

C A N A D A

PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL

S U P E R I O R C O U R T
(Class Action)

N° 500-06-000996-195

RÉAL CHARBONNEAU

Applicant

v.

LOCATION CLAIREVIEW S.E.N.C.

Respondent

**LOCATION CLAIREVIEW'S MOTION TO ADDUCE RELEVANT EVIDENCE AT THE
AUTHORIZATION HEARING
(Art. 574 of the *Code of Civil Procedure*)**

TO THE HONOURABLE JUSTICE MORRISSON, IN AND FOR THE DISTRICT OF
MONTREAL, DESIGNATED TO HEAR THE APPLICATION FOR AUTHORIZATION IN
THE PRESENT FILE, RESPONDENT LOCATION CLAIREVIEW S.E.N.C.
RESPECTFULLY SUBMITS THE FOLLOWING:

I. OBJECT OF THIS APPLICATION

1. Location Claireview S.E.N.C. ("**Location Claireview**") seeks leave to file the following evidence at the hearing of the Applicant's *Demande modifiée d'autorisation d'exercer une action collective et pour être représentant* ("**Amended Application for Authorization**"):
 - a) A copy of the "etiquette" that is required by articles 155 and 156 of the *Consumer Protection Act* ("**CPA**") (**Exhibit AP-1**);
 - b) A copy of Location Claireview's sale agreements from 2016, 2017, 2018 and the current standard contract for 2019, *en liasse* (**Exhibit AP-2**);
 - c) A copy of text exchanges between the Applicant and Mr. Alevexo Poulakos (**Exhibit AP-3**);
 - d) A copy of a vehicle history report for the car through Carproof dated July 4, 2018 (**Exhibit AP-4**);

- e) A copy of the Pre-sales inspection report performed by Location Claireview's garage dated July 5, 2018 (**Exhibit AP-5**);
- f) A copy of the work order from Location Claireview's garage dated July 10, 2018 (**Exhibit AP-6**);
- g) A copy of the text exchanges between Mr. Poulakos and his office dated July 31, 2018 (**Exhibit AP-7**);
- h) A copy of the amended small claims court action dated April 2, 2019 (**Exhibit AP-8**);
- i) A copy of the letter of demand dated September 13, 2018, addressed to Location Claireview (**Exhibit AP-9**);
- j) An affidavit from Alevexo Poulakos ("**Mr. Poulakos**"), a salesman in the employ of Location Claireview since 2007 and through whom Location Claireview dealt with the Applicant (the "**Affidavit**"), a copy of which is communicated herewith as **Exhibit R-1**;

2. The evidence that Location Claireview seeks to adduce will enable the Court to undertake an appropriate analysis of the authorization criteria set out in Article 575 of the *Code of Civil Procedure* ("**CCP**");

II. PROCEDURAL CONTEXT

3. On June 18, 2019, the Applicant filed his Amended Application for Authorization, whereby he seeks permission to institute a class action on behalf of the following group:

Toute personne qui a conclu un contrat de location et/ou de vente d'automobile auprès de la défenderesse.

the whole as appears from the Amended Application for Authorization;

- 4. Respondent intends to contest the Amended Application for Authorization;
- 5. The Applicant alleges that Location Claireview is acting in violation of Section 150.7 of the CPA because it demanded the payment of a deposit that was higher than two months of lease payments (Amended Application for Authorization, para. 2.24);
- 6. The Applicant adds, amongst other things, that Location Claireview is acting in violation of Section 155 of the CPA by not placing an etiquette on every car that is accessible to the public (Amended Application for Authorization, para. 2.31);
- 7. Pursuant to Section 575 CCP, at the authorization stage, this Honourable Court will have to determine if the four conditions to exercise a class action are satisfied;

8. When it facilitates such analysis, the Court may allow evidence to be submitted by the Respondent, based on Section 574 CCP, if it is relevant and appropriate for the purposes of assessing whether the facts alleged appear to justify the conclusions sought;
9. Location Claireview submits that the documents communicated as Exhibits AP-1 to AP-9, as well as the Affidavit, are relevant and appropriate to respond to the Applicant's allegations, to provide an accurate picture of the relationship between the parties and to demonstrate that the criteria of Section 575 CCP are not met in this case;
10. The twin objectives of this affidavit are therefore to describe the general procedure at Location Claireview and to demonstrate that its dealings with the Applicant constituted a *sui generis* situation;

III. LOCATION CLAIREVIEW'S USUAL BUSINESS PRACTICES

11. Paragraphs 2 and 3 of the Affidavit provide useful background information regarding the Respondent;

IV. GENERAL PROCEDURE AT LOCATION CLAIREVIEW

12. Location Claireview submits that paragraphs 4 to 9 of the Affidavit, along with supporting Exhibits AP-1 and AP-2, constitute relevant and appropriate evidence for the purposes of the hearing on the Amended Application for Authorization;
13. Paragraphs 4 through 6 provide basic and essential information concerning Location Claireview's usual business practices and the standard procedure in place when Location Claireview acquires a vehicle, both of which are not accurately described in the Amended Application for Authorization;
12. Paragraph 7, along with supporting Exhibit AP-1, explains how and when an etiquette is generated for cars acquired by Location Claireview;
13. Moreover, Paragraph 8 states that an etiquette is placed on all cars before they become accessible to the public, contradicting the Applicant's broad and entirely unsubstantiated allegation that no cars at Location Claireview contained the etiquette required by the CPA (Amended Application for Authorization, para. 2.6);
14. Finally, Paragraph 9, along with supporting Exhibit AP-2, demonstrates that all of Location Claireview's sale agreements from the relevant period contain the number of its road vehicle dealer's permit in accordance with Section of the 158 CPA (Amended Application for Authorization, para. 2.29);

V. INITIAL CONTACTS WITH THE APPLICANT

15. Location Claireview submits that paragraphs 10 to 22 of the Affidavit, along with supporting Exhibit AP-3, constitute relevant and appropriate evidence for the purposes of the hearing on the Amended Application for Authorization;
16. Paragraphs 10 and 11 provide relevant background information, absent from the Amended Application for Authorization, on how the Applicant and Mr. Poulakos were put in touch;
17. Paragraph 12 also correct the Applicant's unsubstantiated allegation to the effect that Location Claireview already had the car that the Applicant leased in its inventory (Amended Application for authorization, para. 2.4);
18. Paragraph 13 explains how novel it was for Location Claireview to acquire a used car for a client through a car auction and thus clearly establishes that the Applicant's case is unique;
19. Paragraphs 14 and 15 further explain how the Applicant was provided with all of the necessary information regarding both the lease and the deposit prior to Location Claireview acquiring the car sought by the Applicant;
20. Furthermore, Paragraph 14 provides context as to when the Applicant accepted to sign a lease in light of his allegations that he was coerced into doing so (Amended Application for Authorization, para. 2.8);
21. Paragraphs 16 to 18, along with supporting Exhibit AP-3, explain how Mr. Poulakos located the 2011 Volkswagen Tiguan ("**Tiguan**") he had been commissioned to find by Applicant as well as how the Applicant was kept apprised of the process and gave his approval to it;
22. Paragraphs 19 through 21 demonstrate that the deposit was discussed up front with the Applicant, the reason for it, and that the Applicant agreed to the terms of same as well as to the general terms of the lease, including the deposit;
23. Paragraph 19 explains that it was because Location Claireview needed to purchase the car from a vehicle auction house that it required an initial \$2,000 deposit (Amended Application for Authorization, para. 2.4 and 2.5);
24. Paragraph 21 clarifies that the amount of the total deposit paid by Applicant was determined by the Applicant (Amended Application for Authorization, para. 2.9);
25. Paragraph 22 further explains what inspection was provided by the vehicle auction house, who paid for it and what information was provided to the Applicant about same (Amended Application for Authorization, para. 2.7);

VI. LEASING OF THE TIGUAN TO APPLICANT

26. Location Claireview submits that paragraphs 23 to 46 of the Affidavit, as well as Exhibit AP-4 to AP-7, are relevant and appropriate for the purposes of the hearing on the Amended Application for Authorization;
27. Paragraph 23 confirms that Location Claireview acquired the car on July 4, 2018 which it clearly did not have within its inventory prior to that date (Amended Application for Authorization, para. 2.4);
28. Paragraphs 24 to 26, along with supporting Exhibits AP-3 and AP-4, explain the steps that were taken by Mr. Poulakos to provide the Applicant with information about the car immediately after Location Claireview acquired it;
29. Paragraphs 27 to 29, along with supporting Exhibits AP-3 and AP-5, explain how a second inspection was performed, this time by Location Claireview, as well as the Applicant's reaction to the findings of that second inspection;
30. These paragraphs are relevant and appropriate in light of Applicant's allegations that the inspection that he had commissioned differed from the first inspection completed by the vehicle auction house (Amended Application for Authorization, para. 2.19).
31. Paragraph 30, along with supporting Exhibit AP-6, describes the repairs made to the Tiguan by Location Claireview prior to the Applicant taking possession of the vehicle,
32. Paragraph 31 explains why no etiquette was created for the Tiguan and how that situation was exceptional. This contradicts Applicant's broad and entirely unsubstantiated allegation that etiquettes were not placed on the cars that were accessible to the public (Amended Application for Authorization, para. 2.6);
33. Paragraph 32 further explains how things unfolded when Applicant came to pick up the Tiguan on July 10, 2018, including the review of the lease with Mr. Poulakos (Amended Application for Authorization, para. 2.8);
34. Paragraphs 33 to 38 provide key information on the lease signed by Applicant, the detailed information that was shared with him and how the amount due on signing was calculated;
35. More specifically, Paragraphs 35 and 38 demonstrate that the Applicant was informed of the total amount owed to Location Claireview for the lease (Amended Application for Authorization, para. 2.13);
36. Paragraph 39 indicates that the Applicant paid the amount due on signing with his "Marge de credit Visa RBC pour la petite entreprise" despite the fact that he alleges that he is a consumer for the purposes of the CPA (Amended Application for Authorization, para. 2.5 and 2.15);

37. Paragraph 40 clarifies the difference between a non-refundable deposit made in the specific circumstances of this lease and the payment of more than two instalments in advance, which is relevant and appropriate evidence in light of Applicant's allegation that Location Claireview demanded that he pay a deposit that is higher than two months of lease payments (Amended Application for Authorization, para. 2.24);
38. Paragraph 41 indicates that a clerical error resulted in the Applicant being slightly overcharged and that this has since been corrected;
39. Paragraph 42 explains how the Applicant was provided with a copy of both the lease and the two inspection reports on the day that the Applicant came to pick up the car as well as how this constitutes standard practice for Location Claireview (Amended Application for Authorization, para. 2.7 and 2.16);
40. Paragraph 43 sheds light on why Mr. Poulakos did not call the Applicant on July 17, 2018;
41. Paragraphs 44 and 45, along with supporting Exhibit AP-7, explain how Applicant was provided with an additional copy of the Adessa inspection report at his request a few weeks after having taken possession of the car;
42. Paragraphs 46 clarifies that Mr. Poulakos did not have any further communication with the Applicant between July 31, 2018 and the filing of the original Application for Authorization;

VII. THE SMALL CLAIMS ACTION AGAINST LOCATION CLAIREVIEW

43. Location Claireview submits that paragraphs 47 to 49 of the Affidavit, along with supporting Exhibits AP-8 and AP-9, are also relevant and appropriate for the purposes of the hearing on the Amended Application for Authorization;
44. Indeed, this portion of the Affidavit provides information on other proceedings filed by the Applicant against Location Claireview in relation to the Tiguan and indicates that the Applicant has never previously asked for his lease to be cancelled;

VIII. CONCLUSION

45. Both the Affidavit of Mr. Poulakos and the evidence contained in Exhibits AP-1 through AP-9 are relevant and appropriate in order to allow Location Claireview to respond to the allegations put forth by the Applicant in his Amended Application for Authorization, several of which are either inaccurate or incomplete, and will further enable this Court to decide whether the conditions for authorization have been met;
46. This application is well founded in fact and in law.

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

GRANT the present *Motion to Adduce Relevant Evidence at the Authorization Hearing*;

AUTHORIZE Respondent Location Claireview S.E.N.C. to file the following evidence at the hearing on the motion for authorization of the class action:

- a) A copy of the "etiquette" that is required by articles 155 and 156 of the *Consumer Protection Act* ("**CPA**") (**Exhibit AP-1**);
- b) A copy of Location Claireview's sale agreements from 2016, 2017, 2018 and the current standard contract for 2019, *en liasse* (**Exhibit AP-2**);
- c) A copy of text exchanges between Applicant and Mr. Alevexo Poulakos (**Exhibit AP-3**);
- d) A copy of a vehicle history report for the car through Carproof dated July 4, 2018 (**Exhibit AP-4**);
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- h) A copy of the amended small claims court action dated April 2, 2019 (**Exhibit AP-8**);
- i) A copy of the letter of demand dated September 13, 2018, addressed to Location Claireview (**Exhibit AP-9**);
- j) An affidavit from Alevexo Poulakos providing information on how the relationship between Applicant and Respondent unfolded and how Location Claireview met its obligations under the CPA, a copy of which is communicated herewith as **Exhibit D-1**.

THE WHOLE without costs, except in the event of contestation.

MONTRÉAL, June 25, 2019

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PROVINCE OF QUEBEC

DISTRICT OF MONTREAL

N° 500-06-000996-195

S U P E R I O R C O U R T

(Class Action)

RÉAL CHARBONNEAU

Plaintiff

v.

LOCATION CLAIREVIEW S.E.N.C.

Defendant

LIST OF EXHIBITS

- | | |
|--------------|--|
| Exhibit AP-1 | Copy of the "etiquette" that is required by articles 155 and 156 of the <i>Consumer Protection Act</i> ; |
| Exhibit AP-2 | Examples of Location Claireview's sale agreements from 2016, 2017, 2018 and the current standard for contract from 2019; |
| Exhibit AP-3 | Copy of the text exchanges between the Applicant and Mr. Poulakos; |
| Exhibit AP-4 | Copy of a vehicle history report for the car through Carproof dated July 4, 2018; |
| Exhibit AP-5 | Copy of the Pre-sales inspection report performed by Location Claireview's garage dated July 5, 2018; |
| Exhibit AP-6 | Copy of the work order from Location Claireview's garage dated July 10, 2018; |
| Exhibit AP-7 | Copy of the text exchanges between Mr. Poulakos and his office dated July 31, 2018; |
| Exhibit AP-8 | Copy of the amended small claims court action dated April 2, 2019; |
| Exhibit AP-9 | Copy of the letter of demand dated September 13, 2018, addressed to Location Claireview; |

Exhibit D-1 Copy of an affidavit from Alevzo Poulakos;

MONTREAL, this 25th of June 2019

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Our file: 5188-1

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SUPERIOR COURT (Class Action)
DISTRICT OF MONTREAL
PROVINCE OF QUEBEC

RÉAL CHARBONNEAU

Plaintiff

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LOCATION CLAIREVIEW S.E.N.C.

Defendant

**LOCATION CLAIREVIEW'S MOTION TO
ADDUCE RELEVANT EVIDENCE AT
THE AUTHORIZATION HEARING
(Art. 574 C.C.P.) AND
LIST OF EXHIBITS**

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