

SUPERIOR COURT
(Class Action)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

N° : 500-06-000989-190

DATE : January 17, 2020

PRESIDING: THE HONORABLE DONALD BISSON, J.C.S.

GERTRUDE GILLICH
Plaintiff

v.

MERCEDES-BENZ WEST ISLAND
SCI LEASE CORP.
Defendants

**JUDGMENT ON THE JOINT APPLICATION FOR AUTHORIZATION TO INSTITUTE A
CLASS ACTION FOR SETTLEMENT PURPOSES ONLY AGAINST SCI LEASE
CORP. AND FOR APPROVAL OF NOTICES TO CLASS MEMBERS**

[1] **CONSIDERING** the *Application to Authorize the Bringing of a Class Action and to Appoint the Status of Representative Plaintiff* filed on March 14, 2019 against Mercedes-Benz Canada Inc., Mercedes-Benz West Island, Mercedes-Benz Financial Services Canada Corporation, GM Financial Canada Leasing Ltd., SCI Lease Corp., Compagnie de gestion Canadian Road, Honda Canada Finance Inc., Toyota Credit Canada Inc. and Canadian Dealer Lease Services Inc., on behalf of the following proposed Class (the "Class Members"):

English:

All consumers who had a vehicle lease agreement with any of the Defendants and, since March 14, 2016, paid a fee to exercise their option to purchase their

vehicle (“buyback”) at the end of their lease which was not disclosed in their lease.

French:

Tous les consommateurs ayant conclu un contrat de location de véhicule avec l'une des défenderesses et qui, depuis le 14 mars 2016, ont payé des frais pour exercer leur option d'achat (« rachat ») de leur véhicule à la fin de la location qui n'étaient pas divulgués dans leur contrat de location.

[2] **CONSIDERING** the *Amended Application to Authorize the Bringing of a Class Action and to Appoint the Status of Representative Plaintiff* filed on December 22, 2019 against SCI Lease Corp. and Mercedes-Benz West Island only, authorized by the Court in a judgment rendered on January 17, 2020;

[3] **CONSIDERING** the transaction executed between the Plaintiff Gertrude Gillich and the Defendant SCI Lease Corp. on January 16, 2020 filed as Exhibit R-1 (the “**Settlement Agreement**”), which provides for settlement of the action on behalf of the following class:

English:

All consumers who, between March 14, 2016 and November 24, 2019, paid to SCI Lease Corp. a fee to exercise their option to purchase their vehicle (“buyback”) during or at the end of their lease and which was not disclosed in their lease.

French:

Tous les consommateurs qui, entre le 14 mars 2016 et le 24 novembre 2019, ont payé à SCI Lease Corp. des frais pour exercer leur option d'achat (“rachat”) de leur véhicule durant ou à la fin de la location et qui n'étaient pas divulgués dans leur contrat de location.

(hereinafter the “**SCI Sub-Class**” or the “**SCI Sub-Class Members**”)

[4] **CONSIDERING** that the Settlement Agreement provides that the class period for settlement purposes is March 14, 2016 to November 24, 2019;

[5] **CONSIDERING** the *Joint Application for Authorization to Institute a Class Action for Settlement Purposes Only Against SCI Lease Corp. and for Approval of Notices to Class Members* (the “**Joint Application for Authorization**”);

[6] **CONSIDERING** that pursuant to the Joint Application for Authorization, the Plaintiff and the Defendant SCI Lease Corp. are asking the Court to authorize the class action against Defendant SCI Lease Corp. for settlement purposes only and to approve

notices informing the Class Members that the Settlement Agreement will be submitted to the Court for approval;

[7] **CONSIDERING** the proposed French and English versions of the pre-approval notice filed respectively *en liasse* as Exhibit R-2 in support of the Joint Application for Authorization (the **Class Notice**);

[8] **CONSIDERING** the submissions of counsel for the Plaintiff and counsel for the Defendant SCI Lease Corp.;

[9] **CONSIDERING** that the criteria set out in Article 575 of the *Code of Civil Procedure* to authorize a class action are applied with flexibility when the authorization of the class action is sought for settlement purposes¹;

[10] **CONSIDERING** that the Court is of the opinion that the four criteria set out in article 575 of the *Code of Civil Procedure* to authorize a class action are met for the purposes of settlement, namely that:

- 1) the claims of the members of the class raise identical, similar or related issues of law or fact;
- 2) the facts alleged appear to justify the conclusions sought;
- 3) the composition of the class makes it difficult or impracticable to apply the rules for mandates to take part in judicial proceedings on behalf of others or for consolidation of proceedings; and
- 4) the class member appointed as representative plaintiff is in a position to properly represent the class members.

[11] **CONSIDERING** Articles 575, 576, 579, 580, 581 and 590 of the *Code of Civil Procedure*;

FOR THESE REASONS, THE COURT:

[12] **GRANTS** the *Joint Application for Authorization to Institute a Class Action for Settlement Purposes Only Against SCI Lease Corp. and for Approval of Notices to Class Members*;

[13] **AUTHORIZES** the bringing of a class action against Defendant SCI Lease Corp. for settlement purposes only on behalf of the following class:

English:

¹ *Dupuis c. Polyone Canada inc.*, 2016 QCCS 2561, par. 9.

All consumers who, between March 14, 2016 and November 24, 2019, paid to SCI Lease Corp. a fee to exercise their option to purchase their vehicle ("buyback") during or at the end of their lease and which was not disclosed in their lease.

French:

Tous les consommateurs qui, entre le 14 mars 2016 et le 24 novembre 2019, ont payé à SCI Lease Corp. des frais pour exercer leur option d'achat ("rachat") de leur véhicule durant ou à la fin de la location et qui n'étaient pas divulgués dans leur contrat de location.

(the "**SCI Sub-Class**" or the "**SCI Sub-Class Members**")

[14] **APPOINTS** the Plaintiff Gertrude Gillich the status of Representative Plaintiff for settlement purposes;

[15] **IDENTIFIES**, for the purposes of settlement only, the common question to be treated collectively as the following:

Are the SCI Sub-Class Members entitled to compensation for the buyback fees that were charged by SCI Lease Corp. to effect the purchase of a vehicle during or at the end of their car lease, during the class period established for settlement purposes, being March 14, 2016 to November 24, 2019?

[16] **APPROVES** the form, content and mode of diffusion of the Class Notice, in its French and English version, filed as Exhibit R-2;

[17] **ORDERS** the Defendant SCI Lease Corp. to send the Class Notice (Exhibit R-2) to each SCI Sub-Class Member, no later than February 12, 2020, by email, or in the absence of an email address, by regular mail;

[18] **DECLARES** that Class Members who wish to object to Court approval of the Settlement Agreement must do so in the manner provided for in the pre-approval notice (Exhibit R-2), on or before March 13, 2020;

[19] **DECLARES** that Class Members who wish to opt-out from the class action and the settlement thereof may do so by delivering a written notice confirming their intention to opt-out of this class action, in the manner provided for in the pre-approval notice (Exhibit R-2) on or before March 13, 2020;

[20] **DECLARES** that all Class Members who have not requested their exclusion be bound by any judgement to be rendered on the class action to be instituted in the manner provided for by the law;

[21] **SCHEDULES** the presentation of the *Application for Approval of the Settlement Agreement* on March 30, 2020 at 09h00 in room 1.150 of the Montréal courthouse;

[22] **THE WHOLE**, without judicial costs.


DONALD BISSON, J.C.S.

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Hearing date: January 17, 2020