

**SUPERIOR COURT**  
(Class Action Division)

CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

N°: 500-06-000989-190

DATE: October 12, 2021

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**PRESIDING: THE HONORABLE DONALD BISSON, J.S.C. (JB4644)**

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**GERTRUDE GILLICH**  
Plaintiff

v.

**SCI LEASE CORP.**  
**APR (SAINT-JEAN) INC. (doing business as Mercedes-Benz West Island)**  
Defendants

and

**FONDS D'AIDE AUX ACTIONS COLLECTIVES**  
Mis en cause

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**JUDGMENT**  
(closing concerning SCI Lease Corp.)

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[1] **CONSIDERING** the Application of the Defendant SCI Lease Corp. for a Closing Judgment, dated August 20, 2021.

[2] **CONSIDERING** the Affidavit of Mrs. Karen Lobo, representative of SCI Lease Corp., dated July 21, 2021.

[3] **CONSIDERING** the following procedural history of the file :

1) On March 14, 2019, the Plaintiff Gertrude Gillich filed an Application to Authorize the Bringing of a Class Action and to Appoint the Status of Representative Plaintiff against the Defendants (the "Application for Authorization");

- 2) The Application for Authorization asserted claims under the *Consumer Protection Act*<sup>1</sup> regarding fees paid by consumers in order to exercise their option to purchase their vehicle from the Defendants at the end of their lease (“Buyback Fee”);
- 3) The Defendants, including SCI Lease Corp. (“SCI”), acted as the lessors of long-term vehicle leases in Québec;
- 4) On December 20, 2019, the Applicant filed an Amended Application to Authorize the Bringing of a Class Action and to Appoint the Status of Representative Plaintiff, which asserted substantially similar claims but only against the Defendants Mercedes-Benz West Island and SCI<sup>2</sup>;
- 5) On or around November 24, 2019, the Applicant and SCI (the “Parties to the Settlement”) reached an agreement (subsequently signed and executed on or around January 16, 2020) (the Settlement Agreement) without prejudice or admission whatsoever, by way of mutual concessions, for the following sub-group:

All consumers who, between March 14, 2016 and November 24, 2019, paid to SCI Lease Corp. a fee to exercise their option to purchase their vehicle (“buyback”) during or at the end of their lease and which was not disclosed in their lease.

Tous les consommateurs qui, entre le 14 mars 2016 et le 24 novembre 2019, ont payé à SCI Lease Corp. des frais pour exercer leur option d’achat (« rachat ») de leur véhicule durant ou à la fin de la location et qui n’étaient pas divulgués dans leur contrat de location.

(hereinafter the “Settlement Class Members”)

- 6) The Settlement Agreement provided for the collective recovery of the SCI Sub-Class Members’ alleged claims;
- 7) Pursuant to the Settlement Agreement, as full and final compensation for the Settlement Class Member’ alleged claims, each Member would receive a direct payment from SCI in an amount ranging from \$31.50 to \$136.50 depending on the Buyback Fee the Settlement Class Member was charged (the “Compensation”);
- 8) The Compensation represents 100% of the Buyback Fee paid by each Settlement Class Member to SCI;

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<sup>1</sup> RLRQ, c.P-40.1.

<sup>2</sup> Discontinuance against all other Defendants was authorized by the Court: *Gillich c. Mercedes-Benz Canada inc.*, 2020 QCCS 67. The Court has authorized a settlement with the other remaining Defendant Mercedes-Benz West Island: *Gillich c. APR (Saint-Jean) inc. (Mercedes-Benz West Island)*, 2021 QCCS 105.

- 9) Pursuant to the Settlement Agreement, SCI would directly issue to each Settlement Class Member a cheque in the amount of the Compensation, by regular mail;
- 10) On January 17, 2020, this Court<sup>3</sup> authorized the class action against SCI, for settlement purposes only, and approved the form and content of the Pre-Approval Notice in its French and English versions and ordered SCI to send the Pre-Approval Notice, by email, or in the event that no email was on file, by regular mail, to all Settlement Class Members, by February 12, 2020;
- 11) Accordingly, between January 27, 2020 and January 29, 2020, SCI sent out emails and/or letters containing the English and French versions of the Pre-Approval Notices;
- 12) As specified in the March 6, 2020 Affidavit of Karen Lobo, Legal and Compliance Administrator of SCI, filed into the Court record, there are 61 Settlement Class Members;
- 13) On May 21, 2020, this Court<sup>4</sup> granted the Plaintiff and SCI's Joint Application to Approve a Class Action Settlement, approved the Settlement Agreement between the parties and ordered SCI to issue a cheque to each Settlement Class Member in the amount of the Buyback Fee paid by that Settlement Class Member, within 120 days of the judgment;
- 14) With regard to any balance remaining, this Court declared that the 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*<sup>5</sup>;
- 15) Finally, this Court also ordered SCI, at the end of the claims process, to make a detailed report on its administration under articles 59 and 60 of the *Regulation of the Superior Court of Quebec in Civil Matters*<sup>6</sup>;
- 16) As at the date of the hearing on the Joint Application to Approve a Class Action Settlement, no opt-out forms were received by class counsel and no Settlement Class Member objected to the Settlement Agreement (see Judgment of this Court, 2020 QCCS 1602, dated May 21, 2020, at paragraph 7).

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<sup>3</sup> *Gillich c. Mercedes-Benz West Island*, 2020 QCCS 79.

<sup>4</sup> *Gillich c. Mercedes-Benz West Island*, 2020 QCCS 1602.

<sup>5</sup> RLRQ, c. F-3.2.0.1.1, r. 2.

<sup>6</sup> RLRQ, C-25.01, r. 0.2.1.

[4] **CONSIDERING** the following report on the Claims Process:

1) As appears from the Affidavit of Karen Lobo dated July 21, 2021 (Exhibit R-1), on September 3, 2020, SCI sent cheques by mail to each of the 61 Settlement Class Members, in the amount of the Buyback Fee paid by that Settlement Class Member during the Settlement Class Period;

2) As at the date of the Affidavit of Karen Lobo, July 21, 2021, five (5) of the 61 cheques sent to Settlement Class Members remain uncashed, in the amounts detailed below:

<u>Lease Reference #</u>	<u>Cheque amount</u>
10024215	\$136.50
10006960	\$136.50
10021564	\$31.50
10044232	\$31.50
10049153	\$136.50

3) The total amount of the five uncashed cheques is \$472.50;

4) In accordance with this Court's judgment dated May 21, 2020 (2020 QCCS 1602), Article 596 of the *Code of Civil Procedure* and Article 42 of the *Act respecting the Fonds d'aide aux actions collectives*<sup>7</sup>, the remaining balance of \$472.50 is subject to the percentage to be withheld by the Mis en cause *Fonds d'aide aux actions collectives*;

5) In accordance with Article 1(1) of the Regulation respecting the percentage withheld by the *Fonds d'aide aux actions collectives*, the amount which must be remitted to the Fonds d'aide aux actions collectives is 50% of the remaining balance, that is, an amount of \$236.25;

6) The Plaintiff Gertrude Gillich and SCI have further agreed that the other 50% of the remaining balance, also in the amount of \$236.25, will be remitted to the *Fondation Claude Masse*;

7) Payment by SCI of \$236.25 to the *Fonds d'aide aux actions collectives* and of \$236.25 to the *Fondation Claude Masse* will complete the distribution of the amounts provided for in the Settlement Agreement.

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<sup>7</sup> RLRQ, c. F-3.2.0.1.1.

[5] **CONSIDERING** therefore the Affidavit of Mrs. Karen Lobo, representative of SCI Lease Corp., dated July 21, 2021, which specifies that a total balance of \$472.50 remains after distribution of settlement payments to Class Members.

[6] **CONSIDERING** that the Mis en cause *Fonds d'aide aux actions collectives* is entitled to 50% of the balance of \$472.50.

[7] **CONSIDERING** that the parties and the Mis en cause have agreed that the remaining balance after payment to the *Fonds d'aide aux actions collectives* will be donated to the *Fondation Claude Masse*.

**FOR THESE REASONS, THE COURT:**

[8] **GRANTS** the Application of the Defendant SCI Lease Corp. for a Closing Judgment;

[9] **DECLARES** that the remaining balance of the settlement between the Plaintiff Gertrude Gillich and the Defendant SCI Lease Corp., pursuant to Article 596 of the *Code of Civil Procedure*, is \$472.50;

[10] **DECLARES** that the amount owed to the Mis en cause *Fonds d'aide aux actions collectives*, pursuant to the *Regulation respecting the percentage withheld by the Fonds d'aide aux actions collectives* is \$236.25;

[11] **TAKES ACT** of the Defendant SCI Lease Corp's agreement to donate the remaining balance of \$236.25 to the *Fondation Claude Masse*;

[12] **ORDERS** the Defendant SCI Lease Corp. to pay to the *Fonds d'aide aux actions collectives* the amount of \$236.25, within 30 days of the present judgment;

[13] **ORDERS** the Defendant SCI Lease Corp. to pay to the *Fondation Claude Masse* the amount of \$236.25, within 30 days of the present judgment;

[14] **DECLARES** that the Defendant SCI Lease Corp. has fully and duly honoured its obligations under the Settlement Agreement executed on January 16, 2020 between Gertrude Gillich and SCI Lease Corp.;

[15] **DELIVERS** a closing judgment in the present class action, in respect of SCI Lease Corp.;

[16] **THE WHOLE**, without judicial costs.

  
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DONALD BISSON, J.S.C.

Me Joey Zukran  
LPC AVOCAT INC.  
Attorney for the Plaintiff

Me Maya Angenot  
NORTON ROSE FULBRIGHT CANADA LLP  
Attorney for the Defendant SCI Lease Corp.

Nobody for the Defendant  
APR (Saint-Jean) inc. (doing business as Mercedes-Benz West Island)

Me Frikia Belogbi  
Attorney for the Mis en cause Fonds d'aide aux actions collectives

Hearing date : August 24, 2021 (on file)