

SUPERIOR COURT
(Class Actions)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No: 500-06-000816-161

DATE: May 1, 2019

BEFORE THE HONOURABLE GREGORY MOORE, J.S.C.

OPTION CONSOMMATEURS
Plaintiff

and

CHANTAL GAGNON
Designated member

v.

SAMSUNG ELECTRONICS CANADA INC.
and
SAMSUNG ELECTRONICS CO., LTD.
Defendants

CONFIDENTIALITY ORDER

[1] **WHEREAS** the Court is issuing a Communication Order concerning defendants' documents that are identified at Schedule A to the case protocol;

[2] **WHEREAS** certain documents that the defendants intend to communicate may constitute or contain confidential information, the public disclosure of which would cause harm to them;

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[3] **WHEREAS** the parties made a joint application to protect the defendants' confidential information;

[4] **CONSIDERING** the representations of counsel;

THE COURT:

[5] **DECLARES** that for the purposes of this order:

- a. **"Confidential Information"** means all Disclosed Material that contains non-public, confidential, proprietary or commercial information that is not readily ascertainable through lawful means by the public, the Plaintiff, or Counsel of Record for the Plaintiff, or that is subject to privacy protection under federal, provincial or any applicable foreign law, and is designated as "Confidential" in accordance with this Order. Confidential Information includes:
- i. a 3D CAD drawing for each recalled Washer model;
 - ii. repair manuals that were provided to technicians to repair the Washers for each recalled Washer model, which includes diagrams of the repairs and components used in the repair;
 - iii. advertising and promotional materials that the Defendants have in their records and that they published or distributed to consumers in Quebec related to the Washers;
 - iv. marketing and promotional material that the Defendants have in their records and that they distributed to their retailers for intended publication or distribution by the retailers in Quebec;
 - v. communications related to the recall that were published or distributed by Samsung Electronics Canada Inc. ("SECA") in Quebec and intended for general distribution to class members, including:
 - a. letters for general distribution that were prepared and sent by SECA to customers who directly registered with SECA;
 - b. letters for general distribution that were prepared and sent by SECA to customers for whom contact information was provided to SECA by retailers;
 - c. letters for general distribution that were prepared by SECA and sent to customers on SECA's behalf by third party mailing agents, in instances where the retailers would not provide SECA with customer contact information;

- d. letters for general distribution for Sears customers. SECA sent these communications out to Sears' customers on Sears' behalf (at SECA's expense);
 - e. a communication about the recall that was ultimately distributed by Costco to Costco members (at SECA's expense); and
 - f. press releases, public-facing statements, and website content accessible to consumers;
- vi. communication documents related to the recall that were published or distributed by the Defendants and intended for general distribution to retailers doing business in Quebec;
 - vii. a recall rebate chart identifying the entitlement of individual consumers based upon the model and date of purchase;
 - viii. a record identifying where SECA delivered the top load Washers that it sold in Canada;
 - ix. any other documents and or information that the Defendants may be called upon to produce, transfer and/or provide to Counsel of Record for the Plaintiff or any other Party in the course of the Litigation that the Defendants or Counsel of Record for the Defendants designate as "Confidential"; and
 - x. any other document, including a document created by or for a Party, Expert or Counsel of Record, which may contain or make reference to any information contained in the documents list in paragraphs i through x.
- b. "**Counsel of Record**" means (i) any lawyer who has appeared on behalf of a Party in the Litigation as well as any other lawyer, articling student, or employee of their respective firms and (ii) the in-house counsel employed by a Party assigned to this Litigation;
 - c. "**Court Record**" means the court records of the Superior Court of Quebec bearing court number 500-06-000816-161;
 - d. "**Defendants**" means Samsung Electronics Canada Inc. and Samsung Electronics Co., Ltd.;
 - e. "**Disclosed Material**" means all documents or information (regardless of the medium or manner in which it is or was generated, stored or maintained (including without limitation, testimony, transcripts, or tangible things)) disclosed by a Party (whether prior to or subsequent to the date of this Order);

- f. “**Expert**” means a person with specialized knowledge or experience in a matter pertinent to the Litigation, as well as all persons employed by the expert, their associates, collaborators, assistants or research assistants, who has been consulted for the purposes of the Litigation;
- g. “**Litigation**” means the court proceedings bearing the court docket 500-06-000816-161;
- h. “**Party**” means any party to the Litigation, including the Defendants, Plaintiff, any new party, members of the class, defendant, defendant in warranty, intervener or *mise en cause* which may become a party to the Litigation after the date of this order;
- i. “**Plaintiff**” means Option Consommateurs and any class member including Mrs. Gagnon.

[6] **ORDERS** that a Party shall identify Confidential Information by clearly marking it with the following notice: “CONFIDENTIEL SUJET A UNE ORDONNANCE DE CONFIDENTIALITÉ / CONFIDENTIAL SUBJECT TO A CONFIDENTIALITY ORDER”;

[7] **DECLARES** that this Order is made without prejudice to Defendants’ right to assert that any Disclosed Material is subject to privilege or protection, including solicitor-client privilege, litigation privilege, settlement privilege, or foreign law, and without prejudice to any other Party’s right to contest such a claim;

[8] **ORDERS** that access to the Confidential Information either in whole or in part will be strictly limited to the Counsel of Record for the Plaintiff;

[9] **ORDERS** that Counsel of Record for the Plaintiff may provide the Confidential Information to Expert(s) retained on behalf of the Plaintiff for the purposes of the Litigation provided that prior to such disclosure:

- a. Counsel of Record for the Plaintiff provides the Expert(s) with a copy of the present Order;
- b. The Expert(s) agree in writing by way of Confidentiality Agreement and Undertaking in the form attached as Schedule “A”, that he or she is bound by the terms and conditions of this Order, submits himself or herself to the jurisdiction of this Court for enforcement thereof, and has received, read and understood this Order.

[10] **ORDERS** that Counsel of Record for the Plaintiff may provide the Confidential Information to in-house counsel and/or board members of Option Consommateurs, provided that prior to such disclosure:

- a. Counsel of Record for the Plaintiff provides in-house counsel and/or board members of Option Consommateurs with a copy of the present Order;
- b. In-house counsel and/or board members of Option Consommateurs agrees in writing by way of Confidentiality Agreement and Undertaking in the form attached as Schedule "A", that he or she is bound by the terms and conditions of this Order, submits himself or herself to the jurisdiction of this Court for enforcement thereof, and has received, read and understood this Order.

[11] **ORDERS** that Counsel of Record for the Plaintiff shall keep a list of all individuals who receive the Confidential Information. The list shall include the name, title and affiliation of each such individual. Except in the event of a good faith claim of violation of this Order, the list itself is confidential and need not be disclosed;

[12] **ORDERS** that all persons having access to the Confidential Information use every means reasonably necessary to preserve the confidentiality of the Confidential Information;

[13] **ORDERS** that, without limiting the forgoing, any Counsel of Record for the Plaintiff, Expert, or in-house counsel and/or board member of Option Consommateurs who receives Confidential Information shall store or file the Confidential Information separate from all other documents generated or produced in the Litigation, and take all necessary steps to prevent the comingling of Confidential Information with all other documents;

[14] **ORDERS** that the Confidential Information, either in whole or in part, will only be used for the purposes of the Litigation and will not otherwise be disclosed, released, revealed, reproduced, communicated or divulged to any other person other than the Experts, Counsel of Record for the Plaintiff, in-house counsel and/or board members of Option Consommateurs, as provided by this Order, or used for any other purpose;

[15] **ORDERS** that if Confidential Information is disclosed to any person other than in the manner authorized by this Order, the person responsible for the disclosure shall immediately upon learning of such disclosure:

- a. inform the Defendants in writing of all pertinent facts relating to such disclosure;
- b. make every effort to retrieve all copies of the Confidential Information and to prevent the occurrence of any further disclosure unauthorized by this Order;
- c. inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order; and
- d. request such person(s) to execute the Confidentiality Agreement and Undertaking found at Schedule "A" hereto.

[16] **ORDERS** that inadvertent production or communication of Disclosed Material that is privileged or confidential, or a failure to designate any information as privileged or Confidential Information, shall not constitute a waiver of privilege or a waiver of the Defendant's claim of confidentiality;

[17] **ORDERS** that any portion of a pre-trial examination that involves Confidential Information shall be conducted only in the presence of the witness, Counsel of Record for the Plaintiff, Counsel of Record for the Defendants, the Defendants and the stenographer;

[18] **ORDERS** that if Confidential Information is referred to during a pre-trial examination, any transcripts must bear the following notice:

THE CONTENT OF THIS TRANSCRIPT IS CONFIDENTIAL AND SUBJECT TO A CONFIDENTIALITY ORDER RENDERED BY THE SUPERIOR COURT. UNAUTHORIZED ACCESS TO, USE OF, OR DISCLOSURE OF ANY PART OF THE TRANSCRIPT IS STRICTLY PROHIBITED.

[19] **ORDERS** that if Plaintiff intends to file any documents referring to or containing Confidential Information, or parts thereof, into the Court Record, including expert reports, exhibits, plans of argument and transcripts of pre-trial examinations, or intends otherwise to make reference to the Confidential Information in the course of the Litigation, such documents shall be filed under seal and endorsed with a statement substantially in the following form:

« Information confidentielle sujette à une ordonnance de confidentialité rendue par l'honorable juge Gregory Moore en date du 1^{er} mai 2019.

Cette enveloppe/boîte/contenant ne doit pas être ouverte ou son contenu accessible à quiconque sans l'autorisation expresse du tribunal.»

...

“Confidential Information subject to a confidentiality order issued by Justice Gregory Moore on May 1, 2019.

This envelope/box/container is not to be opened nor may its contents be displayed or revealed except by express order of the Court.”

[20] **ORDERS** that in the event that (i) Counsel of Record for the Plaintiff, (ii) Expert(s), (iii) in-house counsel for Option Consommateurs, or (iv) any other person who has signed the Confidentiality Agreement and Undertaking at Schedule A, receives a subpoena or other compulsory process commanding the production of Confidential Information, that person shall promptly (within 7 days following receipt of the subpoena or compulsory process and at least 14 days before it discloses any Confidential Information) provide Counsel of Record for the Defendants with notice, including in such notice the date set

for production of the Confidential Information, so that the Defendants may apply for a protective order, to quash the subpoena, or other appropriate remedy. In the event that an application is filed by the Defendants, the subpoenaed party shall not produce any Confidential Information in response to the subpoena or compulsory process without the prior written consent of the Defendants unless in response to an order of a court of competent jurisdiction, or unless a failure to produce such Confidential Information would constitute a violation of any law, rule or regulation;

[21] **ORDERS** that the party to whom the subpoena is directed must immediately inform in writing the party who caused the subpoena to issue that some or all of the material covered by the subpoena is subject to this Order and deliver a copy of this Order promptly to the party;

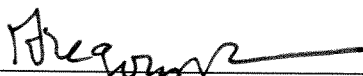
[22] **ORDERS** that Counsel of Record for the Plaintiff, Expert(s), in-house counsel for Option Consommateurs, and any other person who has signed the Confidentiality Agreement and Undertaking at Schedule A, destroy or return to the Defendants all the Confidential Information, and any reproductions, excerpts, notes, summaries, compilations or other documents containing or whose source is Confidential Information within 90 days after the final disposition of this Litigation, including, without restricting the generality of the foregoing, all appeals and all stages related to an out of Court Settlement, including the liquidation, the distribution and/or the remittance of any amount recovered collectively, and that each person having access to the Confidential Information executes an affidavit attesting that they have taken all necessary and reasonable measures to ensure that every physical or electronic copy of the Confidential Information in their possession has either been destroyed or returned to Defendants;

[23] **DECLARES** that the end of the Litigation will not extinguish the obligations of the Expert, Counsel of Record for the Plaintiff, in-house counsel for Option Consommateurs, or any other person who has signed the Confidentiality Agreement and Undertaking at Schedule A to preserve the confidentiality of the Confidential Information;

[24] **DECLARES** that any Party to the Litigation may apply to the court to revise the terms of this order or to challenge the Defendants' designation as "Confidential" of any Disclosed Material, by serving an application to that effect pursuant to the rules of the Code of Civil Procedure. The Defendants do not waive their right to contest any such application to revise the terms of the Order or challenge to the Defendants' designation of Disclosed Material as "Confidential";

[25] **DECLARES** that this order shall remain in force until it is revised or rescinded by a judge of the Superior Court of Quebec;

[26] **WITHOUT LEGAL COSTS.**



GREGORY MOORE, J.S.C.

Me Jean-Philippe Lincourt
Me Daniel Belleau
Me Mélissa Bazin
BELLEAU LAPOINTE
Attorneys for the Plaintiff and the Designated member

Me Éric Vallières
Me Sydney Elbaz
Me Gabrielle Lachance-Touchette
Me Joséane Chrétien
MCMILLAN
Attorneys for the Defendants

Hearing dates: April 2 and 26, 2019

SCHEDULE "A"**CONFIDENTIALITY AGREEMENT AND UNDERTAKING**

IN ACCORDANCE with the Order of the Superior Court (the "**Court**"), a copy of which is attached hereto as Schedule "A" (the "**Order**") and in consideration of being provided with an opportunity to examine and have access to documentation or information in connection with this proceeding over which claims for confidentiality have been advanced (the "**Confidential Information**") (which term shall include the information, the documents and contents thereof and any information and analysis thereof), the undersigned hereby undertakes and agrees to maintain the confidentiality of the Confidential Information so obtained.

For greater certainty, I undertake and agree that the Confidential Information may only be disclosed to or discussed with persons who are authorized recipients of the Confidential Information pursuant to the Order or subsequent order of the Court, and not to any others, except as expressly provided for in the Order.

I will not, directly or indirectly, during the course of this action or at any time after its resolution, without the consent in writing of each Party that provided the Confidential Information or further order of the Court, make copies of or disclose the Confidential Information or the contents thereof to any person, firm or corporation.

I will maintain all Confidential Information in strict confidence as provided for in the Order and will not:

- (a) reproduce, release, disclose or use Confidential Information in any manner for any purpose other than in accordance with the Order for the purpose of this action; or
- (b) reveal or permit access to the Confidential Information to any person other than in accordance with the terms and conditions in the Order.

I acknowledge that I have received, read and understood the Order. I undertake and agree to be bound by the terms and conditions of the Order as ordered by the Court. I acknowledge and agree that I also remain bound by any prior undertakings I have given in this proceeding. I further undertake and agree to submit myself to the jurisdiction of the Court for enforcement of the terms and conditions of the Order. I acknowledge that any breach of this agreement by me or of any prior undertaking given in this action by me will be considered to be a breach of the Order. I further acknowledge and agree that any party to this action may be entitled to injunctive relief to prevent breaches of this agreement and to specifically enforce the terms and provisions hereof, in addition to any other remedy to which they may be entitled in law or equity.

In the event that I receive a subpoena or receive notice that I am or may be required by law to disclose any of the Confidential Information notwithstanding any obligations as set out above, I will promptly (within 7 days following receipt of the subpoena or compulsory process and at least 14 days before it discloses any Confidential Information) provide the counsel of record for each of the Parties in the Litigation, or if a party does not have counsel of record at the time, the party, with notice, including in such notice the date set for the production of the Confidential Information, so that any one or more of the parties may seek a protective order or to quash the subpoena or other appropriate remedy. In the event a such a motion is filed, I shall not produce any Confidential Information in response to the subpoena or compulsory process without the prior written consent of Party who produced the Confidential Information, unless in response to an Order of a court of competent jurisdiction, or unless a failure to produce such Confidential Information would, constitute a violation of any law, rule or regulation.

I will promptly, upon the request of a Party that provided the Confidential Information, advise where such Confidential Information is kept. I further agree that upon the final termination of this action (including the expiry of all rights of appeal), settlement, or as otherwise required by order of the Court, within 30 days I will take reasonable steps to:

- (a) gather and destroy all Confidential Information (that is still subject to that designation) (other than Confidential Information designated by the undersigned);
- (b) destroy all originals and reproductions of other documents, excerpts, notes, summaries or compilations and things containing information whose source is Confidential Information (that is still subject to that designation) (other than Confidential Information designated by the undersigned); and
- (c) destroy or permanently erase all Confidential Information (that is still subject to that designation) in electronic or similar form (other than Confidential Information designated by the undersigned).

SIGNED before a witness this day of, 201__

Signature
Print Name: