2. As to the allegations contained at paragraph 3, the judgment of the Court of Appeal speaks for itself.

3. TCCI has no knowledge of paragraphs 5, 6, 9-13, 17-35, 41, 45, 49-82, , 84, 85, 97, 98, 101, 104, 125, 126, 135, 151-158, and 160-163 of the Application.

4. As to the allegations contained in paragraphs 7, 8, 43, 149, 150, and 159 of the Application, the exhibits referred to therein speak for themselves.

5. The allegations contained in paragraphs 36, 40, 42, 44, 89, 90, 91, 92, 111-115, 136 and 137 constitute legal arguments to which TCCI is not required to answer at this stage.

6. Finally, TCCI denies paragraphs 1, 2, 4, 16, 37, 38, 83, 86, 87, 88, 93, 94, 95, 96, 99, 100, 102, 103, 105, 106, 107, 108, 109, 110, 116-124, 127-134, and 138-148 of the Application.

AND FOR FURTHER CONTESTATION, DEFENDANT TCCI SUBMITS THE FOLLOWING:

A. Overview

7. TCCI is a financial leasing company headquartered in Markham, Ontario (Exhibit P-4). Its principal business is to provide financing services for authorized Toyota dealers and

users of Toyota products. This includes lease and loan financing to assist customers to acquire Toyota and Lexus vehicles.

8. Before entering into a lease financed by TCCI, the potential customer must fill out a credit application and go through an approval process and the accomplishment of several tasks and formalities by TCCI and the Dealer.

9. For instance, the potential customer must provide their personal information such as full legal name, date of birth, address and employment history. This information is submitted to TCCI by the Dealer in form of a signed credit application.

10. Once submitted, the potential customer's credit report will be pulled from Equifax and/or TransUnion and populated in TCCI's credit system along with the potential customer's submitted information by the Dealer.

11. Upon receipt of the credit application, the possible outcomes are: a) the credit system may auto approve the application; b) the credit system may auto decline the application; c) upon review of the application, the credit analyst may manually approve the application; d) upon review of the application, the credit analyst may manually decline the credit application; e) upon review of the application, the credit analyst may ask the Dealer for additional information to make their decision, such as a down payment, a co-signer, employment references, etc.

12. Once there is a decision on the credit application, the decision is relied to the Dealer via the credit system. The Dealer is to communicate the decision of the application to the potential customer.

13. If the customer is approved, the lease will be signed and assigned to TCCI by the Dealer. The customer will then take possession of the vehicle and start paying the monthly rent to TCCI.

14. From thereon, TCCI has no advantage in transferring the lease to a third party during its term, as this involves a new approval process, paperwork, various tasks and costs for TCCI, with no additional rental revenue.

15. The TCCI lease agreements contain a clause to the effect that the lease cannot be transferred, sold or otherwise disposed of without TCCI's prior written consent.

16. Nonetheless, in order to accommodate customers who request it, TCCI may allow a lease transfer, subject to certain conditions being satisfied, as explained below.

B. <u>TCCI's Multi-Step Lease Transfer Process</u>

17. The lease transfer process is complex and requires both TCCI and the relevant dealer to work in close collaboration, in accordance with TCCI's *Standard Operating Procedure – Transfer of Equity – Loan and Lease*, a copy of which is communicated herewith as **Exhibit TCCI-1**.

18. The 17-step transfer procedure is described in this document, but because particular circumstances apply to every transferor, TCCI and the Dealer must often perform additional tasks to ensure that each step of the procedure is properly executed.

19. When a customer (the transferor) inquires about the possibility of transferring the lease to a third party (the prospective transferee), a TCCI Customer Service Associate will advise said customer of the transfer process.

20. The TCCI Customer Service Associate will advise the customer that if they wish to transfer the lease, they must contact their dealership to start the process. The Customer Service Associate will also advise that in transferring the lease, the lease contract will remain the same, i.e. the terms, conditions, security deposit, downpayment, etc. will remain with the lease contract and will not be refunded and/or altered. Additionally, the customer will be advised that the transferee must be approved for credit and that there may be a transfer fee of $400 plus tax to complete the transfer.

21. The prospective transferee will then need to attend at the dealership and complete a credit application.

22. The Dealer will then explain the process to the prospective transferee and mention the transfer fee if such fee is being charged and not waived (as explained below). The Dealer will explain that the transfer fee will be debited from the transferor's bank account by TCCI once the transfer package is received by TCCI and processed, as detailed below.

23. The Dealer must submit the credit application to TCCI through TCCI'S Dealer Credit application system, and TCCI will then perform a credit check and assess the applicant's creditworthiness.

24. If and when the credit application has been approved, the Dealer must prepare the lease transfer package, which includes the credit application itself, the transfer agreement checklist, the Transfer Agreement, the insurance confirmation, the registration transfer letter or copy of the new vehicle ownership issued by the SAAQ, a void cheque or banking information from the transferee, and the death certificate if applicable.

25. The transferor and prospective transferee will be asked by the Dealer to review, comment, and ultimately sign the Transfer Agreement, if they agree to it.

26. The Dealer is responsible for completing and providing the following documents to a TCCI Customer Service Transfer Associate prior to the expiry date (i.e. within 30 days of the prospective approved transfer):

    a) The signed Transfer Agreement;

    b) The credit application;

    c) The new certificate of insurance provided by the transferee's insurer;

    d) A void cheque from the transferee;

    e) A copy of the vehicle's new registration;

    f) A death certificate if the transferor is deceased.

27. The Dealer must also register the vehicle to the transferee as registration holder at the *Registre des droits personnels et réels mobiliers* and pay the applicable fee.

28. Once all the above documents have been submitted to TCCI, a TCCI Customer Service Transfer Associate will review the transfer package and ensure that all necessary documents have been received and are accurate. He must verify that:

    a) All the required signatures on the Transfer Agreement are present and have been dated prior to the expiry date;

    b) The certificate of insurance shows (i) the transferee's name, (ii) the appropriate coverages, (iii) TCCI as an Additional Named insured or its equivalent Loss Payee;

    c) The VIN on the certificate of insurance matches the Transfer Agreement;

    d) The name on the void cheque matches the transferee or co-transferee;

    e) The vehicle registration shows TCCI as owner and the transferee or co-transferee as registration holder;

    f) The VIN on the vehicle registration matches the Transfer Agreement.

29. These verifications often require the Customer Service Transfer Associate to conduct follow-up queries where certain documents are missing or were not properly completed, and to obtain approval from TCCI Customer Service Supervisor when an exception must be made for the lease transfer to move forward. Such exceptions could be that the transfer process is taking too long or the reason that the transferor completed the transfer was for mortgage, bankruptcy, or personal reason and they require that the account be transferred as soon as possible to be removed from their credit bureau and a letter provided as such.

30. Upon receipt of fully completed transfer documents, the Customer Service Transfer Associate will update the insurance information and send the completed transfer package to scan.

31. To finalize the lease transfer process, the Customer Service Transfer Associate will generate a report which will be provided to a TCCI Product Accounting Associate for processing.

32. Upon receipt of the report, the Product Accounting Associate will process it by distributing the transfer fee, if any, between TCCI and the Dealer (as more fully explained below), update the banking information as needed and remove delinquencies on the account, if any.

33. If there are any missing payments, the Product Accounting Associate will review the account to determine if the transferor or the transferee is responsible for the past due amount and a TCCI Transfer Desk Associate will follow-up to obtain the missing payment(s).

34. Finally, after having reviewed the transfer package to ensure that all signatures are accounted for, the Customer Service Transfer Associate will generate a welcome letter to the transferee and remove the account from the transfer list.

35. Once the lease transfer process is complete, the Dealer will wash and detail the vehicle before it is picked-up by the transferee.

36. All costs (labor, materials, third-party vendors, administrative, etc.) associated with the extensive multi-steps and thorough process detailed above are assumed by TCCI and the Dealer, while the transferor only pays the lease transfer fee.

37. The only obligation of the transferor under the Transfer Agreement is to pay the transfer fee, in exchange of which the lessee/transferor obtains:

- TCCI's consent to the transfer of the lease;
- The completion of all steps and formalities required to approve the proposed assignee and make the assignment effective (credit analysis and various checks, preparation of a transfer agreement, study of documents and verification of their conformity, SAAQ transactions for registration, publication at the RDPRM, meetings, correspondence, etc.);
- A full release of all obligations under the lease, including all lease payments until the end of the term;

38. The transfer agreement is therefore quite advantageous for the lessee and far from being excessive or unreasonably detrimental.

C. Lease Transfer Fee: Amount and Distribution

39. The lease transfer fee is charged to cover the costs incurred by the Dealer and TCCI in the lease transfer process.

40. However, if TCCI is unable to qualify the applicant for a transfer request or if, at any moment, the customer or prospective transferee change their mind and no longer want to transfer the vehicle, nothing will be charged for the aborted transfer process. TCCI and the dealer will absorb the expenses incurred.

41. The lease transfer fee is $400, regardless of the vehicle make or model transferred. It is shared between TCCI and the Dealer involved in the lease transfer, as follows:

a) For Toyota vehicles: $300.00 to the dealer / $100.00 to TCCI;

b) For Subaru vehicles: $200.00 to the dealer / $200.00 to TCCI;

c) For Lexus vehicles: $300.00 to the dealer / $100.00 to TCCI; and

d) For Scion vehicles: $300.00 to the dealer / $100.00 to TCCI.

42. TCCI's share for Subaru vehicles is different, because the Subaru lease transfer process has additional required steps as the Subaru dealers are using a different portal.

43. The transfer fee may be negotiated and the dealer has the discretion to waive it entirely, in which case TCCI will not receive its portion of the fee. Two examples of transfer agreements processed by TCCI in which lease transfer fees were waived are communicated herewith as **Exhibit TCCI-2** *en liasse*.

44. The transfer fee is disclosed orally early at the beginning of the process and it is also plainly disclosed in the Transfer Agreement executed by the parties.

45. The transferor and transferee are therefore aware of the precise amount of the fee before committing to pay it and move forward with the lease transfer. They can change their mind if they see fit and they can also negotiate the fee.

CONCLUSION

46. In light of the above, TCCI respectfully submits that Plaintiff's claim, for and on behalf of the Class Members, has no merit and must be dismissed against TCCI.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

DISMISS Plaintiff's Originating Application;

THE WHOLE with legal costs.

MONTRÉAL, July 12, 2024

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LIST OF EXHIBITS

EXHIBIT TCCI-1	TCCI's Standard Operating Procedure – Transfer of Equity – Loan and Lease
EXHIBIT TCCI-2: **(en liasse)**	Two examples of transfer agreements processed by TCCI

MONTRÉAL, July 12, 2024

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BS0350 Our file: 011156-1113

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