

SUPERIOR COURT

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No: 500-06-000549-101

DATE: February 26, 2016

BY: THE HONOURABLE CHANTAL CORRIVEAU, J.S.C.

9085-4886 QUEBEC INC.
Petitioner

v.

VISA CANADA CORPORATION
and
MASTERCARD INTERNATIONAL INCORPORATED
and
BANK OF AMERICA CORPORATION
and
BANK OF MONTREAL
and
BANK OF NOVA SCOTIA
and
CANADIAN IMPERIAL BANK OF COMMERCE
and
CAPITAL ONE FINANCIAL CORPORATION
and
CITIGROUP INC.
and
FÉDÉRATION DES CAISSES DESJARDINS DU QUÉBEC
and
NATIONAL BANK OF CANADA INC.
and

ROYAL BANK OF CANADA
and
TORONTO-DOMINION BANK
Respondents

JUDGMENT

[1] The Petitioner, 9085-4886 Quebec Inc., is seeking to authorize a class action for the sole purpose of approving a fourth settlement in this file reached between the Petitioner and Respondent Fédération des caisses Desjardins du Québec ("Desjardins" or the "Settling Respondent") and to obtain permission to disseminate a notice of authorization and settlement hearing (the "Pre-Approval Notice").

[2] To date, three (3) prior settlements have been reached in this file and approved by this Court by Judgment dated December 7, 2015:

- A) On August 16, 2013, a settlement was reached between the Petitioner and Respondent Bank of America Corporation and was amended on July 7, 2014 and July 8, 2014 (the "BofA Settlement Agreement");
- B) On April 1, 2015, a settlement was reached between the Petitioner and Respondent Capital One Financial Corporation (the "Capital One Settlement Agreement"); and
- C) On April 22, 2015, a settlement was reached between the Petitioner and Respondent Citigroup Inc. (the "Citigroup Settlement Agreement")

INTRODUCTION

[3] The facts of this case were set out in detail in this Court's judgment approving the BofA Settlement Agreement, the Capital One Settlement Agreement, and the Citigroup Settlement Agreement dated December 7, 2015.

[4] Briefly, the Petitioner has alleged, *inter alia*, that the Respondents were imposing significant anti-competitive restrictions on merchants to prevent them from encouraging customers to use lower-cost methods of payment and from declining to accept certain Visa and MasterCard credit cards with high fees.

[5] It is further alleged that the result of such conduct caused the charging to the Visa and MasterCard Class Members of credit card processing fees and associated costs at a supracompetitive rate.

[6] Similar class proceedings are ongoing against the same Respondents which charge substantially the same allegations in the Canadian provinces of British Columbia, Ontario, Alberta, and Saskatchewan¹.

[7] On December 23, 2015, following arm's length negotiations between Class Counsel² and Respondent Desjardins, the Parties reached a settlement agreement (the "Desjardins Settlement Agreement")³, to fully and finally settle all claims asserted against Desjardins in or related to the present Class Action;

[8] The Desjardins Settlement Agreement applies to substantially identical classes as those that have been authorized by this Court for the purposes of the BofA Settlement Agreement, the Capital One Settlement Agreement and the Citigroup Settlement Agreement, namely:

Quebec MasterCard Settlement Class

"All natural persons, legal persons established in the private interest and partnerships, resident in Quebec, who, during the Class Period, accepted payments for the supply of goods or services by way of MasterCard Credit Cards pursuant to the terms of Merchant Agreements, except the Excluded Persons and any legal persons established for a private interest and any partnerships which at any time between December 17, 2009 and December 17, 2010 had under its direction or control more than 50 persons bound to it by contract of employment."

Quebec Visa Settlement Class

"All natural persons, legal persons established in the private interest and partnerships, resident in Quebec, who, during the Class Period, accepted payments for the supply of goods or services by way of Visa Credit Cards pursuant to the terms of Merchant Agreements, except the Excluded Persons and any legal persons established for a private

¹ In the Supreme Court of British Columbia under court file number VLC-S-S-112003, in the Ontario Superior Court of Justice under court file number 11-426591, in the Court of Queen's Bench of Alberta under court file number 1203-18531, and in the Court of Queen's Bench of Saskatchewan under docket number 133 of 2013.

² Class Counsel means the following law firms: Camp Fiorante Matthews Mogerman, Branch MacMaster LLP, and Consumer Law Group Inc.

³ Exhibit R-1.

interest and any partnerships which at any time between December 17, 2009 and December 17, 2010 had under its direction or control more than 50 persons bound to it by contract of employment.”

[9] The Desjardins Settlement Agreement also applies to similar classes in the other provinces within Canada, such that all persons resident in Canada who, during the Class Period, accepted payments for the supply of goods or services by way of MasterCard Credit Cards or Visa Credit Cards pursuant to the terms of Merchant Agreements are covered by the Desjardins Settlement Agreement.

[10] The Petitioner and Desjardins have agreed to the terms of the Desjardins Settlement Agreement, the whole subject to the approval of this Court, and without any admission of liability whatsoever by Desjardins and for the sole purpose of resolving the dispute between these parties.

AUTHORIZATION

[11] Desjardins consents to the authorization of the present Motion as a class proceeding for the purposes of settlement only, which consent shall be withdrawn should the Desjardins Settlement Agreement not be approved by the Court⁴.

[12] This Judgment, including the authorization of the class action against Desjardins and the definitions of the Quebec MasterCard Settlement Class and the Quebec Visa Settlement Class, the Class Period and the Common Issue, are without prejudice to any position a Non-Settling Respondent may take in this or in any other proceeding on any issue, including the issue of whether the Quebec Proceeding should be authorized as a class action as against the Non-Settling Respondents. For greater certainty, this judgment is not binding on and shall have no effect on the continuing proceedings as against the Non-Settling Respondents.

[13] Where a respondent consents to the authorization of a class action for settlement purposes only, the analysis of the criteria set forth at article 575 C.C.P. must still be met, but is flexible, and takes into account the fact of the settlement⁵.

⁴ *Communication Méga-Sat inc. c. LG Philips LCD Co. Ltd.*, 2013 QCCS 5592; *Lavoie c. Régie de l'assurance maladie du Québec*, 2013 QCCS 866; *Option Consommateurs c. Infineon Technologies, a.g.*, 2012 QCCS 6405; *9085-4886 Québec inc. c. Visa Canada Corporation*, 2014 QCCS 6701.

⁵ *Vallée c. Hyundai Auto Canada Corp.*, 2014 QCCS 3778; *Schachter c. Toyota Canada inc.*, 2014 QCCS 802; *Markus c. Reebok Canada inc.*, 2012 QCCS 3562; *Richard c. Volkswagen Group Canada inc.*, 2012 QCCS 5534; *9085-4886 Québec inc. c. Visa Canada Corporation*, 2015 QCCS 5914.

[14] Under reserve of the rights of Desjardins and the Non-Settling Respondents, the Amended Motion for Authorization dated March 30, 2012, the Exhibits in support thereof and the Affidavit of the Petitioner dated February 1, 2016 justify granting the present Motion in accordance with the criteria set forth at article 575 C.C.P. for settlement purposes only.

[15] The Petitioner and Desjardins have agreed to seek authorization for the following identical, similar or related issue of law or fact, namely:

Did Desjardins conspire with others to fix, maintain, increase or control Merchant Discount Fees and/or Interchange Fees paid by Merchants who accepted payment by Visa Credit Cards and/or MasterCard Credit Cards in Canada during the Class Period?

[16] The facts alleged appear to justify the conclusions sought⁶.

[17] The composition of the Class makes it difficult or impracticable to apply the rules for mandates to sue on behalf of others or for consolidation of proceedings:

- a) Potential Class Members are dispersed across Quebec;
- b) Given the costs and risks inherent in instituting an action before the Courts, people could hesitate to institute an individual action against the Settling Respondent;
- c) Individual litigation of the factual and legal issues raised would increase delay and expenses to all parties and to the Court system in general.

[18] The Petitioner, who is requesting to obtain the status of representative, will fairly, properly, and adequately protect and represent the interest of the Class Members since the Petitioner:

- a) Is a Class Member;
- b) Was instrumental in instituting this class action and engaging counsel with extensive experience in class actions;
- c) Provided its attorneys with relevant information and instructed them to proceed with the present proceedings;

⁶ Articles 7 and 1457 of the *Civil Code of Québec*, LRQ, c C-1991, and sections 36, 45, 46 (1), and 61 (from the period of March 23, 2001 to March 11, 2009) of the *Competition Act*, RSC 1985, c C-34.

- d) Ensured that the Class Members would be kept up-to-date through its attorneys' website;
- e) Participated in the settlement negotiations by providing input to its attorneys, ultimately instructing its attorneys to sign the Settlement Agreement;
- f) Has a good understanding of what this class action is about and what the settlement provides to Class Members;
- g) Has performed its responsibilities as the representative of the Class and it will continue to do so insofar as the proposed settlement is concerned;
- h) Has always acted in the best interests of the Class Members;
- i) Has not indicated any possible conflict of interest with the Class Members.

CLASS NOTICE

[19] In accordance with the Desjardins Settlement Agreement and with the Plan of Dissemination⁷, the Pre-Approval Notice will be published in the same manner as the previously cited settlement agreements in this file.

[20] This Court has already approved the notice of authorization and settlement hearing for the BofA Settlement Agreement, the Capital One Settlement Agreement, and the Citigroup Settlement Agreement as follows:

- a) English language notices in two (2) high-circulation national daily newspapers – The Globe and Mail, national edition (English), and the National Post, national edition (English);
- b) Two (2) high-circulation daily newspapers proposed for the province of Quebec alone: La Presse (French) and The Gazette (English);
- c) English and French language notices, as appropriate, in seven (7) mass market national industry magazines – the Retail Council of Canada's Canadian Retailer Magazine, the Retail Council of Canada's Weekly e-Newsletter, the Canadian Convenience Stores Association's C-Store Life, the Canadian Restaurant and Foodservices News, the Grocery Business Magazine; the Canadian Business (Profit Report) - E-News; and the Canadian Business / PROFIT;

⁷ Exhibit R-3.

- d) English and French language notices, as appropriate, in twenty (20) industry associations whose members accept Visa or MasterCard credit cards as a means of payment for goods or services for voluntary distribution to their membership – the Retail Council of Canada, the Canadian Federation of Independent Businesses (CFIB), the Retail Merchants Association of Canada (Ontario) Inc., the Canadian Restaurant and Foodservices Association, the Canadian Convenience Stores Association, the Canadian Federation of Independent Grocers (CFIG), the Food and Consumer Products of Canada, the Canadian Association of Chain Drug Stores, the Tourism Industry Association of Canada, the Canadian Independent Petroleum Marketers Association, the Canadian Jewellers Association, Small Business Matters, the Canadian Wireless Telecommunications Association (CWTA), the Canadian Association of Home and Property Inspectors, the Canadian Parking Association, the Association of Universities and Colleges of Canada, the Automotive Retailers Association, the Canadian Deals and Coupons Association, the Canadian Cosmetic, Toiletry and Fragrance Association, and the Canadian Franchise Association;
- e) E-mail to all persons who signed up on Class Counsels' websites;
- f) Posting in English and in French on Class Counsels' websites;
- g) A Request to the CBA National Class Action Registry to post the notice online;
- h) Posting on the website <http://www.creditcardclassaction.com>; and
- i) The possibility of issuing a press releases on Canada Newswire.

POUR CES MOTIFS, LE TRIBUNAL : **WHEREFORE, THE COURT:**

[21] **ACCUEILLE** la présente requête; [21] **GRANTS** the present motion;

[22] **ORDONNE** que, pour l'application du présent jugement, les définitions énoncées dans la Convention de règlement de Desjardins, pièce R-1, 1, s'appliquent et y sont incorporées par renvoi;

[22] **ORDERS** that for the purposes of this judgment, the definitions contained in the Desjardins Settlement Agreement, Exhibit R-1, 1, shall apply and are incorporated by reference;

[23] **AUTORISE** l'exercice de cette action collective contre l'Intimée Fédération des caisses Desjardins du Québec pour les fins d'un règlement hors cour seulement, sous réserve des conditions de la Convention de règlement de Desjardins, pièce R-1, sans préjudice aux droits des défenderesses non parties à la Convention de règlement de Desjardins;

[24] **ATTRIBUE** au requérant le statut de représentant des groupes ci-après décrits :

Groupe du Règlement MasterCard au Québec

«Toutes les personnes physiques, les personnes morales de droit privé et les sociétés de personnes résidant au Québec qui, au cours de la Période du Recours, ont accepté des paiements pour la fourniture de biens ou de services faits au moyen de Cartes de Crédit MasterCard conformément aux dispositions de Conventions de Marchand, à l'exception des Personnes Exclues et de toute personne morale de droit privé et de toute société de personnes qui, à quelque moment que ce soit entre le 17 décembre 2009 et le 17 décembre 2010, a eu sous sa direction ou son contrôle plus de 50 personnes liées à elle par un contrat de travail. »

Groupe du Règlement Visa au Québec

«Toutes les personnes physiques, les personnes morales de droit

[23] **AUTHORIZES** the bringing of a class action against the Respondent Fédération des caisses Desjardins du Québec for the purposes of settlement only, subject to the terms of the Desjardins Settlement Agreement, Exhibit R-1, without prejudice to the rights of the Non-Settling Respondents;

[24] **APPOINTS** the Petitioner as representative of the classes herein described as:

Quebec MasterCard Settlement Class

“All natural persons, legal persons established in the private interest and partnerships, resident in Quebec, who, during the Class Period, accepted payments for the supply of goods or services by way of MasterCard Credit Cards pursuant to the terms of Merchant Agreements, except the Excluded Persons and any legal persons established for a private interest and any partnerships which at any time between December 17, 2009 and December 17, 2010 had under its direction or control more than 50 persons bound to it by contract of employment.”

Quebec Visa Settlement Class

“All natural persons, legal persons established in the private interest and partnerships, resident in Quebec, who, during the Class Period, accepted payments for the supply of goods or services by way of Visa Credit Cards pursuant to the terms of

privé et les sociétés de personnes résidant au Québec qui, au cours de la Période du Recours, ont accepté des paiements pour la fourniture de biens ou de services faits au moyen de Cartes de Crédit Visa conformément aux dispositions de Conventions de Marchand, à l'exception des Personnes Exclues et de toute personne morale de droit privé et de toute société de personnes qui, à quelque moment que ce soit entre le 17 décembre 2009 et le 17 décembre 2010, a eu sous sa direction ou son contrôle plus de 50 personnes liées à elle par un contrat de travail. »

Merchant Agreements, except the Excluded Persons and any legal persons established for a private interest and any partnerships which at any time between December 17, 2009 and December 17, 2010 had under its direction or control more than 50 persons bound to it by contract of employment.”

[25] **IDENTIFIE** aux fins de règlement, la [25] **IDENTIFIES** for the purposes of question commune comme étant la settlement, the common issue as follows: suivante :

« Est-ce que Desjardins a comploté avec d'autres pour fixer, maintenir, augmenter ou contrôler les Frais d'escompte marchand et/ou les Frais d'interchange payés par les Marchands qui ont accepté des paiements faits au moyen de Cartes de Crédit Visa et/ou de Cartes de Crédit MasterCard au Canada au cours de la Période du Recours? »

“Did Desjardins conspire with others to fix, maintain, increase or control Merchant Discount Fees and/or Interchange Fees paid by Merchants who accepted payment by Visa Credit Cards and/or MasterCard Credit Cards in Canada during the Class Period?”

[26] **ORDONNE** que l'Audience d'Approbation du Règlement au Québec soit tenue le 26 mai 2016 à 14h, en salle 16.12 au Palais de justice de Montréal, 1, rue Notre-Dame Est (l'« Audience d'Approbation du Règlement »), où cette Cour devra alors décider :

[26] **ORDERS** that the Hearing for Settlement Approval in Québec is to be held on May 26, 2016 at 2:00 p.m. in room 16.12 at the Montreal Courthouse, 1, Notre-Dame Street East (the “Settlement Approval Hearing”), at which time this Court will be asked to decide:

- a) s'il convient d'approuver la Convention de règlement Desjardins
- a) whether to approve the Desjardins Settlement Agreement as fair, reasonable and in the best interest of

- comme étant juste, raisonnable et dans le meilleur intérêt des Membres du Groupe du Québec;
- b) si la requête des Procureurs du Groupe relativement aux frais, débours et taxes applicables devrait être accordée; et
- c) toutes autres questions que la Cour peut juger appropriées;
- the Québec Class Members;
- b) whether Class Counsel's application for fees, disbursements and applicable taxes should be granted; and
- c) any other matters as the Court may deem appropriate;

[27] **DÉCLARE** que l'ensemble de la Convention de règlement de Desjardins, Pièce R-1, (incluant son Préambule et ses Annexes) fait partie intégrale du présent jugement;

[27] **DECLARES** that the Desjardins Settlement Agreement, Exhibit R-1, in its entirety (including its Preamble and its Schedules) is an integral part of this judgment;

[28] **APPROUVE** l'Avis de préapprobation essentiellement en la forme de l'avis se trouvant dans l'Annexe « A » de la Convention de règlement de Desjardins, et ci-jointe comme pièce R-2;

[28] **APPROVES** the Pre-Approval Notice substantially in the form as set forth within Schedule A to the Desjardins Settlement Agreement, and attached hereto as Exhibit R-2;

[29] **ORDONNE** que l'Avis de préapprobation soit publié et diffusé essentiellement en conformité avec le Plan de Diffusion se trouvant dans l'Annexe « A » de la Convention de règlement de Desjardins, et ci-jointe comme pièce R-3;

[29] **ORDERS** that the Pre-Approval Notice shall be published and disseminated substantially in accordance with the Plan of Dissemination as set forth in Schedule A to the Desjardins Settlement Agreement, and attached hereto as Exhibit R-3;

[30] **ORDONNE** que la date et l'heure pour la tenue de l'Audience d'Approbation du Règlement soient indiquées dans l'Avis, bien qu'elles puissent être reportées par la Cour sans autre avis signifié aux Membres du Groupe, exception faite de l'avis qui sera affiché sur le site web du Règlement;

[30] **ORDERS** that the date and time of the Settlement Approval Hearing shall be set forth in the Notice, but may be subject to adjournment by the Court without further publication notice to the Class Members, other than such notice which will be posted on the Settlement Website;

[31] **APPROUVE** la forme et le contenu du Formulaire de demande d'exercice du droit d'exclusion, pièce R-4;

[31] **APPROVES** the form and content of the Opt-Out Form, Exhibit R-4;

[32] **ORDONNE** que chaque membre du groupe qui désire s'exclure du recours québécois et par conséquent : (a) ne sera pas lié par la Convention de règlement de Desjardins, (b) ne sera pas en droit de recevoir les prestations payables dans le cadre de ce règlement, doit s'exclure conformément à la Convention de règlement de Desjardins et au Formulaire de demande d'exercice du droit d'exclusion, pièce R-4;

[32] **ORDERS** that each Class Member who wishes to opt-out of the Quebec Proceeding and thus: (a) will not be bound by the Desjardins Settlement Agreement, (b) will not be entitled to receive any share of benefits payable in connection with same, must opt-out in conformity with the Desjardins Settlement Agreement and with the Opt-Out Form, Exhibit R-4;

[33] **DÉTERMINE** que l'échéance pour l'exercice du droit d'exclusion des groupes de la Convention de règlement de Desjardins sera de 60 jours après publication de l'Avis;

[33] **DETERMINES** that the deadline for opting out of the Desjardins Settlement Agreement will be 60 days after the Notice is published;

[34] **ORDONNE** que Epiq Systems soit provisoirement nommé Administrateur des exclusions aux fins d'aide à la publication de l'Avis, l'administration des griefs, les demandes d'exclusion, et tâches connexes et devra fournir aux procureurs des parties une copie de toutes des demandes d'exclusion valides reçues;

[34] **ORDERS** that Epiq Systems shall be provisionally appointed as Opt-Out Administrator for the purposes of assisting with the publication of the Notice, administration of objections, opt-out requests, and related tasks and that it shall provide counsel for all parties with copies of all valid opt-outs received;

[35] **ORDONNE** qu'un exemplaire du présent jugement soit affiché sur les sites web des Procureurs du Groupe;

[35] **ORDERS** that a copy of this judgment shall be posted on Class Counsels' websites;

[36] **ORDONNE** qu'une version traduite de la Convention de règlement de Desjardins soit disponible pour fins de consultation par les Membres du Groupe de règlement;

[36] **ORDERS** that a translated version of the Desjardins Settlement Agreement be made available to the Settlement Class Members for consultation purposes;

[37] **DECLARE** que la version anglaise de la Convention de règlement de

[37] **DECLARES** that the English version of the Desjardins Settlement Agreement is the

Desjardins constitue l'entente entre les true agreement between the parties and parties et que dans l'éventualité d'un shall prevail over the French translation in conflit quant à son interprétation ou son the event of any contradiction between the application, la version anglaise aura two; préséance sur la traduction française;

[38] **DÉCLARE** que dans le cas de [38] **DECLARES** that in the case of any divergence entre les conclusions discrepancy between the French and English françaises et anglaises de ce jugement, conclusions of this judgment, the French la version française prévaudra; version will prevail;

LE TOUT, sans frais.

THE WHOLE, without costs.



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