

# SUPERIOR COURT

CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

No: 500-06-000722-146

DATE: MARCH 22, 2017

---

BEFORE THE HONOURABLE MR. JUSTICE MARK G. PEACOCK, J.S.C.

---

**RENÉ CHARBONNEAU**

Petitioner

v.

**APPLE CANADA Inc. & APPLE Inc.**

Respondents

---

## JUDGMENT

---

[1] Relying on *CCP* articles 25, 49, 206 and 585, Mr. Charbonneau applies to re-amend his "Amended Application to Authorize the bringing of a Class Action and to ascribe the Status of Representative" dated May 28, 2015. Mr. Charbonneau requests that this Court permit him to re-amend his authorization application despite the fact that the amended authorization application was already granted by a rectified authorization judgment ("Rectified Authorization Judgment").

[2] Mr. Charbonneau seeks these amendments in the following context.

[3] The authorization hearing was held on July 7, 2016. On November 24, 2016, this Court issued a judgment authorizing the class action which, following a hearing on December 22, 2016, was rectified by the Rectified Authorization Judgment dated December 22, 2016.

[4] Mr. Charbonneau's requested amendments fall into 2 distinct subject areas. Firstly, he seeks to have the class include all purchasers of the impugned product.

500-06-000722-146

[5] In paragraph 134 of the Rectified Authorization Judgment, the Court, following its reasoning in paragraph 71 of that judgment, defined the class as follows:

***ASCRIBES to the Petitioner the status of representative of the persons included in the Group herein described as:***

***...***

- 1. all persons in Quebec, who purchased and/or own a 2011 MacBook Pro Laptop with a 15 inch or 17 inch screen which has suffered or suffers from a Graphic Defect, or any other Group(s) or Sub-Group(s) to be determined by the Court; and***
- 2. all persons, who purchased in Quebec a 2011 MacBook Pro Laptop with a 15 inch or 17 inch screen which has suffered or suffers from a Graphic Defect, ... manufactured, distributed, sold, or otherwise put onto the marketplace by the Respondents or any other Group(s) or Sub-Group(s) to be determined by the Court;***
- 3. a "Graphics Defect" is a graphical anomaly or defect which could be but does not have to be: severe screen distortion, pixilation, graphical artifact or ghosting".***
- 4. the above rectifications are mirrored in paragraph [71] of the judgment.***

[6] Mr. Charbonneau asserts in his proposed Re-Amendment Application that "the Petitioner and the class members have always alleged in these proceedings that all 2011 Apple MacBook laptops are defective and unfit, notwithstanding the fact that the said defect may or may not have manifested itself yet...".<sup>1</sup>

[7] For the purposes of the present application, the Court refers to paragraph 3.1, as amended in the Amended Application to Authorize in which Mr. Charbonneau refers to the "Graphics Defect", and paragraph 67 of the Rectified Authorization Judgment, which refers to the Respondents' argument.

[8] The articles of the *Code of Civil Procedure* relied upon by Mr. Charbonneau do not permit him to make these amendments to his Amended Motion to Authorize since that application has already been ruled upon by the Rectified Authorization Judgment and since:

8.1. *CCP* articles 25 and 49 do not apply since there is no gap in the

<sup>1</sup> See particularly paragraphs 42, 42.7, 92, 92.1. of the proposed Re-amended Application to Authorize.

500-06-000722-146

procedural rules. The amendment to the Application Seeking Authorization was already permitted prior to judgment and the *Code of Civil Procedure* only provides for the next right to amend after the originating demand in a class action has been filed ;

- 8.2. CCP article 206 CCP does not apply since judgment has already been rendered on the amended application to authorize;
- 8.3. the *Krimed* decision of this Court that Mr. Charbonneau seeks to rely on, is distinguishable on the facts of the present case<sup>2</sup>. In *Krimed*, the Court determined that it was required to authorize the desistment of an application to authorize. The legal foundation necessary to find such authority does not exist in the present case since not only has a judgment been rendered on the amended application to authorize but also the rights of potential class members can be protected, inter alia, through the use of the court's power to authorize an amendment of the class action proceedings pursuant to CCP article 585. In the alternative, and without deciding the issue, the Petitioner may seek in its class action to assert that all purchasers are included within the class that has been authorized on the basis of the established principle of "**une variation sur un thème connu**". As the jurisprudence instructs:

***Puisqu'au stade de la requête en autorisation les allégations des demandeurs peuvent n'être que sommaires, il va de soi que dans leur demande au fond les demandeurs sont admis à préciser, avec plus de détails, ce qu'ils n'avaient que sommairement allégué au départ. Le fait que la déclaration en recours collectif contienne plus de précisions que ne contenait la requête en autorisation ne devrait avoir, en soi, rien de surprenant. Encore faut-il, cependant, qu'il s'agisse de "variations sur un thème connu", sinon l'on est en présence d'un recours nouveau, différent de celui qui a été présenté au tribunal au stade de l'autorisation.***<sup>3</sup>

[9] Secondly, Mr. Charbonneau seeks to amend his damage claim to allege in his conclusions at paragraph 117 to "condemn the Defendants solidarily to pay to Plaintiff, and each of the class members a sum to be determined in (...) compensatory and/or moral damages suffered, (a) for any repair costs disbursed, (b) for the reimbursement of the initial purchase price (c) for stress and inconvenience suffered (d) the loss of work product, (e) for loss of income, (f) for loss of time, (g) for loss of resale value of the

<sup>2</sup> *Krimed v. Uber et al.*, 2016 QCCS 2768 at para. 29.

<sup>3</sup> *Rouleau c. Placements Etteloc inc.*, J.E. 99-935 (C.S.), p. 19.

500-06-000722-146

laptop, (h) for the loss of purchasing a replacement laptop and order collective recovery of the sums".<sup>4</sup>

[10] At the authorization hearing, the Court provided Mr. Charbonneau with the opportunity to make these amendments to his conclusions, but he chose not to do so at that time<sup>5</sup>. While the Court recognizes that certain flexibility is required regarding the specificity of pleadings in class actions, the burden remains on the Petitioner to ensure clarity and a level of precision so that both the Court and the opposing parties are clear on what is being alleged without ambiguity.

[11] Furthermore, the issuance of the Rectified Authorization Judgment precludes further amendments to the authorization proceedings.

[12] At paragraph 31 of the Rectified Authorization Judgment, the Court said: "if, as and when they are made, the Court will deal with any future request for amendments and any opposition to such proposed amendments". The amendments being referred to are those permitted under *CCP* article 585 to the class action but which can only be sought, if necessary, after the originating demand in a class action is filed.

## CONCLUSIONS

### FOR THESE REASONS, THE COURT:

[13] **DISMISSES** Mr. Charbonneau's Application for Permission to Re-Amend the Motion to Authorize;

[14] **THE WHOLE WITH COST TO FOLLOW SUIT.**

---

<sup>4</sup> Proposed amendments are underlined.

<sup>5</sup> See paragraphs 124 and 125 of the Rectified Authorization Judgment.

A handwritten signature in black ink, appearing to read 'Mark G. Peacock, J.S.C.', written over a horizontal line.

**MARK G. PEACOCK, J.S.C.**

*Me David Assor*  
*Me Charlotte Grenier*  
LEX GROUP INC.  
Attorneys for the Petitioner

*Me Kristian Brabander*  
*Me Benedicte Martin*  
MCCARTHY TÉTRAULT  
Attorneys for the Respondents

Date of hearing: March 8, 2017