

SUPERIOR COURT

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

N° : 500-06-000593-125

DATE : February 26th, 2014

PRESIDING : THE HONOURABLE KIRKLAND CASGRAIN, J.S.C.

MARY MASTROCESARE,
and
MICHELANGELO D'ATTOMA
Petitioners

VS.

BSH HOUSEHOLD APPLIANCES LIMITED,
and
BSH HOME APPLIANCES CORPORATION
Respondents

and

FONDS D'AIDE AUX RECOURS COLLECTIFS
Mis-en-cause

JUDGMENT ON MOTION TO AUTHORIZE A CLASS ACTION FOR SETTLEMENT
PURPOSES AND FOR APPROVAL OF A SETTLEMENT AGREEMENT

[1] On February 15, 2012, the petitioners, Mary Mastrocesare and Michelangelo D'Attoma (the "Petitioners"), represented by Merchant Law Group LLP, filed a Motion to Authorize the Bringing of a Class Action and to Ascribe the Status of Representative ("Motion") against the respondents BSH Household Appliances Limited, BSH Home Appliances Corporation ("Respondents") and BSH Bosh Und Siemens Hausgeräte GmbH.

[2] On October 23, 2012, the Court granted a discontinuance of the Motion as against BSH Bosh Und Siemens Hausgeräte GmbH.

[3] On December 3rd, 2013, the Petitioners and Respondents entered into a settlement agreement, the terms of which are summarized as follows:

a. Respondents will pay the sum of \$35,000.00 (said sum of \$35,000.00 is inclusive of any monetary amount payable to "Le Fonds d'aide aux recours collectifs or other organization") to Consumer Council of Canada;

b. Respondents will maintain a recall process (provide a retrofit T-Disc holder for the brewing mechanism to any Member who avails themselves of the recall process) for a period of at least one year from the date of the settlement judgment;

c. Members of the Class shall be deemed to have fully, finally and forever released Respondents from any and all claims resulting from or in connection with the facts alleged in the Class Action, to the exclusion of any corporal (physical) damage suffered therefrom;

d. Respondents shall pay each Petitioner an amount of \$1,000.00, for their time and effort in their capacity as class action representatives;

e. Respondents shall pay Petitioners Attorneys' fees and disbursements up to an amount of \$15,000.00 (inclusive of all applicable legal costs, disbursements and taxes), subject to the approval by the Court which approval is requested herein; and

f. The Petitioners shall file a partial discontinuance, without costs, on the personal injury claim.

[4] Pursuant to the Settlement Agreement, the Petitioners seek authorization to institute a class action for settlement purposes on behalf of all individuals in the group described as follows:

"All persons in Canada who purchased and/or otherwise became the owner of a Tassimo Home brewing system by Bosch, models TAS100, date codes FD8806 thru 9109, TAS200, date codes FD8806 thru 9109, TAS451, date codes FD8806 thru 9109, TAS46, date codes FD8806 thru 9109, TAS651, date codes FD8806 thru 9109 and TAS6512CUL, date codes FD8905 through 9109."

[5] On December 3rd, 2013, the Petitioners filed a Motion for Permission to Amend the Motion to Authorize the Bringing of a Class Action and to Ascribe the Status of Representative, including the Amended Motion to Authorize the Bringing of a Class Representative, and to Ascribe the Status of Representative attached thereto, and a Motion Requesting an Order Approving the Form, Content Date and Mode of Publication of the Notice of Proposed Settlement.

[6] On December 5th, 2013, the undersigned granted Petitioners' above-mentioned motions, scheduling the hearing during which the Court will decide whether or not to authorize the class action for the purpose of settlement and to approve the Settlement Agreement for February 21st, 2014.

[7] As per the Motion Requesting an Order Approving the Form, Content Date and Mode of Publication of the Notice of Proposed Settlement, the parties caused the Notice of Proposed Settlement (found in Schedule A of the Settlement Agreement) to be published in each of *La Presse* and *The Globe and Mail* on December 16th, 2013. In addition, the Petitioners' attorneys have posted the Notice of Proposed Settlement online as a link to their website (www.merchantaaw.com) and have e-mailed a copy of said Notice to all persons who previously provided their contact information to them in connection with the present class action.

[8] **CONSIDERING** the allegations contained in the Motion to Authorize a Class Action for Settlement Purposes and for Approval of a Settlement Agreement and all the documents in support thereof;

[9] **CONSIDERING** that the recourses of the members raise similar questions, the facts alleged seem to justify the conclusions sought, the composition of the group makes the application of article 59 or 67 of the Code of Civil Procedure difficult or impractical and the members to whom the court intends to ascribe the status of representatives are in a position to represent the members adequately;

[10] **CONSIDERING** the Settlement Agreement, and all its schedules, are fair, reasonable and in the best interests of the class;

[11] **CONSIDERING** that there were no objections to the approval of the Settlement Agreement.

[12] **CONSIDERING** that the legal fees of \$15,000.00 for Petitioners' attorneys and the nominal sum of \$1,000.00 to each of the Petitioners are reasonable in the circumstances;

[13] **CONSIDERING** the notice program following approval of the settlement agreement is sufficient;

FOR ALL THESE REASONS, THE COURT:

[14] **GRANTS** Petitioners' Motion for Authorization of a Class Action for Settlement Purposes and for Approval of a Settlement Agreement;

[15] **DECLARES** that the definitions set out in the Settlement Agreement apply to and are incorporated into the present judgment;

[16] **AUTHORIZES** the Petitioners' proceedings as a class action for settlement purposes;

[17] **DECLARES** that the class shall consist of the following individuals:

"All persons in Canada who purchased and/or otherwise became the owner of a Tassimo Home Brewing System by Bosch, models TAS100, date codes FD8806 thru 9109, TAS200, date codes FD8806 thru 9109, TAS451, date codes FD8806 thru 9109, TAS46, date codes FD8806 thru 9109, TAS651, date codes FD8806 thru 9109 and TAS6512CUL, date codes FD8905 through 9109 (the "Home Brewing Systems";

[18] **APPOINTS** Mary Mastrocresare and Michelangelo D'Attoma as representatives of the Class;

[19] **DECLARES** that the common issues in the action are:

a) Did Respondents' Home Brewing Systems have a latent defect?

b) Are Respondents responsible to reimburse the purchase price paid by Group Members for the Home Brewing Systems?

(c) Are Respondents responsible to pay any other compensatory, moral, punitive and/or exemplary damages to Group Members, and if so in what amount?

[20] **APPROVES** the notice of settlement of a class action filed as Schedule B to the Settlement Agreement, Exhibit R-1;

[21] **ORDERS** that notice of settlement of a class action, in the form of the notice filed as Schedule B to the Settlement Agreement, Exhibit R-1, shall be communicated in the following manner:

- a. By publication once in each of *La Presse* and *The Globe and Mail*;
- b. By on-line posting as a link to the website of Petitioners' Attorneys: www.merchanlaw.com; and
- c. By e-mailing or mailing of a copy by the Petitioner's Attorneys to all persons who have provided their contact information to Petitioner's Attorneys in connection with this class action;

[22] **DECLARES** that the Settlement Agreement, and all its Schedules, are fair, reasonable and in the best interests of the Class;

[23] **APPROVES** the Settlement Agreement and all its Schedules pursuant to article 1025 of the *Code of Civil Procedure*, R.S.Q., c. C-25;

[24] **ORDERS** the Respondents to maintain the Recall Process for a period of one (1) year from the date of the settlement judgment;

[25] **ORDERS** the Respondents to pay the sum of \$35,000.00, distributed in the following manner: \$24,500.00 to the Fonds d'aide aux recours collectifs and \$10,500.00 to Consumers Council of Canada;

[26] **DECLARES** that the Settlement Agreement and all its Schedules is incorporated by reference into and forms part of the judgment to be rendered, constitutes a Transaction within the meaning of Article 2631 C.C.Q. and is binding upon the Petitioners, all Class Members and Respondents;

[27] **ORDERS** that any Member of the Class that has not validly opted out as set forth herein shall be conclusively deemed to be a Releasor within the meaning of Section 8 of the Settlement Agreement and to have forever and absolutely released the Released Parties as provided therein;

[28] **DECLARES** that the releases as set forth in the Settlement Agreement shall have full force and effect and that each Releasor has released and shall be conclusively deemed to have fully, finally and forever released the Released Parties from the claims released in Section 8 of the Settlement Agreement (the "Released Claims");

[29] **ORDERS and DECLARES** that each Class Member shall consent and shall be deemed to have consented to the dismissal of any other actions he, she or it has commenced against the Released Parties relating to the Released Claims, without costs and with prejudice;

[30] **APPROVES** the payment of an amount of \$15,000.00 by Respondents to Petitioners' counsel representing reasonable legal fees, disbursements incurred by the Petitioners, and all applicable taxes;

[31] **APPROVES** the payment of a compensatory amount of \$1,000.00 by Respondents to each of the Petitioners Mary Mastrocresare and Michelangelo D'Attoma;

[32] **GRANTS** the Petitioners permission to discontinue their claim with respect to personal injury;

[33] **GRANTS** the Petitioners discontinuance of their claim with respect to personal injury;

[34] **DECLARES** that, in the event that the Settlement Agreement is terminated in accordance with its terms, each of the parties shall be deemed to have totally renounced to the judgment to be rendered by this Court and to have accepted the renunciation of each of the other parties, with the authorization of this Court, such that the case will be put in the position that it was in immediately prior to the rendering of the judgment, in conformity with articles 476 and 1016 of the Code of Civil Procedure, c. C-25;

THE WHOLE without costs.

Mtre Daniel Chung
Merchant Law Group LLP
Attorney for the Petitioners

Mtre Pascale Cloutier and Mtre Fadi Amine
Miller Thomson LLP
Attorneys for the Respondents