

CANADA

(Class Action)

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

SUPERIOR COURT

N° : 500-06-000706-149

People who purchased, before June 30, 2010, an extended warranty based on Defendant's representations that if they did not purchase an extended warranty and that their item failed after the expiry of the manufacturer's one year warranty, they would have to assume the costs to either repair or replace their item.

The Group

and

CAROLE CAKE ROCHON

Representative/Plaintiff

(Collectively "Plaintiffs")

v.

MEUBLES LÉON LTÉE

Defendant

and

**LA PRÉSIDENTE DE L'OFFICE DE LA
PROTECTION DU CONSOMMATEUR**

Intervenor

DEFENDANT MEUBLES LÉON LTÉE'S STATEMENT OF DEFENCE

IN SUPPORT OF ITS STATEMENT OF DEFENCE, DEFENDANT MEUBLES LÉON LTÉE (HEREINAFTER "LEON'S") RESPECTFULLY SUBMITS THE FOLLOWING:

1. With regard to the allegations contained in paragraphs 1 to 4 of the Amended Motion to Institute Proceedings in Class Action in accordance with the judgment rendered on July 13, 2015 (hereinafter the "**Motion**"), Leon's refers to the Honourable Justice André Prévost's April 8, 2015 judgment, denying anything that is not in conformity therewith.
2. With regard to the allegations contained in paragraph 5 of the Motion, Leon's refers to the Honourable Justice André Prévost's April 8, 2015 judgment, denying anything that is not in conformity therewith and adds that the second conclusion appearing at page 8 of the Motion is not in conformity with paragraph 73 c) of the said judgment.
3. Leon's admits the allegations contained in paragraph 6 of the Motion.
4. Leon's denies as drafted the allegations contained in paragraph 7 of the Motion. Leon's adds that it sells furniture, mattresses, electronics and appliances and that as an accessory, it offers to its customers the possibility of purchasing an extended warranty for appliances and electronics.
5. Leon's admits the allegations contained in paragraph 8 of the Motion.
6. With regard to the allegations contained in paragraphs 9 and 10 of the Motion, Leon's refers to its sales invoices, Exhibits P-1 to P-6, denying anything that is not in conformity therewith.
7. With regard to the allegations contained in paragraphs 11 and 12 of the Motion, Leon's has no knowledge of what Plaintiff was told by its different salespeople in 2003, 2005 and 2010 when Plaintiff purchased her appliances and television set.
8. Leon's takes notice of the admission contained in paragraph 13 of the Motion.
9. Leon's has no knowledge of the allegations contained in paragraph 14 of the Motion.
10. With regard to the allegations contained in paragraph 15 of the Motion, Leon's refers to Mr. François Towner's examination, Exhibit P-7, denying anything that is not in conformity therewith.
11. With regard to the allegations contained in paragraph 16 of the Motion, Leon's has no knowledge of what Plaintiff was told or not told by the different salespeople in 2003, 2005 and 2010 and adds that its salesperson had no obligation whatsoever to inform the customers of the content of paragraph 16 of the Motion.
12. With regard to the allegations contained in paragraphs 17 and 18 of the Motion, Leon's has no knowledge of the discussion that took place between Plaintiff and the salesperson on February 11, 2010.

13. Leon's denies the allegations contained in paragraph 19 of the Motion, as it will be set out below.
14. Leon's denies the allegations contained in paragraph 25 of the Motion.
15. Paragraphs 26 to 30 of the Motion set out Plaintiffs' legal submission, which Leon's will not comment upon in its Statement of Defence.
16. Leon's denies the allegations contained in paragraphs 31 to 36 of the Motion.
17. Leon's takes notice of the admission contained in paragraph 39 of the Motion.
18. Leon's denies the allegations contained in paragraphs 40 to 45 of the Motion.

AND TO RE-ESTABLISH THE FACTS, LEON'S RESPECTFULLY ADDS THE FOLLOWING:

INTRODUCTION

19. Leon's submits that the present Class Action is prescribed and should be dismissed solely on that ground.
20. Should this Honourable Court conclude that the present Class Action is not prescribed, Leon's submits that it should be dismissed for the following reasons:
 - i. Leon's made no false or misleading representations to its customers when they purchased an extended warranty;
 - ii. Section 256 C.P.A does not apply to the sale of extended warranties by Leon's.
21. Should this Honourable Court conclude that the present Class Action should be authorized, Leon's submits the Class Group should be modified to exclude people who have taken advantage of their extended warranties or who have ratified their extended warranty contracts, as it will be set out below.

PRESCRIPTION

22. Leon's submits that Plaintiff and the Group members' rights of action against it are prescribed.

Plaintiff Mrs. Cake

23. Plaintiff made six (6) different purchases including the purchase of six (6) extended warranties at Leon's store in Laval between 2003 and 2005 (P-1 to P-5) and on February 11, 2010 (P-6).
24. Plaintiff's right of action against Leon's is prescribed since on or before February 11, 2010, Plaintiff found out, after watching a TV show or seeing something on the

internet, that she was “protected” by the legal warranty and that the representations made by Leon’s salespeople were “false and/or misleading”, as appears from abstracts of Plaintiff’s examination of August 26, 2015, **Exhibit D-1**.

25. Despite the fact that Plaintiff’s right of action was prescribed as of **February 11, 2013** (three (3) years from February 11, 2010), the Motion for Certification was filed on or about **August 20, 2014**, as appears from the Court record.
26. Plaintiff has not shown, let alone even alleged, that it was **impossible in fact** for her to institute proceedings against Leon’s before February 11, 2013 i.e. that Plaintiff’s prescription was not suspended.
27. Furthermore, Plaintiff cannot contend that prescription was suspended by *Fortier v. Meubles Léon Ltée* case (200-09-007482-117) since the cause of action relating to the false representations was not alleged against Leon’s in that case, as was confirmed by the Court of Appeal and the Superior Court in the present case¹.
28. Therefore, Plaintiff’s right to institute proceedings against Leon’s following the purchase of six (6) extended warranties is prescribed.

Class members

29. As for Class members who purchased an extended warranty from Leon’s before June 30, 2010, Leon’s submits that Class members’ rights of action are also prescribed for the following reasons:
 - i. The latest date that an extended warranty was purchased from Leon’s by a Group member was on June 30, 2010, therefore the latest date upon which legal proceedings could be undertaken against Leon’s was **June 30, 2013**;
 - ii. The latest date that the false and/or misleading representations would have been made by Leon’s to customers who purchased an extended warranty was on June 30, 2010, therefore that the latest date upon which legal proceedings could be undertaken against Leon’s was **June 30, 2013**;
 - iii. It is not alleged in the proceedings that it was **impossible in fact** for Class members to undertake proceedings against Leon’s on or before June 30, 2013, therefore Class members’ latest date upon which legal proceedings could be undertaken against Leon’s was not suspended.

¹ See par. 126 of the Court of Appeal’s reasons in *Fortier v. Meubles Léon Ltée* (200-09-007482-117) and par. 22 of Justice André Prévost’s judgment of April 8, 2015 in the present file.

30. In order to overcome the prescription of their claims, Class members would have to show that it was impossible in fact for them to undertake legal proceedings in a timely fashion.
31. Class members cannot avail themselves of a legal impossibility, in other words, their ignorance of the applicable prescription period and/or of the existence of the legal warranty cannot be used as a justification for their failure to act.
32. Class members knew or should have known that the legal warranty existed.
33. Even if Class members didn't know that the legal warranty existed, they should have known as of June 30, 2010 that the C.P.A. was amended concerning the sale of extended warranties and that since then, retailers such as Leon's who sell extended warranties must provide their customers a Notice concerning the legal warranty and read to their customers a paragraph concerning the legal warranty appearing in the said Notice.
34. Therefore, Class members should have realized at that time, if they didn't realize it before or at the same time as Plaintiff in February 2010, that they were "protected" by the legal warranty and that the said representations made by Leon's salespeople were "false and/or misleading".
35. Moreover, l'Office de la protection du consommateur (hereinafter "l'OPC") launched a media campaign in January 2010 which included advertisement in the print media, on the radio and with various consumer associations in order to raise public awareness on the new rights provided by the C.P.A. such as the Notice concerning the legal warranty to be given to the consumers which would come into force on June 30, 2010, as appears from an article of December 10, 2009 published by La Presse, **Exhibit D-2**.
36. It is not alleged in the proceedings that it was **impossible in fact** for Class members to undertake proceedings against Defendant on or before June 30, 2013.
37. Furthermore, Class members cannot contend that prescription was suspended by *Fortier v. Meubles Léon Ltée* case (200-09-007482-117) since the cause of action relating to the false representations was not alleged against Leon's in that case, as was confirmed by the Court of Appeal and the Superior Court in the present case².
38. For the above reasons, Leon's submits that the present Class Action should be dismissed because Plaintiff and Class members' rights of action are prescribed.

² See par. 126 of the Court of Appeal's reasons in *Fortier v. Meubles Léon Ltée* (200-09-007482-117) and par. 22 of Justice André Prévost's judgment of April 8, 2015 in the present file.

NO FALSE AND MISLEADING REPRESENTATIONS

39. The fact that Leon's salespeople would have represented in stores to its customers before June 30, 2010 that if they did not purchase an extended warranty and that their item failed after the expiry of the manufacturer's one year warranty, they would have to assume the costs to either repair or replace their item was not false nor misleading for the following reasons.
40. The above representations that would have been made by Leon's to its customers before June 30, 2010 are almost identical to the definition of "contract of additional warranty" added by the legislature to the section "Definitions" of the C.P.A. on June 30, 2010:

"1 e.1) "contract of additional warranty" means a contract under which a **merchant binds himself toward a consumer to assume directly or indirectly all or part of the costs of repairing or replacing goods or a part thereof in the event that they are defective or malfunction,** otherwise than under a basic conventional warranty given gratuitously to every consumer who purchases the goods or has them repaired;" (Our emphasis)

41. Furthermore, this definition previously appeared in the section "Administration of sums collected in respect of additional warranty" of the C.P.A. before June 30, 2010:

"260.6 "contract of additional warranty"

For the purposes of paragraph *d* of section 321 and this title, "contract of additional warranty" means a contract under which a merchant binds himself toward a consumer to **assume directly or indirectly all or part of the costs of repairing or replacing a property or a part thereof in the event that it is defective or malfunctions,** otherwise that under a basic conventional warranty given gratuitously to every consumer who purchases the property or has it repaired". (Our emphasis)

42. If the above representations were false or misleading, the legislature would have removed the definition previously found at section 260.6 from the C.P.A. on June 30, 2010 rather than adding it to the section entitled "Definitions" of the C.P.A. at section 1 e.1. or would have completely removed the possibility for a merchant to sell extended warranties to consumers.

43. Instead, the legislature amended the C.P.A. on June 30, 2010 in order to provide as follows:

"228.1 C.P.A.

Additional warranty

Before proposing to a consumer to purchase a contract that includes an additional warranty on goods, the merchant must inform the consumer orally and in writing, in the manner prescribed by regulation, of the existence and nature of the warranty provided for in sections 37 and 38.

In such a case, the merchant must also inform the consumer orally of the existence and duration of any manufacturer's warranty that comes with the goods. At the request of the consumer, the merchant must also explain to the consumer orally how to examine all of the other elements of the warranty.

Any merchant who proposes to a consumer to purchase a contract that includes an additional warranty on goods without first providing the information mentioned in this section is deemed to have failed to mention an important fact, and therefore to have used a practice prohibited under section 228." (Our emphasis)

"91.9 R.A.C.P.A.

Before proposing the conclusion of a contract for valuable consideration including an additional warranty on goods, the merchant must give the consumer a document in paper form containing only the following compulsory notice:

"NOTICE CONCERNING THE LEGAL WARRANTY

The Consumer Protection Act gives a warranty on all goods you purchase or lease from a merchant.

The goods must be usable

for the purposes for which they are ordinarily used (section 37 of the Act) and

in normal use for a reasonable length of time, which may vary according to the price paid, the terms of the contract and the conditions of use (section 38 of the Act).

For more information on this legal warranty, go to the website of the Office de la protection du consommateur at www.opc.gouv.qc.ca." (Our emphasis)

44. Sections 228.1 C.P.A and 91.9 R.A.C.P.A. are not retroactive³ and do not apply to the present Class Action i.e. the sale of extended warranties by Leon's before June 30, 2010.
45. Moreover, it is not nor has it ever been Leon's role to act as the legal counsel of its customers who were purchasing an extended warranty.
46. The above representations were not part of any of Leon's written advertisement in its stores, on TV, on the radio and in newspaper ads, flyers or on their website.
47. Finally, during her examination out of Court (D-1, p. 61 to 65), Plaintiff admitted that she was not pressured or intimidated by Leon's salespeople when she purchased her six (6) extended warranties which she voluntarily decided to purchase in order to have some peace of mind:

"Q- (...) Quelle crainte vous avez eue?

R- Bien, justement d'être obligée de me battre avec les compagnies; Samsung, entre autres, là.

Q- Est-ce qu'il y a autre chose qui vous a suscité de la crainte?

R- Non.

Q- Est-ce que le vendeur était menaçant?

R- Non.

Q- Est-ce qu'il était impoli?

R- Pas du tout.

Q- Est-ce qu'il vous a dit...il ne vous a pas menacée?

R- Non.

³ See par. 98 of the Court of Appeal's reasons in *Fortier v. Meubles Léon Ltée* (200-09-007482-117).

Q- Donc, qu'est-ce qui vous a convaincu, finalement, de l'acheter, la garantie?

R- Bien, c'est ça, de ne pas avoir à me casser la tête s'il y avait quelque chose.

Q- Donc vous avez acheté une tranquillité d'esprit?

R- C'est ça.

(...)

Q- Donc, vous n'avez pas senti que vous avez été forcée à l'acheter?

R- Forcée...en tout cas, c'est un grand mot, là, mais il était insistant un petit peu.

Q- Mais vous avez choisi volontairement de l'acheter?

R- Ah, bien oui. ».

48. Leon's has made no false or misleading representations to its customers when they purchased an extended warranty.

TRUST ACCOUNT

Mrs. Muriel Dorion's "affidavit"

49. In support of her Motion, Plaintiff filed an "affidavit" signed by Mrs. Muriel Dorion, l'OPC representative (hereinafter "**Mrs. Dorion**"), on February 9, 2015 (P-8), which according to Plaintiff confirms that Leon's failed to transfer any sum of money collected following the sale of extended warranties into a trust account.
50. As appears from the Sworn Declaration signed by Mrs. Dorion on April 21, 2016, what is presented as an "affidavit" by Plaintiff (P-8) is in reality a reply by l'OPC to a request by Plaintiff's legal counsel to obtain information concerning Leon's, as appears from Mrs. Dorion's Sworn Declaration signed on April 21, 2016 and Exhibits MD-1 (see p. 4) to MD-4 in support, **Exhibit D-3**.
51. When l'OPC receives a request to obtain information, it can reply to it by sending a sworn declaration to the person requesting information as did Mrs. Dorion on February 9, 2015 after receiving Plaintiff legal counsel's request (D-3, p. 1 par. 3 and 4, p. 2, par. 6 and 8 and p. 11).
52. In her reply to the request to obtain information, Mrs. Dorion only inserted the information obtained from l'OPC's computerized database concerning Leon's such as:

- a) Leon's did not hold and never held a permit delivered by the president of l'OPC;
 - b) Leon's never requested the exemption mentioned at section 308 C.P.A.;
 - c) Leon's never informed the president of l'OPC of the elements contained at section 257 al. 2 C.P.A.
53. Mrs. Dorion's reply to Plaintiff legal counsel's request to obtain information does not confirm in any way that Leon's should have transferred or failed to transfer any sum of money collected following the sale of extended warranties into a trust account.
54. As appears from Leon's profile on l'OPC's website filed in support of Mrs. Dorion's Sworn Declaration (D-3, p. 45), Leon's « n'a pas reçu d'avis d'infraction de l'Office depuis les 3 dernières années » et « n'a pas plaidé coupable ou n'a pas été déclarée coupable à la suite d'une poursuite pénale de l'Office au cours des 5 dernières années ».

Section 256 C.P.A. does not apply to the sale of extended warranties by Leon's

55. Leon's principal obligations towards its customers are related to the sale of furniture, mattresses, electronics and appliances. As an accessory to those sales, Leon's offers its customers the possibility of purchasing an extended warranty for the items purchased in its stores.
56. Therefore, Leon's is not required to transfer into a trust account the amount paid by its customers for the purchase of an extended warranty.
57. Alternatively, Leon's extended warranty begins after the expiry of the manufacturer's warranty which is usually a year after the purchase, except for certain parts of some appliances (for example: the manufacturer's warranty for a refrigerator compressor expires ten (10) years after the purchase; therefore, Leon's extended warranty for the compressor will begin at the expiry of the ten (10) years).
58. Section 256 C.P.A. provides that the principal obligation of the merchant **IS** to be performed more than two (2) months after the contract is made.
59. In the case of an extended warranty for appliances and electronics, the extended warranty may never be used by a customer. Therefore, the principal obligation **MIGHT** be performed more than two (2) months after the contract is made, but there is no certainty that it will ever be used i.e. that Leon's might never have to perform its contractual obligation.
60. Furthermore, the C.P.A has a section entitled "**Administration of sums collected in respect of additional warranties**" (section 260.5 C.P.A. and ss) which applies

to every merchant required to hold a permit under section 321 d) of the C.P.A. which provides that:

"d) every merchant who offers or makes a contract of **additional warranty relating to an automobile or a motorcycle adapted for transportation on public roads or relating to other property or another class of property defined by regulation**, except a legal person authorized to act in Québec as an insurer and holding a permit issued by the Autorité des marchés financiers." (Our emphasis)

61. Leon's who sells furniture, mattresses, electronics and appliances is not required by the C.P.A. to hold a permit for the sale of an extended warranty to its customers.
62. Moreover, l'OPC explains on its website that it delivers permits and certificates to six business sectors including merchants that sell extended warranties **for cars or motorcycles** (D-3, p. 25). L'OPC does not mention that it must deliver a permit to merchants such as Leon's that sell extended warranties for appliances and electronics.
63. There exists no obligation under the C.P.A. for a merchant such as Leon's to transfer the amount paid by its customers for the purchase of an extended warranty into a trust account or to hold a permit from l'OPC in order to sell an extended warranty to its customers.
64. Also, l'OPC explains the following on its website in the section « Garantie supplémentaire » relating to appliances, electronics, computers and tablets (D-3, p. 14, 16 and 20):

« En cas de fermeture de l'entreprise :

La loi ne prévoit pas de protection pour des sommes payées afin d'obtenir une garantie supplémentaire. Si l'entreprise qui vous a vendu une garantie ferme ses portes, vous ne pourrez peut-être pas récupérer le montant investi. » (Our emphasis)

65. As for the section « Garantie supplémentaire » relating to new cars and second-hand cars, l'OPC explains the following on its website (D-3, p. 18):

« Fermeture ou faillite de l'entreprise responsable de la garantie :

Vous avez acheté une garantie de type « assurance », mais la compagnie ne peut plus l'honorer? **Vous avez des recours.**

Pour exercer leurs activités, les commerçants de garanties supplémentaires doivent fournir un cautionnement à l'Office de la protection du consommateur. Cette somme d'argent peut être utilisée pour vous dédommager si le commerçant ne respecte pas ses obligations.

Vous pouvez joindre l'Office pour savoir comment faire une réclamation. » (Our emphasis)

66. If merchants such as Leon's who sell extended warranties for electronics and appliances were subject to the same obligations as merchants who sell cars and second-hand cars, l'OPC would have provided this information on its website in order to properly inform the consumers.
67. Finally, Leon's obligations under the extended warranty contracts are covered by an insurance policy which protects Leon's customers in the event that Leon's were to cease or ceased its operations before the expiry of the extended warranty purchased by the customers, as appears from the Leon's extended warranty plans (P-1 to P-6).

ALTERNATIVELY, MODIFICATION TO THE CLASS GROUP

68. Should this Honourable Court conclude that the present Class Action should be allowed, Leon's submits the Class group should be modified in order to exclude the following people from the group:
 - i. People who have already made a claim under their extended warranties i.e. that the item purchased has been repaired or replaced under the extended warranty;
 - ii. People who have ratified their extended warranty contract in any way whatsoever (for example: by asking to obtain a repair or replacement service, whether the item was repaired/replaced or not);

FOR THESE REASONS, MAY IT PLEASE THE COURT:

MAINTAIN the present Statement of Defence;

DISMISS the Plaintiffs' Amended Motion to Institute Proceedings in Class Action;

THE WHOLE WITH LEGAL COSTS.

Montreal, May 24, 2017

Jeansonne Avocats, inc

JEANSONNE AVOCATS, INC.

Attorneys for the Defendant Meubles Léon
Ltée

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**DEFENDANT MEUBLES LÉON
L'ÉE'S STATEMENT OF DEFENCE,
EXHIBITS D-1 TO D-3**

ORIGINAL

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