SUPERIOR COURT

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF QUÉBEC
(Class Action)

No. 200-06-000141-120

DATE: February 4, 2013

PRESENT: THE HONOURABLE SERGE FRANCOEUR J.S.C.

JEAN-PAUL DELAIRE
Petitioner
v.
SNC-LAVALIN GROUP INC.
and
IAN A. BOURNE
and
DAVID GOLDMAN
and
PATRICIA A. HAMMICK
and
PIERRE H. LESSARD
and
EDYTHE A. MARCOUX
and
LORNA R. MARSDEN
and
CLAUDE MONGEAU
and
GWYN MORGAN
and
MICHAEL D. PARKER
and
HUGH D. SEGAL
and
LAWRENCE N. STEVENSON
and
GILLES LARAMÉE

JF0853

and
PIERRE DUHAIME
and
RIADH BEN AÏSSA
and
STÉPHANE ROY
Respondents

RECTIFIED JUDGMENT

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[1] At the beginning of the hearing on a motion for authorization to institute a class action, a motion for amendment of that motion was brought.

[2] Since the motion for amendment was not contested, having been discussed by the parties, it is authorized, including:

- the substitution of Jean-Paul Delaire, a resident of Québec, for Glenn Winder, a resident of Ontario, as petitioner;

- the withdrawal, without costs, of Eric Siegel as a respondent;

- the addition of the following allegation:

  The plaintiffs assert that the US$56 million in improper payments uncovered by the Audit Committee investigation and referred to in the Statement of Claim were made by SNC, in whole or in part, as bribes to secure the contract for the design, construction, financing and maintenance of the McGill University Health Centre's Glen Campus in Montreal, Quebec, and other projects, the full particulars of which are known to the defendants.

[3] As concerns the authorization to institute a class action, of all the respondents, including SNC-Lavalin Group Inc. (SNC), only Stéphane Roy presented grounds for contestation.

[4] Before analyzing those grounds, it should be stated, to protect any eventual positions, that the respondents did not declare that they consented to the motion for authorization to institute a class action; rather, they mentioned that, at this stage, they had no reasons to contest it, reserving those reasons for the hearing on the merits of the case.

[5] For better understanding, it should be pointed out that the petitioner is seeking authorization to institute a class action on behalf of the following group:

> All persons who acquired securities of SNC during the Class Period, who were resident or domiciled in the province of Québec at the time they acquired such securities and who are not precluded from participating in a class action by virtue of Article 999 of the Québec Code of Civil Procedure, RSQ, c C-25, except for the excluded persons.

[6] Based on the facts summarily alleged in his motion:

> 4. SNC is a Canadian-based engineering and construction company with global operations.
>
> 5. During the Class Period, unbeknownst to the Class Members, SNC's business was conducted in an unlawful manner and in contravention of SNC's internal policies. In particular, in December 2009 and July 2011, SNC entered into agreements with "agents" with respect to projects on which SNC was working, pursuant to which SNC made payments totalling US$56 million to those "agents". Although SNC purports not to know the purpose of such payments, their purpose was, in fact, to bribe foreign government officials and/or persons in Canada for the procurement of business by SNC. In any event, the agreements and the payments thereunder violated SNC's Agents Policy and Code of Ethics in numerous respects.

[7] The alleged facts as a whole show that the criteria for the authorization of a class action set forth in article 1003 of Québec's *Code of Civil Procedure* are met.

[8] However, Stéphane Roy has brought a contestation on grounds relative to criterion (*a*) of article 1003:

> ...
>
> ... submits that given, inter alia, the volatility of the stock market (as evidenced by the chart in paragraph 110 of the application), all persons who bought shares of SNC-Lavalin between November 6th 2009 and February 27th, 2012, (currently trading at 41.10) do not enjoy recourses that raise identical, similar or related questions of law or fact. The Applicants' remedy is based on the premise that they will suffer a loss which is yet to be materialized unless they individually prove a loss at the time of disposition attributable to misrepresentation by the Defendants.

[9] The contestation falls within the purview of the merits of the case. The quantum of damages will be the subject of expert assessments, evaluations and arguments.

[10] Mr. Roy's other ground for contestation, i.e. that currently there is an identical class action in Ontario regarding the same facts, cannot be accepted since the group

sought is not the same. The Ontario recourse excludes shareholders residing and domiciled in Québec. Québec shareholders are also entitled to protect their interests.

[11] As concerns the proportionality of the costs under article 4.2 of the *Code of Civil Procedure* invoked by Roy, this provision will certainly be taken into account during the hearing on the merits of the case.

[12] Lastly, as concerns the transfer of the case to the District of Montréal, the conclusions of the judgment include an appropriate conclusion.

FOR THESE REASONS, THE COURT:

[13] **GRANTS** the Motion for amendment of the Motion for authorization;

[14] **GRANTS** the Petitioner's amended Motion for leave to plead the cause of action contained in Title VIII, Chapter II, Division II of the QSA and to authorize the bringing of a class action and to obtain the status of representative;

[15] **AUTHORIZE** leave to commence an action under Title VIII, Chapter II, Division II of the *QSA* and the bringing of a class action in the form of a motion to institute proceedings in damages, pleading solely statutory claims for misrepresentation in secondary market disclosure documents under Title VIII, Chapter II, Division II of the *QSA*;

[16] **ASCRIBE** the Plaintiff the status of representative of the persons included in the Class herein described as:

All persons who acquired securities of SNC during the period from and including November 6, 2009 to and including February 27, 2012 (the Class Period), who were resident or domiciled in the Province of Québec at the time they acquired such securities and who are not precluded from participating in a class action by virtue of Article 999 of the *Québec Code of Civil Procedure*, RSQ, c C-25, except for the Excluded Persons.

"**Excluded Persons**" means the **Defendants** and Michael Novak, and **SNC**'s past and present subsidiaries, affiliates, officers, directors, legal representatives, heirs, predecessors, successors and assigns, and any, spouse, or child of the **Individual Defendants** or Michael Novak;

[17] **IDENTIFY** the principal questions of fact and law to be treated collectively as the following:

Statutory Secondary Market Liability – Impugned Documents

(a) Did the Impugned Documents contain a misrepresentation within the meaning of the QSA as pleaded in the Amended Motion for leave to plead the cause of action contained in Title VIII, Chapter II, Division II of

the QSA and to Authorize the bringing of a class action and to obtain the status of representative?

(b) If the answer to (a) is yes, then when and by what means were the misrepresentations contained in the Impugned Documents publicly corrected?

(c) If the answer to (a) is yes:

(i) did the defendants Gilles Laramée ("Laramée"), Pierre Duhaime ("Duhaime"), Riadh Ben Aïssa ("Ben Aïssa") and Stéphane Roy ("Roy"), or any of them, authorize, permit or acquiesce in the release of the Impugned Documents which contained one or more misrepresentations?

(ii) did Duhaime, Laramée, Ben Aïssa and Roy actually know that the Impugned Documents contained misrepresentations at the time such documents were released?

(iii) if any of Duhaime, Laramée, Ben Aïssa and Roy did not actually know that the Impugned Documents contained misrepresentations at the time such documents were released, then does recklessness or willful blindness with respect to the misrepresentations suffice for purposes of the knowledge requirement of s. 225.31 of the QSA?

(iv) if the answer to clause (iii) above is yes, were Duhaime, Laramée, Ben Aïssa and Roy, or any of them, reckless or wilfully blind as to the existence of the misrepresentations in the Impugned Documents at the time such documents were released?

Statutory Secondary Market Liability – Certifications

(d) Did the Certifications contain a misrepresentation within the meaning of the QSA as pleaded in the Amended Motion for leave to plead the cause of action contained in Title VIII, Chapter II, Division II of the QSA and to Authorize the bringing of a class action and to obtain the status of representative?

(e) If the answer to d) is yes, then when and by what means was the misrepresentation contained in the Certifications publicly corrected?

(f) If the answer to (d) is yes:

(i) did Duhaime and Laramée, or either of them, authorize, permit or acquiesce in the release of the Certifications which contained a misrepresentation?

(ii) if the answer to clause (i) above is yes, with respect to Duhaime and Laramée:

(1) did they actually know that the Certifications contained the misrepresentation at the time such documents were released?

(2) at or before the time the Certifications were released, did they deliberately avoid acquiring knowledge that the Certifications contained the misrepresentation? or

(3) were they, through action or failure to act, guilty of gross fault in connection with the release of the Certifications?

(iii) if the answer to clause (i) above is yes, and if either of Duhaime or Laramée did not actually know that the Certifications contained the misrepresentation at the time such documents were released, then does recklessness or willful blindness with respect to the misrepresentation suffice for purposes of the knowledge requirement of s. 225.31 of the QSA?

(iv) if the answer to clauses (i) and (iii) above is yes, was either of Duhaime or Laramée reckless or wilfully blind as to the existence of the misrepresentation in the Certifications at the time such documents were released?

Due Diligence

(g) If the answer to (a) or (d) is yes:

(i) before the release of the Impugned Documents and Certifications, as the case may be, did the applicable Defendant conduct or cause to be conducted a "reasonable investigation" in accordance with s. 225.17 of the QSA?

(ii) at the time of the release of the Impugned Documents and Certifications, as the case may be, did the applicable Defendant have no reasonable grounds to believe that the documents contained the misrepresentations?

Assessment of Damages

(h) If the answer to (a) or (d) is yes, did the Class Members suffer damages caused by the misrepresentations and, if so, on what basis are the damages suffered by Class Members to be determined?

(i) For purposes of s. 225.28 to 225.33 of the QSA, what amount, if any, of the change in the market price of SNC's securities after the corrective disclosure and

during the 10 trading days thereafter was unrelated to the alleged misrepresentations?

(j) What are the applicable limits on damages, if any, for each Defendant under s. 225.28 to 225.33 of the QSA?

Proportionate Liability

(k) If the answer to (a) or (d) is yes, for each applicable Defendant found liable, what is that defendant's respective responsibility for assessed damages pursuant to s. 225.28 to 225.33 of the QSA?

Administration Costs

(l) Should the Defendants pay any of the costs of administering and distributing the recovery? If so, which Defendants should pay, and how much should each such Defendant pay?

[18] **IDENTIFY** the conclusions sought by the class action to be instituted as being the following:

> **GRANT** the Plaintiff's action against the Respondents, under the cause of action contained in Title VIII, Chapter II, Division II of the *QSA* and, if necessary, the equivalent provisions of the Other Canadian Securities Legislation;
>
> **CONDEMN** Respondents to pay to the Class Members compensatory damages in the amount of $250 million, with interest and the additional indemnity provided by law, calculated from November 6th, 2009, or such other sum as this Court finds appropriate for all monetary losses;
>
> **GRANT** the class action of the Plaintiff on behalf of all the Class Members;
>
> **ORDER** the treatment of individual claims of each of the Class Members in accordance with articles 1037 to 1040 *C.C.P.*;
>
> **THE WHOLE** with interest and additional indemnity provided for in the *Civil Code of Québec* and with full costs and expenses including expert fees, notice fees and fees relating to administering the plan of distribution of the recovery in this action;

[19] **DECLARE** that all Class Members that have not requested their exclusion from the Class in the prescribed delay to be bound by any judgement to be rendered on the class action to be instituted;

[20] **FIX** the delay of exclusion at 30 days from the date of the publication of the notice to the Class Members;

[21] **ORDER** the publication of a notice to the Class Members in accordance with article 1006 *C.C.P.*;

~~[22] **DECLARE** that the class action should be instituted in the judicial district of Montréal and therefore **REFER** the file to the Associate Chief Justice for the issuance of the appropriate Order;~~

[22] **REFER** the file to the Associate Chief Justice who fixes the district in which the class action is brought in accordance with article 1004 C.C.P.;

[23] **THE WHOLE** without costs, the parties having agreed upon the costs of all publications of notices.

SERGE FRANCOEUR J.S.C.

Mtre. Samy Elnemr
SISKINDS DESMEULES
Attorneys for the petitioner

Mtre. François Fontaine
NORTON ROSE
Attorneys for the respondents SNC-Lavalin Group inc., Ian A. Bourne, David Goldman, Patricia A. Hammick, Pierre H. Lessard, Edythe A. Marcoux, Lorna R. Marsden, Claude Mongeau, Gwyn Morgan, Michael D. Parker and Hugh D. Segal

Mtre. Suzanne Gagné (Box 158)
LÉTOURNEAU GAGNÉ
Attorneys for the respondent Pierre Duhaime

Mtre. Dimitri Maniatis
LANGLOIS KRONSTRÖM
Attorneys for the respondent Gilles Laramée

Mtre. Patrick Ouellet
WOODS
Attorneys for the respondent Riadh Ben Aïssa

Mtre. James R.K. Duggan
Mr. Alex Duggan (clerk)
Attorney for the respondent Stéphane Roy

Date of hearing: January 10, 2013