

**SUPERIOR COURT**  
**(Class Action)**

CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

N° : 500-06-000989-190

DATE : February 3, 2020

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

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**GERTRUDE GILLICH**  
Plaintiff

v.

**MERCEDES-BENZ WEST ISLAND**  
**SCI LEASE CORP.**  
Defendants

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**JUDGMENT ON THE APPLICATION OF THE DEFENDANT MERCEDES-BENZ  
WEST ISLAND FOR LEAVE TO ADDUCE RELEVANT EVIDENCE (Art. 574 CCP)**

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**INTROCUCTION**

[1] **CONSIDERING** that, on March 14, 2019, the Applicant Gertrude Gillich (the "Applicant") filed an *Application to authorize the institution of a Class Action and to appoint the status of Representative Plaintiff* against multiple Defendants, including Defendant Mercedes-Benz West Island ("West Island");

[2] **CONSIDERING** that, on January 17, 2020<sup>1</sup>, the Court granted the *Application for Permission to Discontinue the Putative Class Action Against Certain Defendants and for Permission to Amend the Applicant's Application to Authorize the Bringing of a Class Action and to Appoint the Status of Representative Plaintiff*, dated January 15, 2020;

JB 4644

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<sup>1</sup> *Gillich c. Mercedes-Benz Canada inc.*, 2020 QCCS 67.

[3] **CONSIDERING** that, on January 17, 2020<sup>2</sup>, the Court granted the *Amended Application to Authorize the Bringing of a Class Action and to Appoint the Status of Representative Plaintiff*, dated December 20, 2019 (the "Amended Application"), in which the proposed class has been identified as follows:

Class

All consumers who, since March 14, 2016, paid to Mercedes-Benz West Island or SCI Lease Corp a fee to exercise their option to purchase their vehicle ("buyback") at the end of their lease which was not disclosed in their lease.

Tous les consommateurs qui, depuis le 14 mars 2016, ont payé soit à Mercedes-Benz West Island ou à SCI Lease Corp 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;

(hereinafter referred to as the "Class")

or any other Class to be determined by the Court.

[4] **CONSIDERING** that, on January 17, 2020<sup>3</sup>, the Court granted 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*, and that the Court will hear the motion for approval of the settlement agreement on March 30, 2020;

[5] **CONSIDERING** that, therefore, the only actual remaining defendant is West Island and that the authorization hearing is set for March 30, 2020;

[6] **CONSIDERING** that the Amended Application seeks leave to institute a class action based on purported contraventions of Sections 12 and 228 of the *Consumer Protection Act*<sup>4</sup> ("CPA") namely that:

- a) West Island contravened to Section 228 CPA by omitting to disclose in the Applicant's lease that the Applicant would be charged a fee when exercising her option to purchase ("Buy Back Fee") (paragraph 28 of the Amended Application); and
- b) West Island charged the Buy Back Fee, even though it was not precisely indicated in the Applicant's lease (Section 12 CPA) (paragraph 27 of the Amended Application);

[7] **CONSIDERING** that West Island is of the view that the facts alleged in the Amended Application are incomplete and require clarifications and that West Island, by way of its

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<sup>2</sup> Idem.

<sup>3</sup> *Gillich c. Mercedes-Benz West Island*, 2020 QCCS 79.

<sup>4</sup> RLRQ, c. P-40.1

present *Application for Leave to Adduce Relevant Evidence* dated January 21, 2020, requests leave to adduce the following 5 elements evidence at the authorization hearing, for the purpose of buttressing its submissions that the Amended Application fails to meet the threshold authorization conditions set forth at Article 575 of the *Code of Civil Procedure* (“CCP”):

- 1) affidavit of Mr. Nick Avdeliodis, Vice-President of Operations for the Dilawri Group of Companies in Québec, dated January 21, 2020, Exhibit MWC-1, being understood that West Island is part of the Dilawri Group of Companies;
- 2) a copy of the current corporate registry information (CIDREQ) for the defendant West Island, Exhibit NA-1;
- 3) a copy of the “Déclaration d’immatriculation d’une personne morale”, Exhibit NA-2;
- 4) a copy of the GST/HST Registry Search Result for Mercedes-Benz Canada Inc., Exhibit NA-3;
- 5) a copy of the all evidence submitted in the Applications of former Defendants Mercedes-Benz Canada inc. and Mercedes-Benz Financial Services Canada Corporation for Leave to Adduce Evidence, which were notified on September 6, 2019;

[8] **CONSIDERING** that Plaintiff does not challenge the filing of elements #1 to #4 of the application of West Island and that Plaintiff only challenges element #5;

## **ANALYSIS AND DISCUSSION**

### **Elements #1 to #4**

[9] **CONSIDERING** that the Court is of the view that elements #1 to #4 are considered as relevant evidence under Art. 574 CCP<sup>5</sup>, and that the Court will therefore allow them to be filed as evidence;

### **Element #5**

[10] **CONSIDERING** that, in her *Application for Permission to Discontinue the Putative Class Action Against Certain Defendants and for Permission to Amend the Applicant’s Application to Authorize the Bringing of a Class Action and to Appoint the Status of Representative Plaintiff*, the Applicant referred to some elements of the affidavits of the other Mercedes-Benz entities which were parties to the file up to the discontinuance having been granted;

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<sup>5</sup> As per the applicable criteria, summarized amongst others in *Li c. Equifax inc.*, 2018 QCCS 1892, at par. 97 à 104 (no appeal was taken from that portion of the decision).

[11] **CONSIDERING** that these elements have now been put into evidence by the filing of her Application by Applicant and by the Court having referred to them in its judgment of January 17, 2020 granting the discontinuance;

[12] **CONSIDERING** that, as a result, the following elements are validly into evidence:

- paragraphs 5, 7, 8, 9, 11, 12 and 13 and Exhibit A of the affidavit of Mr. Andre Hilliges of July 2, 2019 of Mercedes-Benz Canada inc.; and
- paragraphs 4 and 12 to 16 and Exhibit A of the affidavit of Mr. Vince Agostino of September 3, 2019 of Mercedes-Benz Financial Services Canada Corporation;

[13] **CONSIDERING** that, in its representations, West Island indicated that it did not want the entirety of the declarations of Andre Hilliges and Vice Agostino put into evidence, but was satisfied with what is mentioned at the preceding paragraph and wanted to add only the following additional elements: paragraphs 9 to 11 and Exhibit B and C of the affidavit of M. Vince Agostino of Mercedes-Benz Financial Services Canada Corporation (the “additional elements”);

[14] **CONSIDERING** that Plaintiff is challenging the filing into evidence of these additional elements;

[15] **CONSIDERING** that the additional elements were not filed into evidence, as the Court never ruled on the application of Mercedes-Benz Financial Services Canada Corporation for leave to file them;

[16] **CONSIDERING** that Mercedes-Benz Financial Services Canada Corporation is no longer a party to the present file following the discontinuance having been granted, and **CONSIDERING** that Mercedes-Benz Financial Services Canada Corporation is therefore a third party or “any other person” in the meaning of Art. 221 CCP;

[17] **CONSIDERING** that West Island argues: 1) that it is in the interest of justice that the additional elements be allowed into evidence; 2) that these additional elements complete paragraph 12 of the affidavit of Mr. Vince Agostino of September 3, 2019 of Mercedes-Benz Financial Services Canada Corporation, already into evidence; and 3) that these additional elements are required in order to argue at authorization that Applicant has no appearance of right since:

- West Island is not a party to the Applicant’s Lease Agreement (exhibit P-13);
- West Island could not modify the terms and conditions of the lease agreements; and

- The leasing agreements and the sale contracts are not contracts similar in nature, i.e. the Sale Contract and the Leasing Agreement are two distinct contracts;

[18] **CONSIDERING** that the additional elements refer to the contacts between lease customers and Mercedes-Benz Financial Services Canada Corporation, and to contacts between Applicant and Mercedes-Benz Financial Services Canada Corporation;

[19] **CONSIDERING** that the detailed arguments of Applicant at paragraphs 12 to 15 of her *Application for Leave to Adduce Relevant Evidence* do not show how these contacts or the additional elements would be relevant to her three arguments, detailed above;

[20] **CONSIDERING** in addition that the additional elements sought comes from a moral person who is not a party to the file, and that, as a result, will have no bearing on the appearance of right of Applicant vis-à-vis West Island;

[21] **CONSIDERING** that third party evidence is not in the nature of “relevant evidence” under Art. 574 CCP;

[22] **CONSIDERING** that the additional elements also consist of challenged facts which are a “question litigieuse” and not a neutral one,<sup>6</sup> and consist of internal documents from a third party which were never showed to Applicant<sup>7</sup>, both of which do not warrant that they be allowed into evidence at the stage of authorization;

[23] **CONSIDERING** therefore that the Court will not allow the filing of the additional elements;

[24] **CONSIDERING** that the Applicant does not require leave to examine Mr. Nick Avdeliodis, Vice-President of Operations for the Dilawri Group of Companies in Québec, on his affidavit of January 21, 2020;

**FOR THESE REASONS, THE COURT:**

[25] **GRANTS** in part the *Application of Defendant Mercedes-Benz West Island for Leave to Adduce Relevant Evidence*;

[26] **ALLOWS** Defendant Mercedes-Benz West Island to file into the Court record, within the next 15 days following the present judgment, the following 4 elements as evidence:

1. affidavit of Mr. Nick Avdeliodis, Vice-President of Operations for the Dilawri Group of Companies in Québec, dated January 21, 2020;

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<sup>6</sup> See *Lambert (Gestion Peggy) c. Écolait Itée*, 2016 QCCA 659, at par. 37 and 38.

<sup>7</sup> See *Preisler-Banoon c. Airbnb Ireland*, 2018 QCCS 2151, at par. 1.

2. a copy of the current corporate registry information (CIDREQ) for the defendant West Island, Exhibit NA-1;

3. a copy of the "Déclaration d'immatriculation d'une personne morale", Exhibit NA-2;

4. a copy of the GST/HST Registry Search Result for Mercedes-Benz Canada Inc., Exhibit NA-3;

[27] **DECLARES** the following elements are validly into evidence:

- paragraphs 5, 7, 8, 9, 11, 12 and 13 and Exhibit A of the affidavit of Mr. Andre Hilliges of July 2, 2019 of Mercedes-Benz Canada inc.; and
- paragraphs 4 and 12 to 16 and Exhibit A of the affidavit of Mr. Vince Agostino of September 3, 2019 of Mercedes-Benz Financial Services Canada Corporation;

[28] **REFUSES** the production into evidence of any other element;

[29] **SPECIFIES** that there will be no examination on affidavit of Mr. Nick Avdeliodis, Vice-President of Operations for the Dilawri Group of Companies in Québec;

[30] **THE WHOLE**, with judicial costs in favor of Plaintiff.



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DONALD BISSON, J.C.S.

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Hearing date (in writing): January 21 to 29, 2020