

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

(CLASS ACTION)
SUPERIOR COURT

N^o : 500-06-000709-143

« Les personnes ayant acheté des défenderesses Ameublements Tanguay Inc., Meubles Léon Itée, Brault & Martineau inc., Corbeil Électrique inc. et Glentel inc., une garantie prolongée, après le 30 juin 2010, à la suite de la représentation à l'effet que si elles n'achetaient pas cette garantie supplémentaire et qu'un bris survenait après l'expiration de la garantie d'un an du manufacturier, elles devraient assumer le coût des réparations ou du remplacement. »

The Group

-and-

FRANÇOIS ROUTHIER

Representative

(Collectively « **Plaintiffs** »)

v.

AMEUBLEMENTS TANGUAY INC.

-and-

MEUBLES LÉON LTÉE

-and-

GROUPE BMTC INC. (BRAULT & MARTINEAU)

-and-

GLENTEL INC.

Defendants

DEFENDANT MEUBLES LÉON LTÉE'S STATEMENT OF DEFENCE

IN SUPPORT OF ITS STATEMENT OF DEFENCE, DEFENDANT MEUBLES LÉON LTÉE (HEREINAFTER “LEON’S”) RESPECTFULLY SUBMITS THE FOLLOWING:

1. With regard to the allegations contained in paragraphs 1 to 5 of the *Demande introductive d’instance en action collective modifiée* (hereinafter “**Application**”), Leon’s refers to the judgment rendered by the Honourable Pierre Nollet, J.S.C., on September 9, 2016¹, denying anything that is not in conformity therewith.
2. Leon’s admits the allegations contained in paragraphs 6 and 7 of the Application regarding Leon’s.
3. Leon’s admits the allegations contained in paragraph 8 of the Application regarding Leon’s and adds that it has no knowledge about the other Defendants’ activities.
4. Leon’s has no knowledge of the allegations contained in paragraph 9 of the Application.
5. Leon’s admits the allegations contained in paragraph 10 of the Application.
6. Leon’s has no knowledge of the allegations contained in paragraphs 11 to 29 of the Application.
7. With regard to the allegations contained in paragraph 30 of the Application, Leon’s refers to its sales invoice (P-4) and its Extended Warranty Plan(P-5), denying anything that is not in conformity therewith.
8. With regard to the allegations contained in paragraph 31 of the Application, Leon’s admits that an Extended Warranty Plan was proposed to Mrs. Karine Prud’homme by its Sales Associate, but it denies the remainder of the allegations contained in the said paragraph.
9. With regard to the allegations contained in paragraph 32 of the Application, Leon’s refers to its sales invoice (P-4) and its Extended Warranty Plan (P-5), denying anything that is not in conformity therewith.
10. Leon’s denies the allegations contained in paragraphs 33 and 34 of the Application.
11. With regard to the allegations contained in paragraph 35 of the Application, Leon’s denies that this “*type de représentations*” is generalized in all of its stores in the Province of Québec and admits the remainder of the said paragraph.

¹ Leon’s Motion for Leave to Appeal was dismissed on September 7, 2017 (500-09-026393-165).

12. Leon's denies the allegations contained in paragraphs 36 and 37 of the Application.
13. Leon's denies as drafted the allegations contained in paragraph 38 of the Application.
14. Paragraphs 39 and 40 of the Application set out Plaintiffs' legal submissions, which Leon's will not comment upon in its Statement of Defence.
15. With regard to the allegations contained in paragraph 41 of the Application, Leon's refers to Mr. David Leclerc's Affidavit, Exhibits in support of the Affidavit and the transcript of his examination (P-7), denying anything that is not in conformity therewith.
16. Leon's denies the allegations contained in paragraph 42 of the Application.
17. Leon's has no knowledge of the allegations contained in paragraphs 43 to 97 of the Application.
18. With regard to paragraph 98 of the Application, Leon's refers to the *Consumer Protection Act* (hereinafter "**C.P.A.**"), denying anything that is not in conformity therewith.
19. Leon's denies the allegations contained in paragraph 104 of the Application.
20. Paragraphs 105 to 110 of the Application set out Plaintiffs' legal submissions, which Leon's will not comment upon in its Statement of Defence.
21. Leon's denies the allegations contained in paragraphs 112 to 115 of the Application.
22. Leon's denies the allegations contained in paragraph 116 of the Application and adds that the question of whether Leon's would have breached sections 220 a) and c) of the C.P.A. (which is denied) is not part of the questions that were authorized by the judgment rendered by the Honourable Pierre Nolle, J.S.C., on September 9, 2016.
23. Leon's denies as drafted the allegations contained in paragraph 117 of the Application.
24. Paragraphs 118 to 120 of the Application set out Plaintiffs' legal submissions, which Leon's will not comment upon in its Statement of Defence, save and except to add that the questions of whether Leon's would have breached sections 42, 43, 220 a) and c) of the C.P.A.(which is denied) were not part of the questions that were authorized by the judgment rendered by the Honourable Pierre Nolle, J.S.C., on September 9, 2016.

25. Leon's denies the allegations contained in paragraphs 121 to 123 of the Application.

AND TO RE-ESTABLISH THE FACTS, LEON'S RESPECTFULLY ADDS THE FOLLOWING:

INTRODUCTION

26. Leon's is a well-established retailer in Canada which sells furniture, major appliances and home electronics.
27. Leon's has eight (8) corporate stores in the Province of Québec.
28. Leon's offers to its customers the possibility to purchase an Extended Warranty which covers major appliances and home electronics (P-5).
29. The Extended Warranty comes into force at the expiry of the manufacturer's warranty which is generally of one year (P-5).

AMENDMENT OF THE C.P.A.

30. On June 30, 2010, the C.P.A. and the *Regulation respecting the application of the Consumer Protection Act* (hereinafter "**R.A.C.P.A.**") were amended in order to establish how, as of that date, extended warranties on goods would be sold:

"228.1 C.P.A.

Additional warranty

Before proposing to a consumer to purchase a contract that includes an additional warranty on goods, the merchant must inform the consumer orally and in writing, in the manner prescribed by regulation, of the existence and nature of the warranty provided for in sections 37 and 38.

In such a case, the merchant must also inform the consumer orally of the existence and duration of any manufacturer's warranty that comes with the goods. At the request of the consumer, the merchant must also explain to the consumer orally how to examine all of the other elements of the warranty.

Any merchant who proposes to a consumer to purchase a contract that includes an additional warranty on goods without first providing the

information mentioned in this section is deemed to have failed to mention an important fact, and therefore to have used a practice prohibited under section 228.” (Our emphasis)

“91.9 R.A.C.P.A.

Before proposing the conclusion of a contract for valuable consideration including an additional warranty on goods, the merchant must give the consumer a document in paper form containing only the following compulsory notice:

“NOTICE CONCERNING THE LEGAL WARRANTY

The Consumer Protection Act gives a warranty on all goods you purchase or lease from a merchant.

The goods must be usable

- **for the purposes for which they are ordinarily used (section 37 of the Act) and**
- **in normal use for a reasonable length of time, which may vary according to the price paid, the terms of the contract and the conditions of use (section 38 of the Act).**

For more information on this legal warranty, go to the website of the Office de la protection du consommateur at www.opc.gouv.qc.ca.”

91.10 R.A.C.P.A.

The notice provided for in section 91.9 must contain, on the front,

(a) the heading, in bold capital type of at least 14 points;

(b) below the heading, the following text in type of at least 14 points in a rectangle: “The

law provides a warranty on the goods you purchase or lease: they must be useable for normal use for a reasonable length of time.”;

(c) below that rectangle, the following text in italic type of at least 12 points: “(The merchant is required to read you the above text)”;

(d) the first two paragraphs, in type of at least 14 points in a rectangle;

(e) the third paragraph, in type of at least 12 points.

91.11 R.A.C.P.A.

For the purposes of section 228.1 of the Act, before proposing the making of a contract referred to in that section, the merchant must read to the consumer the text prescribed in paragraph b of section 91.10.” (Our emphasis)

31. Before these amendments came into force on June 30, 2010, Leon’s informed and instructed verbally the General Managers of its corporate stores located in the Province of Québec (hereinafter “**General Managers**”) that:
- i. The C.P.A. would be modified on June 30, 2010 concerning the sale of Extended Warranties;
 - ii. In order to ensure that Leon’s would comply with the law, the General Managers were instructed to inform the Sales Associates working in the stores located in the Province of Québec (hereinafter “**Sales Associates**”) of the changes without further delay;
 - iii. Before proposing the sale of an Extended Warranty, a Notice concerning the legal warranty (“**Notice**”) had to be handed out to the customers and a paragraph appearing in the said Notice had to be read to the customers, as appears from the Notice, **Exhibit DL-1**;
 - iv. Also, the customers had to be informed verbally of the existence and the duration of the manufacturer’s warranty and if a customer made the request, Leon’s had to explain to the consumer verbally how to examine all of the other elements of the warranty.

32. At the same time, Leon's also instructed the General Managers to change the way Extended Warranties were now sold to a customer in order to:
 - i. Focus on the legal warranty meaning on the Notice to be provided to the customers and read the relevant paragraph from the Notice;
 - ii. Present the Extended Warranty as an alternative proposal and avoid referring to the costs of repairs.
33. Following the above instructions, on June 30, 2010 and in the course of the following days (depending on the Sales Associates' work schedules), the General Managers informed verbally the Sales Associates and the Front Office Associates of these instructions enforceable immediately and that failure to comply with these instructions could lead to a sanction or a dismissal.
34. At that time, approximately ninety-five (95) Sales Associates and sixty (60) Front Office Associates were employed by Leon's in their six (6) corporate stores in the Province of Québec.
35. Since 2010, Leon's has ensured that it complies with the C.P.A. and its Regulation and that the above instructions for the sale of Extended Warranties were followed by:
 - i. Sending a memo on February 11, 2011 to all the stores in the Province of Québec as a reminder of the verbal instructions that were implemented as of June 30, 2010, **Exhibit DL-2**;
 - ii. Conducting in-store training on the proper way to sell Extended Warranties;
 - iii. Continuing to use a technique called "shadowing" which consists of observing "live" how a Sales Associate interacts with a customer in the stores, which includes handing out the Notice and reading the relevant paragraph from the Notice;
 - iv. As of September 2014, having the Sales Associates sign a document in which they undertook to follow the procedure described in Leon's memo of February 11, 2011 and if it was not followed, it could lead to a sanction or a dismissal, **Exhibit DL-3**;
 - v. Adding an automatic comment indicating "CLIENT A REÇU INFO ET AVIS DE GARANTIE LÉGALE" to the sales invoices which the Sales Associates select after handing out the Notice

and reading the relevant paragraph from the Notice at the time that they prepare the customers' sales invoices;

- vi. Displaying additional copies of the Notices in all of Leon's stores in the Province of Québec.
36. Since the law is different in the Province of Québec, Leon's does not use training videos for the sale of Extended Warranties in the Province of Québec. Instead, Leon's has always conducted in-store training on the proper way to sell Extended Warranties.
37. For the stores located in other Canadian Provinces, Leon's uses training videos to assist Sales Associates with the sale of Extended Warranties. These videos are posted on Leon's Learning Management System, available on Leon's internal computer system.
38. The training videos are mandatory for the Sales Associates selling Extended Warranties outside the province of Québec and must be re-viewed on an annual basis.
39. From February 2016 to December 2019, a training video to assist Sales Associates with the sale of Extended Warranties outside the Province of Québec was inadvertently made available to the Sales Associates in the Province of Québec in the section "Additional training" in Leon's Learning Management System.
40. Irrespective of the fact that this training video was available to Sales Associates in the Province of Québec, in-store training on the sale of Extended Warranties based on the instructions put in place on June 30, 2010 continued (handing out the Notice and reading the relevant paragraph from the Notice) as well as the "shadowing" technique to observe the Sales Associates' interactions with the customers and the signature of the document (DL-3) in which the Sales Associates undertook to follow the procedure described in Leon's memo of February 11, 2011 (DL-2).
41. From February 2016 to December 2019, the Area Supervisor for the Province of Québec, Mr. David Leclerc, the Regional Sales Manager for the Province of Québec, Mr. Charles Dupont, and the Sales Managers in the Province of Québec in charge of the "shadowing technique" have not seen any modification in the Sales Associates' interactions with customers in stores, meaning that the focus remained on the legal warranty (Notice to be provided and paragraph to be read) and to present the Extended Warranty as an alternative, not based on the costs of repairs.
42. Since June 30, 2010, Leon's has taken all the necessary steps to ensure that its Sales Associates inform its customers about the legal warranty by

providing the Notice before proposing the sale of an Extended Warranty and reading out the requested section of the Notice.

NO FALSE AND MISLEADING REPRESENTATIONS

43. Despite its best efforts to ensure that its Sales Associates comply with the law, it is impossible for Leon's to confirm if a Sales Associate has inadvertently forgotten to hand out the Notice to a customer or read to a customer the relevant section from the Notice or refer to, for the period of February 2016 to December 2019, a sales technique used outside the Province of Québec.
44. Even if Leon's Sales Associates were to have represented to customers in the Province of Québec that if they did not purchase an extended warranty and that their item failed after the expiry of the manufacturer's one-year warranty, that they would have to assume the costs to either repair or replace their item, these representations are not false nor misleading for the following reasons.
45. The above representations that would have been made by Leon's to its customers are almost identical to the definition of "contract of additional warranty" added by the legislature to the section "Definitions" of the C.P.A. on June 30, 2010:

"1 e.1) "contract of additional warranty" means a contract under which **a merchant binds himself toward a consumer to assume directly or indirectly all or part of the costs of repairing or replacing goods or a part thereof in the event that they are defective or malfunction,** otherwise than under a basic conventional warranty given gratuitously to every consumer who purchases the goods or has them repaired;"
(Our emphasis)

46. Furthermore, this definition previously appeared in the section "Administration of sums collected in respect of additional warranty" of the C.P.A. before June 30, 2010:

"260.6 "contract of additional warranty"

For the purposes of paragraph *d* of section 321 and this title, "contract of additional warranty" means a contract under which a merchant binds himself toward a consumer to **assume directly or indirectly all or part of the costs of repairing or replacing a property or a part thereof in the event that it is defective or**

malfunctions, otherwise that under a basic conventional warranty given gratuitously to every consumer who purchases the property or has it repaired". (Our emphasis)

47. If the above representations were false or misleading, the legislature would have repealed the definition previously found at section 260.6 from the C.P.A. on June 30, 2010 rather than adding it to the section entitled "Definitions" of the C.P.A. at section 1 e.1. or would have completely removed the possibility for a merchant to sell extended warranties to consumers.
48. Instead, the legislature amended the C.P.A. on June 30, 2010 in order to establish how, as of that date, extended warranties on goods would be sold (sections 228.1 CPA and 91.9 R.A.C.P.A.).
49. In light of the above, Leon's respectfully submits that the present Class Action should be dismissed.

ALTERNATIVELY, MODIFICATION TO THE CLASS

50. Should this Honourable Court conclude that the present Class Action should be granted, Leon's submits the Class should be modified in order to exclude the following people from it:
 - i. People who have already made a claim under their Extended Warranty Plan meaning that the item purchased has been repaired or replaced under the Extended Warranty Plan; and
 - ii. People who have ratified their Extended Warranty Plain in any way whatsoever (for example: by asking to obtain a repair or replacement service, whether the item was repaired/replaced or not).
51. In light of the above, should this Honourable Court conclude that the present Class Action should be granted, Leon's submits that it should provide individual recovery of the claims.

FOR THESE REASONS, MAY IT PLEASE THE COURT:

MAINTAIN the present Statement of Defence;

DISMISS Plaintiffs' *Demande introductive d'instance en action collective modifiée*;

THE WHOLE WITH LEGAL COSTS.

Montréal, January 17, 2020

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CANADA
PROVINCE OF QUEBEC
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(CLASS ACTION)
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« Les personnes ayant acheté des défenderesses Ameublements Tanguay inc., Meubles Léon Itée, Brault & Martineau inc., Corbeil Électrique inc. et Glentel inc., une garantie prolongée, après le 30 juin 2010, à la suite de la représentation à l'effet que si elles n'achetaient pas cette garantie supplémentaire et qu'un bris survenait après l'expiration de la garantie d'un an du manufacturier, elles devraient assumer le coût des réparations ou du remplacement. »

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FRANÇOIS ROUTHIER

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v.

AMEUBLEMENTS TANGUAY INC.

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GLENTEL INC.

Defendants



DEFENDANT MEUBLES LÉON LTÉE'S
STATEMENT OF DEFENCE

ORIGINAL

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