

C A N A D A

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

(Class Action)
SUPERIOR COURT

NO: 500-06-000970-190

AVRAHAM BROOK

Applicant

-vs-

HYPOTHÈQUES CIBC INC. (CIBC
MORTGAGES INC.)

Defendant

APPLICATION FOR PERMISSION TO DISCONTINUE AGAINST DEFENDANT
HYPOTHÈQUES CIBC INC. (CIBC MORTGAGES INC.)
(ARTICLES 213 AND 585 C.C.P)

TO THE HONOURABLE CHANTAL CORRIVEAU, J.S.C., DESIGNATED TO HEAR
THE APPLICATION TO AUTHORIZE A CLASS ACTION, YOUR APPLICANT STATES
AS FOLLOWS:

I. INTRODUCTION

1. On October 17th, 2011, the original Applicant in this file, Diane Lamarre, filed her "*Motion to Authorize the Bringing of a Class Action and to Obtain the Status of Representative*", seeking to represent the following class (at the time the file number was 200-06-000139-116):

All persons and entities (as per the criteria of section 999 (d) of the Code of Civil Procedure) who entered into a mortgage contract with Hypothèques CIBC Inc. (CIBC Mortgages Inc.) or with related entities since 2005 and who, as part of a prepayment of the mortgage, were charged prepayment penalties by Hypothèques CIBC Inc. (CIBC Mortgages Inc.) or by related entities with respect to the mortgage contract;

2. On November 3rd, 2016, Ms. Lamarre amended her class definition as follows:

Toutes les personnes physiques, personnes morales de droit privé, sociétés ou associations ou autres groupements sans personnalité juridique du Québec qui ont signé depuis 2005 un contrat de prêt hypothécaire avec Hypothèques CIBC inc. ou

une entité liée et qui, dans le cadre d'un remboursement anticipé partiel ou complet du prêt hypothécaire, se sont fait facturer des intérêts de pénalisation par Hypothèques CIBC inc. ou une entité liée.

3. For more than 6.5 years since the filing, an authorization hearing had not yet been fixed to adjudicate on Ms. Lamarre's Application;
4. On May 31st, 2018, Mr. Avraham Brook and Ms. Katy Haroch filed their "*Application for Authorization to Institute a Class Action and to Appoint the Status of Representative Plaintiffs*" in the judicial district of Montreal against 13 financial institutions and/or hypothecary lenders (S.C.M. file no: 500-06-000930-186), on behalf of the following class:

All persons, entities, partnerships or organizations resident or domiciled in Quebec, who, since May 31st, 2015, had a hypothecary loan and/or a collateral hypothec with any of the Defendants and who paid a mortgage prepayment charge in an amount that exceeds three months of interest as a result of paying off their mortgage early;
5. On June 5, 2018, Mr. Brook filed an application to substitute Ms. Lamarre in the present file, which was granted by Justice Blanchard on December 6, 2018;
6. On December 19, 2018, the Honourable Chief Justice Pidgeon rendered a judgment authorizing the transfer of this file from the District of Quebec to the District of Montreal (file no. 200-06-000139-116 became file no. 500-06-000970-190);
7. On April 23, 2019, Mr. Brook and Ms. Haroch notified their 2nd *Re-Amended Application to Authorize the Bringing of a Class Action and to Appoint the Status of Representative Plaintiffs* in S.C.M. file no: 500-06-000930-186, on behalf of the following group (formally notified and filed on May 24, 2019):

Class:

All natural and legal persons who, since May 31st, 2015, paid to any of the Defendants (or to any of their affiliates) a mortgage prepayment charge in an amount that exceeds three months of interest when either entirely or partially paying off a hypothecary loan or a collateral hypothec on a property located in the province of Quebec;

(hereinafter referred to as the "**Class**")

CIBC Class:

All natural and legal persons who, since 2005, paid to

Defendants CIBC or CIBC Mortgages Inc. (or to any of their affiliates) a mortgage prepayment charge in an amount that exceeds three months of interest when either entirely or partially paying off a hypothecary loan or a collateral hypothec on a property located in the province of Quebec; (hereinafter referred to as the “**CIBC Class**”);

8. Both files S.C.M. file no. 500-06-000970-190 and no. 500-06-000930-186 now seek authorization of a class action involving the same Applicant (Avraham Brook), the same defendant (CIBC Mortgages Inc.), the same attorneys and the same facts;

II. GROUNDS FOR PERMISSION TO DISCONTINUE

9. On April 16, 2019, the parties agreed that CIBC Mortgages Inc. would withdraw its opposition of February 11, 2019, to the initial amendments in file no. 500-06-000930-186 and that Mr. Brook would seek permission to discontinue the class action in file no. 500-06-000970-190 on the following conditions:
 - 1) The parties agree that the rights of class members remain the exact same as if both cases were joined (500-06-000970-190 and 500-06-000930-186);
 - 2) The parties agree that the defences of CIBC remain the exact same as if both cases were joined (500-06-000970-190 and 500-06-000930-186);
 - 3) Neither party loses or gains any rights by importing file no. 500-06-000970-190 into file no. 500-06-000930-186;
 - 4) The benefits concerning the period of prescription of file no. 500-06-000970-190 is no longer necessary because it is now included in file no. 500-06-000930-186, notably by way of the April 23, 2019 modifications;
 - 5) The benefits with respect to the amortization cause of action and the issue of prescription of file no. 500-06-000970-190 is now transferred to the “CIBC Class” in file no. 500-06-000930-186;
 - 6) In view of the above, file no. 500-06-000970-190 is now purely overlapping with file no. 500-06-000930-186 and is no longer necessary.
10. On May 7, 2019, CIBC Mortgages Inc. withdrew its opposition to the modifications in file no. 500-06-000930-186, under reserve of Mr. Brook filing a discontinuance in file no. 500-06-000970-190;
11. A discontinuance against CIBC Mortgages Inc. in file no. 500-06-000970-190 respects the rule of proportionality and does not prejudice the rights of any of the “CIBC Class Members”;

12. The discontinuance for which authorization is being requested is more fully set out in the "Discontinuance", produced herewith as **Exhibit A-1**;

FOR THESE REASONS, MAY IT PLEASE THE COURT:

GRANT the present application;

AUTHORIZE the Applicant to discontinue the action against Defendant Hypothèques CIBC Inc. (CIBC Mortgages Inc.) as requested in the Discontinuance, enclosed herewith as Exhibit A-1, without the publication of a notice and without costs;

AUTHORIZE the Applicant to file said discontinuance within 10 (ten) days of judgment to be rendered herein;

RENDER any other order that is useful or necessary to safeguard the rights of the Group members and of the parties;

THE WHOLE without legal costs.

Montreal, June 19, 2019

(s) LPC Avocat Inc.

LPC AVOCAT INC.

PER: ME JOEY ZUKRAN

Attorney for Applicant

NOTICE OF PRESENTATION

To: **Me François Giroux**
McCarthy
fgiroux@MCCARTHY.CA

Attorneys for Hypothèques CIBC Inc. (CIBC Mortgages Inc.)

TAKE NOTICE that the present *Application for Permission to Discontinue Against Defendant Hypothèques CIBC Inc. (CIBC Mortgages Inc.)* of the Applicant shall be presented for adjudication before the Honourable Chantal Corriveau, J.S.C., on **June 26th 2019 at 9h30**, at Montreal Courthouse, situated at 1 Notre-Dame Street East, Montréal (Quebec), H2Y 1B6, in a room to be determined by the Court.

Montreal, June 19, 2019

(s) LPC Avocat Inc.

LPC AVOCAT INC.

PER: ME JOEY ZUKRAN

Attorney for Applicant

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PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

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AVRAHAM BROOK

Applicant

-vs-

HYPOTHÈQUES CIBC INC. (CIBC
MORTGAGES INC.)

Defendants

LIST OF EXHIBITS

EXHIBIT A-1: Draft of the Applicant's Discontinuance against Hypothèques CIBC Inc. (CIBC Mortgages Inc.);

Montreal, June 19, 2019

(s) LPC Avocat Inc.

LPC AVOCAT INC.
PER: ME JOEY ZUKRAN
Attorney for Applicant

EXHIBIT A-1

C A N A D A

**PROVINCE OF QUEBEC
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DISCONTINUANCE
(art. 213 C.C.P.)

The Applicant, Avraham Brook, through his counsel, discontinues the whole of the judicial application against Defendant Hypothèques CIBC Inc. (CIBC Mortgages Inc.) without costs.

Montreal, , 2019

LPC AVOCAT INC.
PER: ME JOEY ZUKRAN
Attorney for Applicant

