

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL

SUPERIOR COURT
(CLASS ACTIONS CHAMBER)

NO: 500-06-000499-109

Dated: June 11, 2013

IN THE PRESENCE OF THE HONOURABLE PAUL MAYER, S.C.J.

MICHAEL MELLEY

Petitioner

vs.

TOYOTA CANADA INC.
TOYOTA MOTOR CORPORATION
-and-
TOYOTA MOTOR NORTH AMERICA
INC.

Respondents

JUDGEMENT

- [1] **IN VIEW** of the judgement of this Court dated February 12, 2013, granting the permission to Merchant Law Group to cease representing Petitioner on the basis that they were no longer able to get any instructions regarding this litigation;
- [2] **WHEREAS** that Petitioner was duly notified by the Respondents to appoint another attorney by notice under Articles 251 and 1049 C.C.P served on March 11, 2013;
- [3] **WHEREAS** that on the date of the judgment, the Petitioner or any member of the group have failed to appoint another attorney to act as Class Counsel;
- [4] **IN VIEW** of the Article 1049 C.C.P.;

- [5] **IN VIEW** of the following exhibits filed by the Respondents:

Affidavit of Kenji Ito, Project General Manager, Quality Innovation Dept. at Toyota Motor Corporation ("hereinafter TMC"), Toyota City, Japan, dated November 6, 2012, to the effect that the defect alleged by Petitioner was no more than an inconsistent brake "feel" issue reported by a small number of purchasers of the proposed Class Vehicles and that this issue was addressed by a comprehensive recall carried out by Toyota wherein the brake control software in the proposed Class Vehicles was updated to correct the inconsistent brake feel, **Exhibit DT-2**;

Affidavit of Marty Ji, Consultant in Government Affairs at Toyota Canada Inc. ("hereinafter TCI") at One Toyota Place, in the City of Scarborough, in the Province of Ontario, dated April 18, 2013, to the effect that the recall brake software update was extended by Toyota and applied to 100% of proposed Class Vehicles at no cost to the class members, **Exhibit DT-1**;

Affidavit of Faten Sabry, Ph.D., Economist and Senior Vice President at National Economic Research Associates, Inc. ("NERA") dated May 1, 2013, to the effect that there is no demonstrable evidence that the proposed Class vehicles diminished in value as a result of the alleged defect or at all, **Exhibit DT-3**;

- [6] **CONSIDERING** that no other member of the class has expressed interest in substituting the present Petitioner to pursue the proposed class action;
- [7] **CONSIDERING** that the class members will not suffer any prejudice should the dismissal of the Motion to Institute Class Action proceedings be granted;
- [8] **IN VIEW** of the Amended motion to dismiss the class action motion (Articles 251, 1049, 1010.1 C.C.P.) filed by the Respondents;
- [9] **IN VIEW** of the representations of the attorneys for the Respondents.

WHEREFORE THE COURT:

GRANTS the *Amended motion to dismiss the class action motion* (Articles 251, 1049, 1010.1 C.C.P.);

PRAYS ACT of the Affidavits of Marty Ji (**Exhibit DT-1**), Kenji Ito (**Exhibit DT-2**), and Faten Sabry, PH.D. (**Exhibit DT-3**);

DISMISSES *Petitioner's Motion to authorize the bringing of a class action and to ascribe the status of representative* dated February 5, 2010, as amended on November 15, 2010, save recourse;

THE WHOLE without cost.



PAUL MAYER, S.C.J.