SUPERIOR COURT

CANADA
PROVINCE OF QUEBEC
DISTRICT OF TERREBONNE

No: 700-06-000012-205

DATE: May 31, 2021

PRESIDING THE HONOURABLE THOMAS M. DAVIS, J.S.C.

RAN LEVY
Plaintiff
v.
LOOP INDUSTRIES INC.
and
LOOP CANADA INC.
and
DANIEL SOLOMITA
and
JAY STUBINA
and
LAURENCE SELLYN
and
ANDREW LAPHAM
and
NELSON GENTILETTI
Defendants

JUDGMENT

OVERVIEW

[1] Defendants seek the Court's authorization to produce relevant evidence in support of their contestation of an Application to Authorize a Class Action, instituted by the Plaintiff, Ran Levy, (**Mr. Levy**) under both the class action provisions of the *Code of Civil Procedure* and the relevant sections of the Quebec *Securities Act* (the "**QSA**").

[2] Mr. Levy is an investor in Defendant Loop Industries Inc. ("**Loop**") and alleges that the share price was negatively affected by certain material misrepresentations made by Loop.

[3] He seeks to represent a class comprised of the following persons:

> All persons and entities that acquired LOOP Industries Inc. securities during the Class Period.
>
> or any other Class to be determined by the Court.

1. CONTEXT

[4] Following a case management conference, the parties have agreed on the evidence that Defendants might appropriately adduce in the context of the authorization application under articles 575 and following C.C.P., subject to the Court's approval. The agreed upon evidence is:

> (a) Loop Industries Inc.'s *Current Report on Form 8-K*, dated November 21, 2016 (**Exhibit D-1**);
>
> (b) Loop Industries Inc.'s *Current Report on Form 8-K,* dated April 4, 2018 (**Exhibit D-2**);
>
> (c) Loop Industries Inc.'s *Current Report on Form 8-K,* dated December 19, 2018 (**Exhibit D-3**);
>
> (d) Loop Industries Inc.'s *Current Report on Form 8-K,*dated May 29, 2019 (**Exhibit D-4**);
>
> (e) Loop Industries Inc.'s *Annual Report on Form 10-K,* for the fiscal year ended February 29, 2020 (**Exhibit D-5**);
>
> (f) *Loop Industries, Inc. (2020). Current Report on Form 8-K,* dated December 14, 2020 (**Exhibit D-7**);
>
> (g) Exhibit 99.2 enclosed in *Loop Industries, Inc. (2020). Current Report on Form 8-K,* dated December 14, entitled "*Kemitek Report, dated December 10, 2020*" (**Exhibit D-9**);

(h) Loop Industries Inc.'s *Current Report on Form 8-K*, dated October 29, 2020 (**Exhibit D-11**);

(i) *Notice of Motion of John Jay Cappa for Consolidation, Appointment as Lead Plaintiff and Approval of Lead Counsel* (Exhibit D-12); and

(k) *Stipulation and Order Consolidating Related Actions Appointing Lead Plaintiff and Approving Lead Counsel* rendered by the United States District Court, Southern District of New York, dated January 4, 2021 (**Exhibit D-13**).[1]

[5] Defendants advise that they also intend to produce this evidence, and perhaps other evidence in their contestation of the application under the QSA.

2. LEGAL PRINCIPLES

[6] Given the hybrid nature of the present action, in the Court's view, it need not consecrate an abundance of time to the admissibility of the proposed evidence under article 574 C.C.P., particularly as Defendants have stated their intention to also rely on the proposed evidence for the QSA portion of the application.

[7] In a recent judgment, the Court considered the question as follows:

> [15] This being a hybrid class action given the request for authorization under the QSA, the principles are less well developed than those that apply to a class action instituted solely under articles 574 C.C.P. and following. A number of QSA applications have proceeded to the authorization stage with no judicial oversight on the evidence adduced into the record by the parties.
>
> [16] In *Nseir* c. *Barrick Gold Corporation*, the undersigned posed a number of questions about the quantity of evidence that had been adduced prior to the hearing of the authorization application:
>
> > [191] The Court agrees with Justice Chatelain in *Catucci* c. *Valeant Pharmaceuticals International Inc.* that some reflection on the scope of the review of the evidence that should be undertaken at the authorization stage may well be in order. However, with respect, the Court believes that the need for reflection does not principally flow from the differences between Ontario and Quebec laws, other than the codified recognition in Quebec that the approach of the parties to litigation must be proportional. Rather, it is born of the very nature of the proceeding at the authorization stage. Should there be some limitations placed on the amount of evidence that the parties can produce, bearing in mind the legislative objective in the QSA of a robust deterrent screening mechanism? Is allowing essentially unlimited evidentiary production an appropriate use of the Court's resources at the authorization stage?

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[1] Application by Defendants Loop Indusries Inc., Loop Canada Inc., Daniel Solomita, Jay Stubina, Laurence Sellyn, Andrew Lapham and Nelson Gentiletti for Leave to Adduce Relevant Evidence.

[Reference omitted]

[17] The Court agrees that Justice Duprat has indeed provided some useful and appropriate answers to these questions in the *Baazov* judgment.[2] Here is how he approached the issue:

> [41] In the Court's opinion, the production of evidence should be limited by the burden of proof facing the plaintiff, whether it be article 575 C.C.P. or article 225.4 QSA, and the Court's duty to screen authorizations accordingly. All evidence should not be allowed, but only the evidence which serves to analyse the burden. A Court should therefore be weary of permitting the administration of proof which would be better suited under the merits of the case.[...]
>
> [42] In the Court's view, exhibits D-1, D-2, D-4, D-5, D-6, D-7, D-8 and D-9 should be part of the record. Firstly, Firstly, the exhibits all show a prima facie relevance to the corresponding allegations and exhibits filed by plaintiff. Secondly, the documents are not disproportionate to the evidence already part of the record. Thirdly, generally speaking, the proposed exhibits complete the record as it stands and shed light on the evidence. [...]

[18] In so doing, he appears to have distinguished the judgment of Justice Chantal Tremblay in *Gauthier c. Bombardier inc.* and most certainly, the judgment of Justice Schrager, then of this Court, in *Kegel c. National Bank of Canada*.

[19] While, as Justice Schrager stated, the permission of the Court to adduce evidence may not be necessary under a QSA application, such that the required authorization under article 574 C.C.P. may be redundant, this does not remove the powers of the Court to manage the proceeding using its powers under article 158 C.C.P.

[20] From the Court's perspective, these powers extend to ensuring that the production of documents is proportional and that judicial resources are used appropriately. Of course, the Court must weigh a party's right to fully present its case in the balance. The reasoning of Justice Duprat appears to provide a good equilibrium.[3]

3. ANALYSIS

[8] In the Court's view, the same principles are applicable to the present action.

[9] Plaintiff purchased his shares on June 18, 2018. In mid-October 2020, the corporation was the object of a number of unfavorable articles in the press, apparently

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2 *Gauthier* c. *Baazov*, 2020 QCCS 2452.
3 *Miller* c. *Hexo Corp.*, 2021 QCCS 1002.

generated by short sellers. The share price is alleged to have been affected by the articles in question.

[10] The alleged misrepresentations made by Defendants are described in various ways in the authorization application, including:

- misrepresentations in core documents (such as in their prospectuses, filings and reports, including the report filed for demonstration purposes – at this stage – as Exhibit P-2);[4]

- misrepresentations were consistently made by LOOP to the public in several ways, including on its website and in public documents, as it appears from a document available on LOOP's website titled "Loop Industries Leading the Sustainable Plastic Revolution (July 2020)", disclosed as Exhibit P-8.[5]

- For instance, in a core document filed by LOOP with the U.S. Securities and Exchange Commission ("SEC") on May 14, 2018 (i.e. prior to the Applicant's purchase of LOOP shares), LOOP made the following misrepresentations:...[6]

[11] So at the very least, the alleged misrepresentations that Plaintiff intends to rely on occurred between May 2018 and apparently the date of the unfavourable articles in mid-October 2020, assuming that this is the public correction.

[12] The Court concludes that the proposed documents that Defendant wishes to adduce into evidence: "all show a prima facie relevance to the corresponding allegations and exhibits filed by plaintiff" and meet the other criteria discussed by Justice Duprat.

[13] Even considering the more limited scope for the production of evidence under article 574 C.C.P., the burden would be met as the documents constitute: "evidence that is essential and indispensable to the Court's analysis of the criteria of article 575 C.C.P."[7] This is because a full analysis of whether a misrepresentation has been made, and hence whether the allegations are clearly false, can only be carried out properly by comparing the documents containing the alleged misrepresentations with others issued in the same timeframe. All the documents, perhaps with the exception of Exhibits D-12 and D-13, meet this criteria.

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4 Amended Application for Authorization of a Class Action and for Authorization to Bring an Action Pursuant to Section 225.4 of the Quebec *Securities Act*, para. 11.

5 *Ibid.*, para. 11.1.

6 *Ibid.*, para. 16.1.

7 *Lambert (Gestion Peggy)* c. *Écolait Ltée*, 2016 QCCA 659, paras. 37-38; *Leventakis* c. *Amazon.com inc.*, 2020 QCCS 289, para. 4.

[14] As to these latter exhibits, knowledge of parallel class actions in the United States is relevant to the Court's work, perhaps not for the analysis of the authorization criteria, but certainly to ensure appropriate case management.

[15] In addition, in their application, Defendants posit that the documents:

> are necessary to rectify incorrect allegations and to correct or complete facts, including the following:
>
> (a) the individual Defendants were not all directors or officers at the relevant times of the release of the documents filed in support of the Amended Application;
>
> (b) Loop has a patent-protected technology, which has been validated by an independent third-party; and
>
> (c) Loop has always disclosed the fact that it does not yet have any sources of revenue and that there can be no assurance that any future financing will be available or will satisfy Loop's condition.[8]

[16] The proposed documents will also help verify these issues.

FOR THESE REASONS, THE COURT:

[17] **GRANTS** Defendants' Application to Adduce Relevant Evidence;

[18] **AUTHORIZES** Defendants to adduce Exhibits D-1 to D-5, D-7, D-9 and D-11 to D-13 into evidence;

[19] **WITHOUT JUDICIAL COSTS**.

THOMAS M. DAVIS, J.S.C.

Mtre Joey Zukran
LPC AVOCAT INC.

Mtre Eric Préfontaine
Mtre Frédéric Plamondon
OSLER, HOSKIN & HARCOURT, S.E.N.C.R.L./S.R.L.

Case Management Conference date: April 8, 2021

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[8] Application by Defendants Loop Indusries Inc., Loop Canada Inc., Daniel Solomita, Jay Stubina, Laurence Sellyn, Andrew Lapham and Nelson Gentiletti for Leave to Adduce Relevant Evidence, para. 23.

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