C A N A D A

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

Nº 500-06-000996-195

S U P E R I O R C O U R T
(Class Action)

RÉAL CHARBONNEAU

Plaintiff

v.

LOCATION CLAIREVIEW S.E.N.C.

Defendant

DEFENCE OF LOCATION CLAIREVIEW S.E.N.C.

IN CONTESTATION OF THE PLAINTIFF'S *ORIGINATING APPLICATION TO INSTITUTE A CLASS ACTION*, DEFENDANT RESPECTFULLY STATES AS FOLLOWS:

Background

1. Defendant Location Claireview s.e.n.c. ("**Claireview**") is an independent leasing company that leases both new and used automobiles.

2. The great majority of Claireview's car leases, whether they are for consumer or commercial purposes, are leases with an option to purchase.

3. When Claireview acquires a new or used car, typically, that car will eventually be placed in its showroom, as it is made available for sale or lease.

4. Customers who wish to lease a vehicle will enter into a Lease Agreement with Claireview, examples of which are communicated as **Exhibits D-1 to D-7**.

Cash Down Payments

5. As is common in the car leasing industry, when a customer leases a vehicle from Claireview, he or she has the option to provide a Cash Down Payment ("**CDP**") at the inception of the contract, in order to reduce the amount of the monthly rent payments.

6. The CDP is a single lump sum payment that is subtracted from the total amount leased. As the total lease amount is reduced, consequently, so is the amount of the monthly rent payments.

7. The lease communicated as **Exhibit D-6** shows an example of a customer who elected to provide a CDP, whereas **Exhibit D-1** shows an example of a customer who chose not to make a CDP.

8. The Plaintiff alleges that every class member *was forced to make a CDP* when leasing a vehicle from Claireview: "La défenderesse exigeait ensuite de chaque membre du groupe un versement avant de l'autoriser à signer un contrat de location à long terme » (*Originating Application*, para. 31; See also, para. 10).

9. That allegation is patently false. Not only is there a complete lack of evidence to support it, but it is squarely contradicted by the fact that, *out of the seven class members* that were examined on November 28, 2023, *only three made a CDP*.

10. The Plaintiff alleges that Claireview breached art. 150.7 of the *Consumer Protection Act* ("**CPA**"), which reads as follows:

> **150.7.** <u>The rent payable during the leasing period must be divided into instalments</u>. All instalments must be equal, except the last, which may be less. The dates the instalments are payable must be fixed in such a manner as to be situated at the beginning of approximately equal divisions of the leasing period, not exceeding thirty-five days.
>
> <u>The merchant cannot require the consumer to pay more than two instalments in advance</u>, and may only collect such instalments before the beginning of the leasing period.
>
> (Emphasis added)

11. Contrary to Plaintiff's assertion, the payment of a CDP is not prohibited by the CPA.

12. A CDP is not a monthly rent instalment; it is different in nature, being a one-time payment made at the execution of the lease. The CDP actually reduces the total amount leased and therefore the amount of the rent instalments.

13. As illustrated in the Lease Agreements communicated as **Exhibits P-4, D-4, D-6 and D-7**, when the customer elects to make a CDP, it is not a multiple of the monthly rent payments.

14. For example, if we consider **Exhibit D-6**, the amount of the CDP is $4,000.00, which is not a multiple of the monthly instalments of $1,435.00 ($1,649.89 with tax). This further illustrates that the CDP does not represent one or more *rent instalments*.

15. In addition, Claireview does not breach art. 150.7 of the CPA because it does not *require* that its customers provide a CDP, as is illustrated from the multiple examples where Claireview clients elected to rent a vehicle without making a CDP (**Exhibits D-1, D-2, D-3 and D-5**).

16. Article 150.7 does not apply to the CDP but rather to the First Monthly Payment in Advance ("**FMPA**"). As can be observed from the various leases provided as exhibits, when an FMPA is paid by a Claireview customer it is equal to one single monthly rent instalment, which is compliant with art. 150.7 CPA (**Exhibits D-1, D-3 and D-5**).

Total Amount Paid

17. Plaintiff also alleges that the Lease Agreements of the Defendant are misleading with respect to the total amount ultimately paid by the customer and that the Lease Agreements therefore breach art. 228 of the CPA (*Originating Application*, paras. 22, 23, 35, 36, 38 and 41).

18. According to those allegations, the class members would not understand that the total amount ultimately paid out by the consumer is the Total of Monthly Payments *plus* the Total Payment Due at Lease Signing.

19. For example, considering **Exhibit D-6**, if we were to believe the preposterous allegations found in the *Originating Application*, the average customer would not understand that the total amount paid out is the Total Payment Due at Lease Signing of $5,247.46 (Item 2. of the Lease Agreement), *plus* the Total of Monthly Payments of $79,194.72 (Item 5. of the Lease Agreement).

20. As will be shown at trial, it is plain on the face of the contract, and any customer would understand, even a "credulous and inexperienced" one, that the total amount of the lease is not just the total monthly payments, but also includes the sum of amounts paid at signing (including the optional CDP and various fees appearing in Item 2.).

21. To affirm otherwise is essentially equivalent to asserting that consumers lack the most basic understanding of math and common sense.

22. This proposition is so untenable that it was contradicted by the Representative Plaintiff himself at his examination on discovery. Indeed, Charbonneau affirmed that *when he saw the contract*, he understood that the total amount to be paid, was the initial total amount *plus* the total monthly payments, the whole as appears from the examination of Charbonneau communicated as **Exhibit D-8** (pages 40, 42-43, and 67-68).

23. Thus, there is no ambiguity on the Lease Agreements regarding the total amount ultimately paid by the consumer.

No Damages to Class Members

24. In addition to showing no violation of the CPA, the Plaintiff does not identify any damages to class members.

25. Indeed, one can hardly comprehend how making a CDP, which actually reduces the monthly payments, is detrimental or damaging to the class members.

26. Plaintiff has not alleged, much less shown with any evidence, including expert evidence, how the payment of a CDP caused any damages to consumers.

27. Furthermore, and in light of the absence of damages, the remedies sought by the Plaintiff are nonsensical.

28. As a remedy, the Plaintiff seeks the complete annulment of the Lease Agreements of all class members (*Originating Application*, para. 51 and Conclusions). If that remedy was ordered by the Court, the class members would be entirely reimbursed for all funds paid under the Lease Agreement, even though they used a vehicle for several months, and in many cases, multiple years.

29. Such a remedy is wholly inappropriate and would constitute a great injustice to the Defendant.

30. Subsidiarily, the Plaintiff seeks the reimbursement of all CDPs paid by class members (*Originating Application*, para. 52 and Conclusions).

31. This remedy is also inappropriate, because the class members that elected to make a CDP fully benefited from that payment in that the amount leased was reduced accordingly. To grant the remedy sought would be equivalent to paying a windfall to class members equal to the value of the CDP paid.

32. The present Defence is well founded in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THIS COURT TO:

GRANT the Defence of the Defendant, Location Claireview s.e.n.c.;

DISMISS the *Demande introductive d'instance en action collective* of the Plaintiff, Réal Charbonneau.

MONTREAL, July 29, 2024

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