

CANADA

PROVINCE OF QUEBEC
DISTRICT OF QUEBEC

SUPERIOR COURT
(Class Action)

No.: 200-06-000207-160

PATRICIA PAQUETTE

Plaintiff

v.

SAMSUNG ELECTRONICS CANADA INC.

and

SAMSUNG ELECTRONICS AMERICA INC.

Defendants

**APPLICATION BY DEFENDANTS TO STAY THE PROCEEDINGS
(ARTICLE 577 C.C.P.)**

TO THE HONOURABLE JUSTICE DANIEL DUMAIS, JUDGE OF THE SUPERIOR COURT, SITTING IN AND FOR THE DISTRICT OF QUEBEC, THE DEFENDANTS STATE AS FOLLOWS:

1. The Defendants Samsung Electronics Canada Inc. ("**SECA**") and Samsung Electronics America Inc. ("**SEA**") seek a temporary stay of the *Demande pour autorisation d'exercer une action collective* bearing Court docket number 200-06-000207-160 (the "**Quebec Motion**"). SECA and SEA seek the stay on the basis that another class action having the same cause and object is underway in the province of Ontario, a stay would produce judicial economy and the rights and interests of Quebec residents would be protected if the stay were to be granted.

I. THE QUEBEC MOTION

a. The proceedings

2. The Quebec Motion was instituted on or about November 9, 2016, and seeks the authorization of a class action for the class described as follows (the "**Quebec Class**"):

« Toutes les personnes domiciliées ou résidant au Québec qui ont acheté un Samsung Galaxy Note 7 vendu, fabriqué, commercialisé ou distribué par l'une ou l'autre des défenderesses. »,

the whole as appears from the Court record.

3. The Plaintiff alleges that the Defendants would have intentionally hidden from the public the fact that the Samsung Galaxy Note 7 mobile devices (the “**NOTE7**”) would be affected by defects and would constitute a safety risk for consumers, namely that the products could allegedly overheat, catch fire and explode.
4. The Plaintiff alleges that the Defendants would have breached their legal obligations, by, *inter alia*, making false or misleading representations with respect to the quality of their products and the availability and quality of the replacement devices, and by selling products that were allegedly known to be affected by defects.
5. The Plaintiff alleges that she is a Quebec consumer who purchased a NOTE7 and who had to replace her device on two occasions following the Defendant’s recall process.
6. The Plaintiff alleges having suffered an important stress related to the security, exchange and management of her telephone accounts, the whole as a result of her purchase of the NOTE7, and she seeks compensatory and punitive damages as a result.

b. Steps accomplished in the Quebec proceedings

7. As appears from the Court record, on May 19, 2017, the Honorable Justice Dumais temporarily agreed to stay the Quebec Motion until September 8, 2017 for the parties to report on the progress of the parallel proceedings in Ontario and to indicate whether they wanted to stay the Quebec Motion, in light of the Ontario case.
8. On September 29, 2017, counsel for the Plaintiff and for the Defendants jointly advised Mr. Justice Dumais that a certification hearing in the parallel Ontario proceedings had been set for April 2018 and sought a renewal of the stay of the Quebec Motion. A copy of this email is attached hereto as **Exhibit R-1**.
9. On October 10, 2017, Justice Dumais wrote a letter to both counsel asking them to reply jointly to a number of questions with respect to the stay of proceedings and the ongoing Ontario proceedings. A copy of the correspondence from Mr. Justice Dumais to the parties’ counsel is attached hereto as **Exhibit R-2**.
10. On November 6, 2017, McMillan LLP (“**McMillan**”) (counsel for the Defendants) wrote to Me Eric Lemay from Dussault Gervais Thivierge LLP (“**Dussault**”) (counsel for the Plaintiff) attaching draft answers to the questions addressed by Mr. Justice Dumais. McMillan requested Dussault’s approval to submit the answers to the Court on behalf of all counsel in both proceedings. A copy of this email, together with the draft answers prepared by McMillan, is attached hereto as **Exhibit R-3**.

11. On November 9, 2017, Dussault wrote to McMillan to advise that Me Lemay was “out of the office for the day” and that he would comment on McMillan’s email on the following day. A copy of this correspondence is attached hereto as **Exhibit R-4**. However, Me Lemay did not follow up on this undertaking.
12. On November 17, 2017, Me Lemay wrote to Me Vallières of McMillan to say that due to circumstances allegedly out of his control, he would answer McMillan’s email in the following week. A copy of this email is attached hereto as **Exhibit R-5**.
13. On November 17, 2017, Me Lemay also advised the Court that he would be able to respond to Justice Dumais’ letter in the following week. A copy of this email is attached hereto as **Exhibit R-6**.
14. Not having received a response from Me Lemay, Me Vallières followed up with the Plaintiff’s counsel on November 24, 2017 and again on November 30, 2017, as appears from a copy of the emails attached hereto as **Exhibit R-7, en liasse**.
15. No response was received from Dussault whatsoever.
16. As appears from the Court record, a Case Management Conference was held on December 19, 2017 at the request of Mr. Justice Dumais.
17. As appears from the Court record, to this date no further steps have been taken in Quebec with respect to the Quebec Motion. At the same time, an Ontario class action seeking the same remedy on behalf of a national class of NOTE7 purchasers has been proceeding expeditiously toward a certification hearing in April of 2018.

II. THE ONTARIO PROCEEDINGS

a. The proceedings

18. In parallel to the Quebec Motion, an action to certify a class action against the same Defendants and in relation to the same alleged defects and recall of the NOTE7 was commenced in Ontario, bearing Court File No. 2610/16CT (the “**Ontario Proceedings**”).
19. The Ontario Proceedings were commenced five days **before** the filing of the Quebec Motion by the filing of a Statement of Claim on November 4, 2016 against SECA and SEA. The judge appointed to manage the Ontario Proceedings is the Honourable Justice Helen Rady.
20. On November 15, 2016, the Plaintiffs amended their claim in the Ontario Proceedings to, among other things, add allegations about alleged defects in relation with another product marketed in Canada by SECA, namely, the Samsung Galaxy S7 and the Samsung Galaxy S7 Edge.

21. As of the date of this Application, the Ontario Proceedings are seeking to certify a class action on behalf of the following class, as appears from the November 15 Claim (the "**Ontario Class**"):

"All persons, corporations, and other entities resident in Canada who purchased a Samsung Galaxy Note 7, a Samsung Galaxy S7, or a Samsung Galaxy S7 Edge sold, manufactured, or distributed by one or more of the Defendants."

22. A thorough description of all of the relevant steps and actions that have taken place in the Ontario Proceedings is found in the Affidavit prepared in support of this Application by Calie Adamson, a copy of which is attached hereto as **Exhibit R-8**.
23. As detailed in Calie Adamson's affidavit (Exhibit R-8), the Ontario Proceedings have been continuously progressing. Evidence from fact witnesses and expert witnesses has been exchanged and cross examinations have been conducted. A certification hearing is scheduled for April of 2018 and is expected to proceed on the scheduled date. In addition to the above, the Ontario Class Plaintiffs amended their Statement of Claim on March 30, 2017 in order to replace the original Plaintiffs, and made another request on November 29, 2017 to have the new Plaintiff replaced. SEA has also been removed as a Defendant on March 30, 2017.
24. As previously indicated to this Court, a three-day certification hearing in the Ontario Proceedings has also been scheduled for hearing before Mrs. Justice Rady for April 17-19, 2018.

III. SAME PARTIES, CAUSE AND OBJECT

a. Same parties

25. As appears from above, at the date of this application, the Ontario Proceedings seek to certify a class action for the benefit of all residents of Canada who purchased a NOTE7, a Samsung Galaxy S7 or a Samsung Galaxy S7 Edge. The putative Ontario Class is thus currently a national class which includes Quebec residents.
26. The Quebec Motion seeks the authorization of a class action for the benefit of Quebec residents who purchased a NOTE7.
27. Thus, the Quebec Class is a subset of the putative national class currently sought in the Ontario proceedings. As a result, for all intents and purposes, in the context of class proceedings, the parties in demand in the Quebec Motion are also parties in Demand in the Ontario Proceedings.
28. SECA is a Defendant to the Quebec Motion, as well as in the Ontario Proceedings.

29. As for SEA, as appears from Mrs. Adamson's affidavit (Exhibit R-8), that entity was initially named a Defendant in the Ontario Proceedings, but the Ontario Plaintiff decided to discontinue the action against it because, among other things, SEA did not market the relevant products in Canada.
30. If the Quebec Motion were to proceed, SEA would ask to be withdrawn from the Quebec Motion for the same reason.

b. Same cause

31. The facts alleged in the Quebec Motion and in the Ontario Proceedings in relation to the NOTE7 stem from the same chain of events and are substantially similar.
32. In both proceedings, the Class claimants seek to take action on behalf of purchasers of the NOTE7.
33. More specifically, both proceedings allege the same defects in the NOTE7 device (i.e. overheating, catching fire and risk of exploding) and allege that these defects were known by the Defendants, who sold the NOTE7 without informing consumers about said alleged defects.
34. Both proceedings allege that the Defendants would have made false and misleading representations to consumers with respect to the security of the devices and the availability and quality of the replacement devices, in violation of consumer protection legislation, the whole as appears from the Quebec Motion and the Ontario Proceedings. The Statement of Claim in the Ontario Proceedings even specifically pleads and relies upon consumer protection statutes in all provinces, including the Quebec *Consumer Protection Act*.
35. The causes of action in both jurisdictions are therefore the same.

c. Same object

36. As regards the NOTE7, the object of both proposed class actions is also essentially the same: the proceedings in both jurisdictions seek the authorization or certification of a class action relating to the compensation of those who have allegedly suffered harm as a result of the purchase of the NOTE7.

IV. RECOGNITION OF AN ONTARIO JUDGMENT

37. The Ontario Superior Court of Justice clearly has jurisdiction over the Ontario Proceedings.
38. The decision that will be rendered by the Ontario Superior Court of Justice on the issues related to certification of the class action will obviously not be rendered in contravention of fundamental principles of procedure, or be inconsistent with public order as understood in international relations.

39. As a result, a final decision in the Ontario Proceedings should be capable of full recognition and enforcement in the Province of Quebec.

V. THE PROTECTION OF THE RIGHTS AND INTERESTS OF QUEBEC RESIDENTS

40. When deciding on an Application to stay a class action, the Court is required, pursuant to Article 577 C.C.P., to take into account the protection of the rights and interests of Quebec residents.

41. In this case, there is no issue whatsoever that the rights and interests of the Quebec class members will be fully protected if this Application to stay the Quebec Motion is granted, the whole, as further detailed below.

42. As noted above, the causes of action advanced in the Ontario Proceedings and in the Quebec Motion are virtually identical.

43. Moreover, as at the date of this Application, Quebec Consumer protection legislation is being taken into account in the Ontario Proceedings and competent Quebec counsel are closely involved in the development of the arguments before the Ontario Superior Court, as it relates to Quebec residents or the application of Quebec Law.

44. An order staying the Quebec Motion pending the determination of the Ontario certification motion would serve judicial economy. In the event that the Ontario certification motion results in the certification of a national class, then the Quebec Motion will likely be redundant and could probably be dismissed.

45. On the other hand, if certification is not successful in Ontario, then many issues will have been extensively debated between the parties, and the debate between the parties in Quebec may be shortened considerably as a result.

46. Given that the facts underlying the Ontario Proceedings and the Quebec Motion are complex, judicial economy is a significant factor for this Court's consideration on a motion to stay the proceeding.

47. Having the same debate in parallel in two separate jurisdictions before two different courts would mean that many of the procedural steps that the parties have to go through as part of the judicial process would have to be conducted twice. Likewise, many of the arguments that are common between both cases would have to be made twice and debated twice.

48. For instance, if the Quebec Motion were to proceed, the Defendants would seek to have SEA removed from the court record. Given the nature of the allegations and the existence of a recall program, they would also want to cross-examine the Class Claimant and adduce their own evidence, including on the nature and extent of the recalls already conducted regarding the NOTE7.

49. An overview of the issues that would most certainly arise in parallel before both Courts can be found in Mrs. Adamson's affidavit (Exhibit R-8).
50. The facts underlying this class action are complex and thus multiplying the proceedings in both jurisdictions would clearly not be proportional. This is particularly true considering (i) the upcoming certification hearing in Ontario in April 2018, and (ii) no steps other than the filing of the Application to authorize the class action have been accomplished in the Quebec proceedings.
51. Quebec residents will clearly not suffer any prejudice and their rights and interests will be adequately protected if this Honorable Court grants this Application, since the Quebec Motion would not be dismissed but only stayed temporarily pending a determination of the certification motion in the Ontario Proceedings.
52. This protection applies regardless of the outcome in the Ontario certification proceedings. Should the Ontario Proceedings be certified for a national class as sought by the Plaintiffs in that proceeding, it would likely be necessary for the Ontario Superior Court of Justice to also certify a subclass of Quebec residents so that any issues related to Quebec law could be determined for that subclass alone. On the other hand, should the Ontario court decline to certify a class including Quebec residents, that would not necessarily prohibit a motion before this court for authorization of this Quebec proceeding.
53. As mentioned in Calie Adamson's affidavit (Exhibit R-8), on January 18, 2018, shortly before the deadline previously set for Defendants' stay application in this proceeding, counsel for the national class in the Ontario case advised McMillan that they now intend to carve Quebec residents out of their putative national class in the Ontario case. Ontario class counsel have taken no steps to remove Quebec residents from the Ontario proceeding, however, and they have not amended their pleadings to reflect their stated intention. This statement of their intent to carve out Quebec residents comes more than 14 months after their commencement of the Ontario case on behalf of a national class including Quebec residents, and after almost 9 months of intense work on the Ontario plaintiffs' motion for certification of a national class including Quebec residents. It also comes after the Ontario class counsel has twice amended the Ontario pleading, with each amendment seeking a national class including residents of Quebec.
54. Notwithstanding this very recent statement of intent from Ontario class counsel, the Defendants maintain all their arguments above and their position that Quebec residents would gain significantly from a stay of the proceedings. The certification hearing in the Ontario Proceedings will be heard in a matter of weeks, and Quebec residents will strongly benefit from the debate which will take place during that hearing and the decision that will be rendered thereafter.

55. Indeed, and as mentioned above, the Ontario Proceedings and the Quebec Motion substantially allege the same facts: both proceedings allege the same defects in the NOTE7 device (i.e. overheating, catching fire and risk of exploding) and allege that these defects were known by the Defendants, who sold the NOTE7 without informing consumers about said alleged defects.
56. As a result, whether or not Quebec residents are part of the Ontario Class, they will benefit from the Ontario certification decision, since many issues will have been extensively debated between the parties, and accordingly the debate between the parties in Quebec, once the stay is lifted, could be shortened considerably and framed to the essential questions of the case.
57. The decision of the Ontario court on the certification motion will undoubtedly be of some assistance to this Court in respect of any Quebec authorization motion and related issues.
58. Granting this Application to stay the Quebec Motion would be consistent with the principle of proportionality and could also avoid a risk of contradictory judgments.

FOR THESE REASONS, MAY IT PLEASE THIS HONOURABLE COURT TO:


GRANT the present Application;

ORDER the stay of proceedings in the present case until the determination of the Ontario certification motion, or until such other time as this Court may direct, subject to any further order of this Honourable Court;

RESERVE the right of the parties to seek further temporary stay or a permanent stay in the present file;

THE WHOLE without legal cost, except in the event of contestation.

MONTREAL, January 19, 2018



MCMILLAN LLP
Attorneys for Defendants

AFFIDAVIT

I, the undersigned, Éric Vallières, attorney, carrying on business with the firm of McMillan LLP, at 1000 Sherbrooke Street West, suite 2700, in the City and District of Montreal, province of Quebec, H3A 3G4, do solemnly declare as follows:

1. I am one of the attorneys for the Defendants Samsung Electronics Canada Inc. and Samsung Electronics America Inc. herein;
2. All the facts alleged in this Application pertaining to the Quebec proceedings are true and correct to the best of my knowledge.

AND I HAVE SIGNED



ÉRIC VALLIÈRES

SOLEMNLY DECLARED before me,

At Montreal, this 19 day of January 2018



Commissioner of Oaths for the province
of Quebec



NOTICE OF PRESENTATION

To: Me Éric Lemay / Me Jean-François Lachance
DUSSAULT LEMAY BEAUCHESNE AVOCATS
2795, boul. Laurier, bureau 450
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Attorneys for the Plaintiff

TAKE NOTICE that the Application by Defendants to stay the proceedings will be presented for adjudication before the Honourable Justice Daniel Dumais on **February 2, 2018**, at the Quebec Court House, located at 300 Blvd. Jean-Lesage in Quebec, Quebec, G1K 8K6, or so soon thereafter as counsel may be heard.

DO GOVERN YOURSELVES ACCORDINGLY.

MONTREAL, January 19, 2018

McMillan LLP

McMILLAN LLP

Attorneys for Defendants

CANADA

PROVINCE OF QUEBEC
DISTRICT OF QUEBEC

SUPERIOR COURT
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PATRICIA PAQUETTE

Plaintiff

v.

SAMSUNG ELECTRONICS CANADA INC.

and

SAMSUNG ELECTRONICS AMERICA INC.

Defendants

LIST OF EXHIBITS

- Exhibit R-1: Copy of an email from counsel for the Plaintiff and for the Defendants jointly to Mr. Justice Dumais dated September 29, 2017
- Exhibit R-2: Copy of a letter from Mr. Justice Dumais to counsel for the Plaintiff and for the Defendants dated October 10, 2017
- Exhibit R-3: Copy of an email from S. Maidment, McMillan LLP to E. Lemay, Dussault Gervais Thivierge LLP and M. Baer dated November 6, 2017
- Exhibit R-4: Copy of an email from J-F. Lachance, Dussault Gervais Thivierge LLP to E. Vallières, McMillan LLP dated November 9, 2017
- Exhibit R-5: Copy of an email from E. Labrecque, Dussault Gervais Thivierge LLP to E. Vallières, McMillan LLP dated November 17, 2017
- Exhibit R-6: Copy of an email from E. Labrecque, Dussault Gervais Thivierge LLP to Mr. Justice Dumais dated November 17, 2017
- Exhibit R-7: Copy of emails from E. Vallières, McMillan LLP to E. Lemay, Dussault Gervais Thivierge LLP dated November 24, 2017 and November 30, 2017
(*en liasse*)

Exhibit R-8: Copy of affidavit of C. Adamson and exhibits dated January 18, 2018

MONTREAL, January 19, 2018

McMillan LLP

MCMILLAN LLP
Attorneys for Defendants

N° / No.: 200-06-000207-160

SUPERIOR COURT
(Class Action Division)
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**APPLICATION BY DEFENDANTS TO
STAY THE PROCEEDINGS (ART. 577
C.C.P.), AFFIDAVIT, NOTICE OF
PRESENTATION, LIST OF EXHIBITS,
EXHIBIT R-1 TO EXHIBIT R-8**

Éric Vallières

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Procureur pour / Attorney for

SAMSUNG ELECTRONICS CANADA INC. AND

SAMSUNG ELECTRONICS AMERICA INC.

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