

SUPERIOR COURT

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

N°: 500-06-000666-137

DATE : March 30, 2015

IN THE PRESENCE OF: THE HONOURABLE JEAN-FRANÇOIS MICHAUD, J.S.C.

KIM PARKER

- and -

JÉRÉMIE LAFOND

Petitioners

v.

APOTEX INC.

- and -

LABORATORIOS LÉON FARMA

Respondents

JUDGEMENT

(Motion to Stay Proceedings)

[1] The Court is seized with a Motion to Stay Proceedings (**Motion**) presented by the Respondent Laboratorios Léon Farma (**Laboratorios**) who asks that the present matter be stayed until judgment is rendered on the certification of another matter in Alberta, which has a similar object.

[2] Indeed, on September 26, 2013, the Petitioners filed a Motion to Authorize the Bringing of a Class action and to Ascribe the Status of Representative (**Quebec Class Action**) on behalf of the following group:

All persons in Canada who purchased or ingested Alysena 28 with Lot numbers LF01899A, LF01898A, LF01894B, LF01901A, LF01900A, LF01980A, LF01982A, LF01981A, LF01979A, LF02037A, LF02036A, and LF02026A and Lots that were half placebo and half active medicinal ingredients ("**Defective Alysena 28**"), and all persons in Canada who will become a parent of an unplanned pregnancy due to Defective Alysena 28;¹

[3] According to the Petitioners, Alysena 28 is a generic birth control pill produced, manufactured, marketed, and distributed by Laboratorios and Apotex, the other Respondent.

[4] On the same day, the Petitioners filed a similar motion against the same Respondents before the Court of Queen's Bench of Alberta, Judicial Centre of Edmonton, bearing court file number 1303 13736, also seeking the certification of a class action for the same group (**Alberta Class Action**).²

[5] Pursuant to Article 3137 of the *Civil Code of Québec*, a Quebec Court may stay its ruling if there is a situation of *lis pendens* with another action pending before a foreign authority:

3137. On the application of a party, a Québec authority may stay its ruling on an action brought before it if another action, between the same parties, based on the same facts and having the same object is pending before a foreign authority, provided that the latter action can result in a decision which may be recognized in Québec, or if such a decision has already been rendered by a foreign authority.

[6] The conditions for *lis pendens* found at Article 3137 C.C.Q. are well established. The Code requires identity of the parties, identity of the object and identity of the material facts. On the application of Article 3137 C.C.Q. to private international law matters, the Supreme Court of Canada explained that the objects of the two recourses should be the focus of the analysis:³

[51] [...] The conditions for *lis pendens* are well established in the domestic context in Quebec civil law. Like *res judicata*, *lis pendens* depends on identity of the parties, identity of the cause of action and identity of the object (J.-C. Royer, *La preuve civile* (4th ed. 2008), Nos. 788-89, at p. 635; *Rocois Construction Inc. v. Québec Ready Mix Inc.*, [1990] 2 S.C.R. 440). However, in private international law matters, the nature of the required identities is altered somewhat in the *Civil Code of Québec* in the case of *lis pendens*. In particular, in art. 3137, as in art. 3155(4), the Code retains identity of the parties and identity of the object but substitutes identity of the facts on which the actions are based for identity of the cause of action.

¹ Para 1.

² See para 9 of the Amended Statement of Claim filed in Alberta.

³ *Société canadienne des postes v. Lépine*, [2009] 1 R.C.S. 549.

[52] This change takes account of the problems involved in reconciling the specific features of legal systems that come into contact with each other, as well as the diversity in their substantive law concepts and procedural rules. The Quebec judge therefore considers the facts on which the actions are based and does not go beyond the differences in the legal systems in question to try to find an identity of the cause of action. The analysis thus focuses more on the respective objects of the two actions (*Birdsall*, at pp. 1351-52; Goldstein and Groffier, at pp. 325-26).

[7] At this stage, the three identities are present. There is clearly identity of the material facts and of the object. Both recourses allege the same facts and ask for the same type of damages: compensatory, moral, and punitive or exemplary damages. Moreover, many of the allegations made and conclusions sought in the Quebec Class Action are very similar if not identical to the ones in the Alberta Class Action:

Quebec Class Action		Alberta Class Action
paras 6 to 14	→	paras 15 to 23
para 15	→	para 29
para 16	→	paras 39 ss.
para 17	→	para 55
paras 18 and 23	→	paras 41, 45 and 52
para 19	→	para 35
para 20	→	para 24
para 21	→	para 25
para 22	→	para 36

[8] In addition, there is identity of the parties considering both recourses seek to represent the same members. The Supreme Court of Canada stated that legal identity of the parties, as opposed to physical identity, is what is required at the certification stage.⁴

[9] Therefore, the Court concludes there is apparent *lis pendens* between the Quebec Class Action and the Alberta Class Action.

⁴ *Ibid* at para 55; see also *Hotte v. Servier Canada Inc.*, 1999 CanLII 13363 (QC CA).

[10] Using its discretion found in Article 3137 C.C.Q.⁵, the Court considers it to be in the best interest of the Quebec members to suspend the Quebec Class Action for the following reasons:

- The hearing on certification of the Alberta Class Action is scheduled peremptorily for a period of 4 days, from June 15 to 18, 2015;
- As transpires from the transcript of a management conference in the Alberta Class Action held on February 12, 2015, the Court of Queen's Bench intends to deal with this matter promptly;
- Given the great similarity between the two recourses, the parties should not invest time and costs in both jurisdictions;
- The principle of proportionality⁶ requires that the parties deal with only one recourse at this stage;
- The Alberta Class Action may result in a decision, which could be recognized in Quebec given the apparent *lis pendens*;
- The Quebec members will not suffer any prejudice since the Quebec Action is not dismissed but stayed.⁷

[11] Finally, it is worth noting that Petitioners' lawyer did not contest the Motion considering the representations of Laboratorios' lawyers to proceed with the certification of a national class before the Queen's Bench of Alberta. In this context, no costs will be awarded.

FOR THESE REASONS, THE COURT:

[12] **GRANTS** the Motion to Stay Proceedings;

[13] **STAYS** the court file bearing number 500-06-000666-137 until final judgment is rendered on the certification of the Alberta Class Action court file number 1303 13736;

[14] **WITHOUT COSTS.**


JEAN-FRANÇOIS MICHAUD, J.S.C.

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⁵ *Schmidt v. Johnson & Johnson Inc.*, 2012 QCCA 3132 at para 34.

⁶ Article 4.2 of the *Civil Code of Procedure*.

⁷ *Schmidt v. Johnson & Johnson Inc.*, *supra* note 5 at para 63.

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Date of hearing: March 24, 2015