SUPERIOR COURT

(Class actions)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No: 500-06-000957-189

DATE: October 24, 2019

BY THE HONOURABLE CHANTAL TREMBLAY, J.S.C.

DANIEL POULIN

Plaintiff

٧.

MARRIOTT INTERNATIONAL INC.

and

LUXURY HOTELS INTERNATIONAL OF CANADA, ULC

and

STARWOOD CANADA, ULC

Defendants

JUDGMENT ON CASE MANAGEMENT

- [1] **CONSIDERING** that on September 3, 2019, a telephone case management conference was held to discuss the timetable of the preliminary motions and the authorization hearing in the present proceeding;
- [2] **CONSIDERING** that on that day, the Court fixed the delay, for the parties to discuss changes to the class description, to September 17, 2019;

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[3] **CONSIDERING** that on September 17, 2019, the parties filed written submissions regarding the class description and the timetable for preliminary motions and the authorization hearing;

- [4] **CONSIDERING** that on October 11, 2019, Mr. Justice Paul Perell rendered a decision on a carriage motion in *Winder* v. *Marriott International Inc.*, 2019 ONSC 5766 stating the following:
 - [154] In Ontario, carriage has now been granted to Siskinds LLP for a national class action. In Québec, carriage has been granted to Woods LLP and Rochon Genova LLP for a regional class action. In Alberta, Koskie Minsky LLP, along with Guardian Law Group LLP and James H. Brown Associates has carriage for a national class action. In Nova Scotia, Koskie Minsky LLP has carriage in for a regional class action for the maritime provinces. In British Columbia, carriage has not been determined.
 - [155] To sort out this procedural morass, I suggest that: (a) either the Marriott Defendants simultaneously bring forum conveniens motions in British Columbia, Alberta, Ontario, Québec, and Nova Scotia; or (b) Siskinds LLP simultaneously bring motions in British Columbia, Alberta, Ontario, Québec, and Nova Scotia to settle how many class actions should proceed pursuant to the model of the the Uniform Law Conference's legislation.
 - [156] The model legislation is already in place in British Columbia and Alberta and it already fits nicely with the existing forum conveniens law in Ontario, Québec, and Nova Scotia.
 - [157] Using modern technology, the simultaneous motions could be heard simultaneously, or given the Supreme Court of Canada's decision in *Endean v. British Columbia*, there could be a joint hearing in any of British Columbia, Alberta, Ontario, Québec, and Nova Scotia. It may be that this approach will allow Canadian courts to develop a procedure akin to and perhaps better than the MDL procedure (multiple district litigation) used by American states.
- [5] **CONSIDERING** that on October 15, 2019, the Court was informed of Defendants' acceptance of Justice Perell's suggestion and their intention of bringing simultaneous motions to "settle how many class actions should proceed and, accordingly, whether any (and which) actions should be stayed" (**Simultaneous Motions**);
- [6] **CONSIDERING** that in British Columbia, carriage has not yet been determined. The carriage motions are scheduled to be heard from November 25 to 28, 2019;
- [7] **CONSIDERING** that the Defendants' position is that the Simultaneous Motions should be heard after carriage in B.C. is determined and before any preliminary motions or authorization motion in the present proceeding;

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[8] **CONSIDERING** that Plaintiff opposes the Defendants' suggestion for the following reasons:

- A joint case management conference may or may not happen and the Defendants have not yet indicated whether they intend to bring a stay motion in Québec;
- b) The Québec proceeding was the first launched in all of Canada and the Plaintiff has worked diligently to advance the Québec proceeding ahead of other cases arising from the same data breach occurrence:
- c) Siskings LLP planned to exclude Québec residents from its class definition and to "co-operate with Class Counsel in the Poulin Action";1
- d) If the Court issues a timetable for the Québec class action, it will enable other provincial Courts involved in the *Marriott* litigation, at any future case conference, to properly assess the relative progress of the various class actions, and the upcoming procedural steps in each province. The absence of a schedule would make such assessment more difficult.
- [9] **CONSIDERING** that the Court is of the view that to observe the principle of proportionality in terms of costs and time involved, the Simultaneous Motions should be heard prior to any preliminary motions or authorization motion in the present matter;
- [10] **CONSIDERING** that the Simultaneous Motions cannot be notified prior to the British Columbia carriage decision.

WHEREFORE, THE COURT:

- [11] **SUSPENDS** the present proceedings until the decision on the British Columbia carriage motions is rendered;
- [12] **THE WHOLE**, without costs.

CHANTAL TREMBLAY, J.S.C.

Winder v. Marriott International Inc., 2019 ONSC 5766, par. 32.

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