

SUPERIOR COURT
(Class Action)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

N° : 500-06-000989-190

DATE : May 21, 2020

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

GERTRUDE GILLICH
Plaintiff

v.

MERCEDES-BENZ WEST ISLAND
SCI LEASE CORP.
Defendants

And

FONDS D'AIDE AUX ACTIONS COLLECTIVES
Mis en cause

**JUDGMENT ON THE JOINT APPLICATION TO APPROVE A CLASS ACTION
SETTLEMENT WITH SCI LEASE CORP. ONLY**

INTRODUCTION

[1] The Court is seized with a Joint Application by Plaintiff Gertrude Gillich and Defendant SCI Lease Corp. (hereinafter "SCI") to approve a class action settlement. This settlement only covers SCI, as Plaintiff is seeking the authorization of a class action against the other defendant, Mercedes-Benz West Island. The Court will dispose in a separate judgment the issue of the authorization sought against Mercedes-Benz West Island.

[2] The relevant facts and documents were put into evidence by the Affidavit of Karen Lobo, representative of SCI, dated March 6, 2020¹.

[3] On January 17, 2020², the Court authorized the class action of Plaintiff for settlement purposes only against Defendant SCI Lease Corp. (hereinafter “SCI”) and approved the contents of the Pre-Approval Notices to the members³. The Settlement Agreement is Exhibit R-2. The Court indicates that other capitalized terms in the present judgment have the meaning ascribed to them in the Settlement Agreement.

[4] The class was described as follows in the authorization judgment:

In 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.

In 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 leurs contrats de location.

[5] Plaintiff alleged that SCI was in breach of Sections 12 and 228 of the *Consumer Protection Act*⁴ namely that:

- SCI contravened to Section 228 CPA by omitting to disclose in the Plaintiff’s lease that she would be charged a fee when exercising her option to purchase (the “buyback” fee); and
- SCI charged the buyback fee, even though it was not precisely indicated in the lease of Plaintiff.

[6] In summary, the Settlement Agreement provides that SCI will reimburse each Settlement Class Member one hundred percent (100%) of the Buyback Fee paid by the Settlement Class Member during the Settlement Class Period.

[7] The Pre-Approval Notices were disseminated to the Settlement Class Members in accordance with the terms ordered by the Court⁵. No “opt-outs” were received by class counsel and no class members objected to the Settlement Agreement.

¹ Exhibit R-3.

² *Gillich c. Mercedes-Benz West Island*, 2020 QCCS 79.

³ Exhibit R-1 en liasse.

⁴ RLRQ, c. P-40.1.

[8] Class counsel does not claim any fees and disbursement.

[9] For the reasons that follow, the Court approves the Settlement Agreement.

ANALYSIS AND DISCUSSION

The applicable law to the approval of a settlement agreement

[10] Following Article 590 of the *Code of Civil Procedure* (« CCP »), the Court must approve a class action settlement in order to insure that it is just, reasonable and in the best interest of class members, in accordance with a series of criteria developed by the case law ⁶ and which are as follows:

- (i) The probability of success;
- (ii) The amount and nature of discovery;
- (iii) The terms and conditions of the settlement agreement;
- (iv) The attorneys' recommendation and their experience;
- (v) Approval of the Plaintiff;
- (vi) The future expenses and probable length of the litigation;
- (vii) The number and nature of any opt-outs and/or objectors;
- (viii) Good faith of the parties and the absence of collusion.

Application to the present file

[11] The parties submit that an analysis of all of these criteria should lead the Court to conclude that the Settlement Agreement is fair and reasonable and in the best interest of Class Members. The Court agrees. Here is why.

i. The Probability of Success:

[12] While the Plaintiff maintains that her action is well-founded, SCI denies her claims and allegations.

[13] The Parties indicated that they would have entered into a serious and contradictory debate as to whether SCI committed the alleged violations of the *Consumer Protection Act*.

⁵ See par. 4 to 8 of the Affidavit of Karen Lobo. The total number of Settlement Class Members is 61.

⁶ *Pellemans c. Lacroix*, 2011 QCCS 1345, at par. 20.

[14] There is always a risk that: i) the Court would not authorize the class action or it would not be successful on the merits; or ii) it would be impossible to recover even if it were successful on the merits after many years of litigation, and this risk is abated through the Settlement Agreement which guarantees recovery to Class Members.

[15] As a result, this criteria is met.

ii. The amount and nature of discovery:

[16] This criteria does not apply here and is neutral, as the amount and nature of discovery would likely not be very detailed and complicated.

iii. The Terms of the Settlement Agreement:

[17] In the Court's opinion, the Settlement Agreement is a favorable result for Settlement Class Members in that it provides for a full resolution of the litigation and for the following noteworthy benefits:

(a) SCI will reimburse each Settlement Class Member one hundred percent (100%) of the Buyback Fee paid by the Settlement Class Member during the Settlement Class Period. The specific amount reimbursed will vary between \$31.50 and \$136.50, depending on the Buyback Fee they were charged;

(b) Payments will be sent directly to each Settlement Class Member by cheque, at their last known address;

(c) No claim process is required.

[18] This is a great result.

iv. The Attorneys' Recommendations and their Experience:

[19] Class Counsel, whose practice is focused in the area of consumer class actions, has negotiated and recommended the terms and conditions of the Settlement Agreement.

[20] The Court agrees that the Settlement Agreement adequately addresses the issues raised in the class action and provides full relief and benefits to the Class Members.

v. Approval of the Plaintiff:

[21] The Plaintiff provided her instructions to enter into the Settlement Agreement on her own behalf and on behalf of the Class Members and signed the Settlement Agreement.

vi. The Future Expenses and Probable Length of the Litigation:

[22] If the case were to proceed in an adversarial fashion, there is no doubt that there would be protracted litigation and important costs.

[23] In addition, it is safe to say that the present action would take several years to be decided on the merits and there would have been a possibility that a successful judgment could be appealed, causing further delays.

[24] Conversely, having obtained a settlement in the form of full monetary compensation is in the interests of judicial economy, proportionality and a favorable result for Class Members.

vii. The Number and Nature of any Opt-Outs and/or Objectors:

[25] Following the dissemination of the Pre-Approval Notices and until this day, no class members have requested to “opt-out” of this class action and no class members have made any objections.

viii. Good Faith of the Parties and the Absence of Collusion:

[26] The parties have indicated that the Settlement Agreement was negotiated at arm’s-length and in utmost good faith by the parties.

[27] The Mis en cause Fonds d’aide aux actions collective has sent a letter to the parties⁷ and to the Court indicating that it has no specific opposition or comments to provide on the Settlement Agreement since:

- The Settlement Agreement provides for a collective recovery;
- The parties have agreed that, if there is a balance, any balance of any amounts payable to the Settlement Class Members will be subject to the percentage to be withheld by the Fonds d’aide aux actions collectives in accordance with the *Regulation respecting the percentage withheld by the Fonds d’aide aux actions collectives*⁸;
- SCI is the claims administrator;
- As claims administrator, at the end of the claims process, SCI will make a detailed report on its administration under Art. 59 and 60 of the *Regulation of the Superior Court of Québec in civil matters*⁹;

⁷ Dated March 23, 2020.

⁸ RLRQ, c. F-3.2.0.1.1, r. 2.

⁹ RLRQ, C-25.01, r. 0.2.1.

- Class counsel does not claim any fees and disbursement.

[28] Based on all of the above, the Court is of the opinion that the Settlement Agreement must be authorized. In light of the Covid-19 situation, the Court will extend to 120 days the 30 days delay initially provided for to issue cheques to class members.

Class counsel fees and disbursements

[29] In a class action settlement, the Court also has to approve any fees and disbursement claimed by class counsel¹⁰.

[30] However, none are claimed here. Class counsel indicated the low amount of the settlement amount¹¹ does not justify the award of class counsel fees and disbursements, and that the file is continuing against Defendant Mercedes-Benz West Island.

[31] As a result, the Court has nothing to decide on this issue.

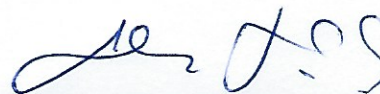
FOR THESE REASONS, THE COURT:

[32] ACCUEILLE la Demande conjointe en approbation de l'Entente de Règlement avec SCI Lease Corp.;	[33] GRANTS the Joint Application to Approve a Class Action Settlement with SCI Lease Corp.;
[34] DÉCLARE que les définitions contenues dans l'Entente de Règlement s'appliquent et sont incorporées au présent jugement, et en conséquence en font partie intégrante, étant entendu que les définitions lient les parties à l'Entente de Règlement;	[35] DECLARES that the definitions set forth in the Settlement Agreement apply to and are incorporated into this judgment, and as a consequence shall form an integral part thereof, being understood that the definitions are binding on the parties to the Settlement Agreement;
[36] APPROUVE l'Entente de Règlement conformément à l'article 590 du <i>Code de procédure civile du Québec</i> , et ORDONNE aux parties de s'y conformer;	[37] APPROVES the Settlement Agreement as a transaction pursuant to article 590 of the <i>Code of Civil Procedure</i> , and ORDERS the parties to abide by it;
[38] DÉCLARE que l'Entente de Règlement (incluant son préambule et ses annexes) est juste, raisonnable et qu'elle est dans le meilleur intérêt des Membres du Groupe et qu'elle constitue une	[39] DECLARES that the Settlement Agreement, (including its Preamble and its Schedules) is fair, reasonable and in the best interest of the Class Members and constitutes a transaction pursuant to article

¹⁰ *Dupuis c. Polyone Canada Inc.*, 2016 QCCS 2561, at par. 37.

¹¹ The 61 class members will receive refund of 100% of their claims, for an approximate collective total of 7,200 \$.

transaction en vertu de l'article 2631 du <i>Code civil du Québec</i> , qui lie toutes les parties et tous les Membres du Groupe tel qu'énoncé aux présentes;	2631 of the <i>Civil Code of Quebec</i> , which is binding upon all parties and all Class Members at set forth herein;
[40] ORDONNE et DÉCLARE que le présent jugement, incluant l'Entente de Règlement, lie chaque Membre du Groupe Visé par le Règlement;	[41] ORDERS and DECLARES that this judgment, including the Settlement Agreement, shall be binding on every Settlement Class Member;
[42] ORDONNE à SCI Lease Corp. d'émettre un chèque à chaque Membre du Groupe Visé par le Règlement au montant des frais de rachat payé par le Membre durant la Période pour fins de règlement, dans les 120 jours du présent jugement;	[43] ORDERS SCI Lease Corp. to issue a cheque to each Settlement Class Member in the amount of the Buyback Fee paid by that Settlement Class Member during the Settlement Class Period, with 120 days of the present judgment;
[44] DÉCLARE que le reliquat des sommes payables aux Membres du Groupe Visé sera sujet au pourcentage prélevé par le <i>Fonds d'aide aux actions collectives</i> , conformément au <i>Règlement sur le pourcentage prélevé par le Fonds d'aide aux actions collectives</i> ;	[45] DECLARES that the balance of any amounts payable to the Settlement Class Members will be subject to the percentage to be withheld by the <i>Fonds d'aide aux actions collectives</i> in accordance with the <i>Regulation respecting the percentage withheld by the Fonds d'aide aux actions collectives</i> ;
[46] ORDONNE à SCI Lease Corp., à la fin du processus de réclamation, de produire un rapport détaillé de son administration en vertu des articles 59 et 60 du <i>Règlement de la Cour supérieure du Québec en matière civile</i> ;	[47] ORDERS SCI Lease Corp., at the end of the claims process, to make a detailed report on its administration under Art. 59 and 60 of the <i>Regulation of the Superior Court of Québec in civil matters</i> ;
[48] LE TOUT , sans frais de justice.	[49] THE WHOLE , without legal costs.



DONALD BISSON, J.S.C.

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Hearing dates (on file) : March 20 and 23, 2020

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