

# SUPERIOR COURT

CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF MONTRÉAL

No.: 500-06-000932-182

DATE: January 18, 2021

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**BY THE HONOURABLE MARTIN F. SHEEHAN, J.S.C.**

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**QING WANG**  
Applicant

v.

**C.S.T. CONSULTANTS INC.**  
and

**CANADIAN SCHOLARSHIP TRUST FOUNDATION**  
and

**KALEIDO FOUNDATION (personally and in continuance of proceedings for  
UNIVERSITAS FOUNDATION OF CANADA)**

and

**KALEIDO GROWTH INC. (personally and in continuance of proceedings for  
UNIVERSITAS MANAGEMENT INC.)**

and

**HERITAGE EDUCATION FUNDS INC.**

and

**HERITAGE EDUCATIONAL FOUNDATION**

and

**CHILDREN'S EDUCATION FUNDS INC.**

and

**CHILDREN'S EDUCATIONAL FOUNDATION OF CANADA**

and

**KNOWLEDGE FIRST FINANCIAL INC. (personally and in continuance of  
proceedings for HERITAGE EDUCATION FUNDS INC.)**

and

**KNOWLEDGE FIRST FOUNDATION**

and

**GLOBAL RESP CORPORATION**

and  
**GLOBAL EDUCATIONAL TRUST FOUNDATION**  
Defendants

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JUDGMENT

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**1. OVERVIEW**

[1] Defendants promote and distribute group registered education savings plans (“**Group RESP**”).

[2] The Applicant, Mr. Qing Wang (“**Applicant**”), wants to file a class action against the Defendants. He alleges that Defendants charge Group RESP enrollment fees that are abusive and exceed what is allowed by the relevant regulations.

[3] The Defendants each seek permission of the Court to file relevant evidence under article 574(3) of the *Code of Civil Procedure* (“**CCP**”).

[4] Defendants allege that the evidence is necessary to assess whether or not the criteria to authorize a class action are met. In particular, they plead the evidence assists in challenging Applicant’s allegation that they made false representations in their prospectuses.

[5] Applicant contests Defendants’ motions. He alleges that the evidence is not essential and indispensable goes beyond the “frugal” and “limited” documentary evidence that should be allowed at this stage.

**2. BACKGROUND**

[6] On June 15, 2018, the Applicant filed an Application for Authorization to Institute a Class Action and to Appoint the Status of Representative Plaintiff (the “**Application**”) against the Defendants.

[7] An Amended Application was filed on June 26, 2020 (the “**Amended Application**”). The Court granted permission to amend on August 28, 2020.

[8] The Applicant now seeks to represent the following class and subclass:<sup>1</sup>

Class:

All persons residing in Quebec who, at any time since July 19th, 2013 (the “**Class Period**”), had a contract with any of the Defendants in which they were a subscriber and/or contributor (either primary or joint) for a Registered Education Savings Plan (“**RESP**”), and who were charged a fee (referred to as “**Enrollment Fee**”, “**Sales Charge**” and/or “**Membership Fee**”), including the commissions of the distributor and its salesmen, exceeding \$200.00 per plan;

(hereinafter referred to as the “**Class**”)

Subclass:

All persons residing in Quebec: (1) who at any time since June 15th, 2015 (the “**Subclass Period**”), had a contract with any of the Defendants in which they were a subscriber and/or contributor (either primary or joint) for an RESP, (2) who cancelled their RESP as of that date and (3) lost more than 20% of their contributions on account of Enrollment Fees, Sales Charges or Membership Fees;

(hereinafter referred to as the “**Subclass**”)

or any other group or subgroups to be determined by the Court;

[9] In support of his claim, Applicant alleges that:

- 9.1. the Enrollment Fees charged by the Defendants in excess of \$200 contravene subsection 1.1(7) of *Regulation no. 15 Respecting Conditions Precedent to Acceptance of Scholarship or Educational Plan Prospectuses*<sup>2</sup> (“**Regulation 15**”);
- 9.2. in their respective prospectuses, provided to Class members when they opened their RESP, Defendants falsely claim that they comply with Regulation 15;
- 9.3. the portion of Enrollment Fees which is forfeited upon cancellation of the RESP is abusive under article 1437 CCQ.

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<sup>1</sup> Amended Application, para. 1.

<sup>2</sup> *Regulation No. 15 respecting Conditions Precedent to Acceptance of Scholarship or Educational Plan Prospectuses*, CQLR c V-1.1, r 44.

### 3. ANALYSIS

#### 3.1 Applicable Law

[10] A class action is a procedure by which a person, the class representative, can sue on behalf of all members of a group that have a similar claim. Because the class representative is not specifically mandated to act on behalf of these members, prior authorization of the Court is required before a class action can be filed.<sup>3</sup>

[11] The Court's role at the authorization stage has been described as "screening." It must weed out those frivolous cases that clearly don't meet the requirements for the issuance of class action (article 575 CCP). The merits of the case should only be considered after authorization has been granted.<sup>4</sup>

[12] Article 574 CCP provides that an Application for authorization to file a class action must set out: i) the facts on which it is based; ii) the nature of the class action; and iii) the class on whose behalf the person intends to act. It adds that the application for authorization is contested orally and that "the court may allow relevant evidence to be submitted."

[13] The principles applicable to a Motion to adduce relevant evidence at the authorization stage of a class action are well known. In fact, Applicant and Defendants agree on them.

[14] These principles can be summarized as follows:

- 14.1. Filing of relevant evidence requires prior authorization by the Court. An agreement between the parties on this issue is not binding on the judge.<sup>5</sup>
- 14.2. In determining whether the filing should be allowed, the Court must strive to find the middle ground between rigidity and permissiveness. The summary nature of the authorization process requires such prudence.<sup>6</sup>
- 14.3. The proposed evidence must be limited and proportional to what is essential to assess the criteria set out in article 575 CCP<sup>7</sup> and respect the principle of proportionality and reasonableness set out in articles 18 and

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<sup>3</sup> *L'Oratoire Saint-Joseph du Mont-Royal v. J.J.*, 2019 SCC 35, para. 6.

<sup>4</sup> *Desjardins Cabinet de services financiers inc. c. Asselin*, 2020 SCC 30, para. 55; *L'Oratoire Saint-Joseph du Mont-Royal v. J.J.*, *supra*, note 3, para. 7; *Infineon Technologies AG v. Option consommateurs*, 2013 SCC 59, paras. 59, 61, 65 and 68.

<sup>5</sup> *Allstate du Canada, compagnie d'assurances v. Agostino*, 2012 QCCA 678, paras. 25 and 27.

<sup>6</sup> *Ibid.*, para. 35.

<sup>7</sup> *Lambert (Gestion Peggy) c. Écolait ltée*, 2016 QCCA 659, para. 38; *Allstate du Canada, compagnie d'assurances v. Agostino*, *supra*, note 5, para. 35 quoting Justice Clément Gascon (then of the Superior Court) in *Option Consommateurs v. Banque Amex du Canada*, 2006 QCCS 6290, para. 20.

19 CCP.<sup>8</sup>

- 14.4. The Court must be careful not to transform the authorization stage into a pretrial inquiry of the merits. At the authorization stage, the allegations of the motion must be taken to be true without verifying their veracity. The Court must limit itself to analyzing the proposed legal syllogism and avoid taking on the role of the ultimate arbiter of the facts.<sup>9</sup>
- 14.5. When the evidence consists of sworn declarations, these must generally relate to neutral and objective facts as opposed to controversial or contentious questions which fall within the assessment of the evidence on the merits of the case.<sup>10</sup>
- 14.6. The onus of demonstrating utility and relevance lies with the party requesting permission to file the relevant evidence.<sup>11</sup>

[15] Applying these principles, courts have generally allowed the filing of evidence consisting of:

- 15.1. The contracts relevant to the members' claim;<sup>12</sup>
- 15.2. The nature of a defendant's operations<sup>13</sup> and the regulatory context under which it operates;<sup>14</sup>
- 15.3. Evidence that demonstrates the obvious falsity or the ludicrous character of certain allegations.<sup>15</sup>

### 3.2 Application

[16] The evidence that Defendants wish to file can be divided into the following categories:

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<sup>8</sup> *Option Consommateurs c. Samsung Eletronics Canada inc.*, 2017 QCCS 1751, par. 11; *Kramar c. Johnson & Johnson*, 2016 QCCS 5296, par. 22 and 25.

<sup>9</sup> *Desjardins Cabinet de services financiers inc. c. Asselin*, *supra*, note 4, paras. 9 and 74; *Infineon Technologies AG v. Option consommateurs*, *supra*, note 4, paras. 67 and 68; *Godin c. Aréna des Canadiens inc.*, 2020 QCCA 1291.

<sup>10</sup> *Lambert (Gestion Peggy) c. Écolait ltée*, *supra*, note 7, para. 37.

<sup>11</sup> *Allstate du Canada, compagnie d'assurances v. Agostino*, *supra*, note 5, para. 35 quoting Justice Clément Gascon (then of the Superior Court) in *Option Consommateurs v. Banque Amex du Canada*, *supra*, note 7, para. 20.

<sup>12</sup> *Benabou c. StockX*, 2020 QCCS 418, para. 10; *Société AGIL OBNL c. Bell Canada*, 2019 QCCS 4432, para. 9; *Gagné c. Rail World*, 2014 QCCS 32, paras. 77, 136 and 137.

<sup>13</sup> *Benabou c. StockX*, *supra*, note 12, para. 9; *Société AGIL OBNL c. Bell Canada*, *supra*, note 12, para. 8.

<sup>14</sup> *Labranche c. Énergie éolienne des Moulins, s.e.c.*, 2015 QCCS 918, paras. 48 and 52.

<sup>15</sup> *Benabou c. StockX*, *supra*, note 12, para. 9.

- 16.1. Annual prospectuses and Prospectus summaries;
- 16.2. Regulatory Receipts;
- 16.3. RESP Plan summaries, Client Disclosure Documents and Applicant's Signed Application Form;
- 16.4. Applicant's 2016 Annual RESP Statement; and
- 16.5. Documents related to the AMF's Internal Review of Applicant's Complaint.

[17] These will be examined in turn.

### 3.2.1 The Prospectuses and Prospectus Summaries

[18] The prospectuses are central to Applicant's case. They are mentioned in several paragraphs of the Amended Application. On several occasions, Applicant states that Defendants made misrepresentations in their prospectuses and that these misrepresentations were reiterated year after year.<sup>16</sup>

[19] Applicant's counsel argues that the filing is unnecessary because the prospectuses are all similar. He also argues that a detailed factual analysis of the prospectuses is unwarranted at the authorization stage. That may be the case.

[20] This being said, for the purpose of the present motion, it suffices to decide that the prospectuses were part of the contractual agreement between the parties and are referred to by Applicant as one possible source of misrepresentation.

[21] Permission to file the prospectuses (and for those who asked the prospectus summaries) for the duration of the Class period (2013 and following) is thus allowed.

### 3.2.2 The Receipts Issued by the Securities Commissions

[22] The receipts issued by the applicable Securities Commission from 2013-2017 may also be relevant to the assessment of the applicable criteria.

[23] Defendants allege that under the Canadian Securities Administrators' Passport System, the receipts, deemed to be issued by the regulators of the other Canadian provinces and territories, demonstrate that the prospectuses were filed with and received by the relevant securities commissions. Defendants intend to argue that this shows that none of the grounds provided by law for refusing the receipt of prospectuses were found to apply in this case by the regulators.

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<sup>16</sup> Amended Application, paras. 30, 30.1, 30.2, 39, 42, 46 to 49, 53 to 56, 59 to 62, 65 to 68, 71 to 74, 77 to 81, 87.2, 88, 91.2, 93, 94, 96.1, 96.3 and 116.

[24] Applicant contests this reasoning on the basis that the receipts are not contested and that regulatory compliance does not absolve a defendant from civil liability.<sup>17</sup>

[25] The ultimate relevance of the receipts for the purpose of the authorization stage does not have to be decided here. Suffice it to say that the receipts complete the regulatory picture and fall within the type of evidence that can be filed at this stage.

### 3.2.3 RESP Plan Summaries, Client Relationship Disclosure Documents and Applicant's Signed Application Form

[26] The Plan Summaries, Client Relationship Disclosure Documents and the Signed Application Form also complete the contractual picture.

[27] They outline certain features and terms of the RESP plans.

[28] In fact, Applicant refers to one such Plan Summary (exhibit P-14) and to his Application Form (exhibit P-13) in his Application.<sup>18</sup>

[29] The production of the Plan Summaries and Client Relationship Disclosure Documents is allowed as well.

### 3.2.4 Applicant's 2016 Annual RESP Statement

[30] The Applicant filed his 2015 Annual RESP Statement as well as the two RESP statements that he received upon closing his accounts in 2017 (exhibits P-17, P-19, P-24).<sup>19</sup>

[31] Defendant CST seeks to adduce a copy of the annual RESP statement remitted to the Applicant for the year 2016.

[32] Applicant does not oppose this filing. This evidence completes the Applicant's evidence regarding his RESP accounts, their evolution and related Sales Charges.

[33] Production of the statement is authorized.

### 3.2.5 The AMF's Internal Review of Applicant's Complaint

[34] Applicant filed a letter dated August 25, 2017, from CST (exhibit P-27) in response to his own complaint letter.<sup>20</sup>

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<sup>17</sup> *Infineon Technologies AG v. Option consommateurs*, supra, note 4, paras. 96 and 97; *Charles c. Boiron Canada Inc.*, 2016 QCCA 1716, paras. 44 and 45 (motion for leave to appeal to the Supreme Court dismissed with dissent (Can C.S., 2017-05-04) 37366).

<sup>18</sup> Amended Application, paras. 31 to 37, 89, 89.10 and 93.10.

<sup>19</sup> Amended Application, paras. 89.3, 89.6, 89.11, 93.3, 93.6 and 93.11.

<sup>20</sup> Amended Application, paras. 96.1 and 96.2.

[35] Defendant CST wishes to file a copy of Applicant's complaint letter dated July 13, 2017, to complete and provide full context for the Applicant's allegations and evidence.

[36] Applicant do not contest this filing. This is authorized.

[37] CST also wishes to file a document related to AMF proceedings concerning Applicant's case. It argues that the production of the document is required on the basis that CST's response letter mentions, "if you are dissatisfied with our examination of your complaint or the outcome of this examination, you can request your file to be transferred to the [AMF] within a year of receipt of this response."

[38] This evidence is possibly relevant to the merits of the class action (though the Court makes no judgment on this issue) but it is clearly not relevant to the *prima facie* determination required at the authorization stage. Moreover, filing this letter without the full context of the AMF Proceedings would undoubtedly give rise to the kind of factual debate that the summary nature of the authorization stage is meant to avoid.

[39] Production of the AMF letter dated December 14, 2018, is refused.

#### **4. CONCLUSION**

[40] Applicant's counsel is certainly correct in mentioning that the present ruling entails the filing of thousands of pages of documents, many of which may be redundant.

[41] This being said, the class period spans a number of years and the class comprises members who dealt with various potential defendants. This explains why the documents are voluminous.

[42] Nonetheless, the fact remains that the documents that Defendants wish to file are part of the contractual relationship between potential class members and the Defendants.

[43] These are essential and indispensable to assess the criteria of 575 CCP.

#### **FOR THESE REASONS, THE COURT:**

[44] **GRANTS** Defendant C.S.T. Consultants Inc.'s Motion to file the following documents:

- 44.1. The Prospectuses submitted for years 2013 to 2017 (exhibits CST-1A to CST-1E);
- 44.2. The Receipts issued by the Ontario Securities Commission (exhibits CST-2A to CST-2E);
- 44.3. The RESP Plan Summaries (exhibits CST-3A to CST-3E);



- 44.4. The Client Relationship Disclosure Documents (exhibits CST-4A to CS-4E);
- 44.5. Applicant's 2016 Annual RESP Statement (exhibit CST-5);
- 44.6. Applicant's Complaint Letter dated July 13, 2017 (exhibit CST-6); and
- 44.7. Applicant's Signed Application Form (exhibit CST-8).

[45] **GRANTS** Defendants, Kaleido and Kaleido Growth Inc.'s Motion to file the following documents:

- 45.1. The Prospectuses submitted to the AMF for years 2013 to 2017 (exhibit DK-1); and
- 45.2. The Visas issued by the AMF for the Reeflex, Individual and Universitas Plans (exhibit DK-2).

[44] **GRANTS** Defendants, Global RESP Corporation and Global Educational Trust Foundation's Motion to file the following documents:

- 45.3. The Prospectuses submitted for years 2013 to 2017 (exhibits RG-1A to RG-1G); and
- 45.4. The Receipts issued by the Ontario Securities Commission (exhibits RG-2A to RG-2G).

[46] **GRANTS** Defendants, Heritage Educational Foundation, Children's Education Funds Inc., Children's Educational Foundation of Canada, Knowledge First Financial Inc. and Knowledge First Foundation's Motion to file the following documents:

- 46.1. The Prospectuses ( exhibits HCK-3 to HCK-5) and Prospectus Summaries ( exhibits HCK-2A to HCK-2C); and
- 46.2. The Receipts issued by the Securities Commission (exhibits HCK-1A to HCK-1C).

[47] **THE WHOLE**, with costs to follow suit.

Mtre Joey Zukran  
**LPC AVOCAT INC.**  
Attorney for the Plaintiff

Mtre Stéphane Pitre  
Mtre Anne Merminod  
**BORDEN LADNER GERVAIS S.E.N.C.R.L., S.R.L.**  
Attorneys for C.S.T. Consultants Inc. and Canadian Scholarship Trust Foundation

Mtre Vincent De L'Etoile  
Mtre Sandra Desjardins  
**LANGLOIS AVOCATS, S.E.N.C.R.L.**  
Attorneys for Universitas Management Inc., Universitas Foundation of Canada, Kaleido Foundation and Kaleido Growth Inc.

Mtre Julie-Martine Loranger  
Mtre Gabriel Querry  
Mtre Dominique Paiement  
**MCCARTHY TÉTRAULT S.E.N.C.R.L., S.R.L.**  
Attorneys for Heritage Education Funds Inc., Heritage Educational Foundation, Children's Education Funds Inc., Children's Educational Foundation of Canada, Knowledge First Financial Inc. and Knowledge First Foundation

Mtre Malgorzata (Margaret) Weltrowska  
**DENTONS CANADA LLP**  
Attorney for Global Resp Corporation and Global Educational Trust Foundation