

SUPERIOR COURT

(Class Action Division)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

N° : 500-06-001097-209

DATE : October 26, 2021

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

**KIRANPREET KAUR
MUNEET MUNEET**
Plaintiffs

c.

**RISING PHOENIX INTERNATIONAL INC. / PHÉNIX ASCENDANT INTERNATIONAL
INC.
COLLÈGE DE L'ESTRIE INC.
CAROLINE BONNEVILLE
CHRISTINA MASTANTUONO
JOSEPH MASTANTUONO**
Defendants

JUDGEMENT

(On Application for Discontinuance)

[1] **CONSIDERING** the Application for Authorization to institute a Class Action filed by Plaintiffs on October 27, 2020 against Defendants, on behalf of the following proposed class:

All foreign students who during the three (3) year period prior to the date of this Application for Authorization were granted admission to study at CDE College (as hereinafter defined) in Sherbrooke Quebec or any other educational institution operated by Rising Phoenix (as hereinafter defined) in Quebec and who either cancelled their enrollment prior to the provision of services (the "Section 72 Class Members"); or after services had started being provided (the "Section 73 Class Members") and who made a deposit against the fees owing and who have not, in either case, obtained the amount which is required to be returned by the Act and

its regulations, or such other group as may be determined by this Honourable Court;

[2] **CONSIDERING** that the proposed action is for a refund and damages;

[3] **CONSIDERING** that the Application for Discontinuance *de bene esse* and the sworn declaration of M^e Tom Markakis dated October 18, 2021;

[4] **CONSIDERING** Art. 585 of the *Code of Civil Procedure* and the requirement that any discontinuance before authorization has to be authorized by the Court¹;

[5] **CONSIDERING** the criteria for discontinuance provided for by the decision of the Court of Appeal in *École communautaire Belz c. Bernard*²;

[6] **CONSIDERING** the following facts:

1) On September 29, 2021, the parties attended a settlement conference which was presided by former Justice Mr. Robert Mongeon (the "CRA"), in an attempt to resolve the litigation between the parties at the outset of the Application for Authorization;

2) In the context of the CRA, with the invaluable assistance of former Justice Mr. Mongeon, the parties were able to quickly find an amicable resolution to the litigation, and an agreement was reached which provided for, *inter alia*, that a transaction agreement would be formally executed by the parties that very same day (the "Transaction");

3) While the terms of the Transaction and the agreement reached between the parties at the CRA are, as is provided for in then, confidential, one of the salient terms of the Transaction consists of the Plaintiffs discontinuing the Application for Authorization;

4) The primary consideration for the settlement reached between the parties results from the fact that, as the file progressed, further to the filing of the Application for Authorization, it became increasingly apparent that the anticipated class was not a homogenous one and that there was little to no real genuine interest from the other potential members spoken with to be involved with the Class Action;

5) Moreover, none of the potential students class members had registered on the Website of class counsel;

6) As a result of this, it is the position of the parties that the group and class the Plaintiffs were seeking to represent is indeed much smaller than anticipated, if it exists at all;

¹ *Union des consommateurs c. Telus Communications inc.*, 2021 QCCS 2681, par. 17.

² 2021 QCCA 905, par. 8.

[7] **CONSIDERING** that, in light of the recent decision *Union des consommateurs c. Telus Communications inc.*³, the Court concludes that there is no formal transaction here, but a simple discontinuance, as:

- No benefits or refunds are offered to all class members or a part of the class;
- The requirements for the presence of common questions and the existence of a class are not met.

[8] **CONSIDERING** that, accordingly, in such circumstances it is contrary to the principles of proportionality set forth in the *Code of Civil Procedure* to have the Plaintiffs and Defendants incur additional onerous legal costs and fees by continuing with the Application for Authorization;

[9] **CONSIDERING** that the Application for Discontinuance does not undermine the integrity of the justice system in any way;

[10] **CONSIDERING** that the Application for Discontinuance does not negatively affect the interests of other putative members, if any, in any material way, as they still have all of their rights to pursue Defendants should they choose to do so;

[11] **CONSIDERING** that additionally, in the event that the present Application for Discontinuance is granted by the Court, and in accordance with the principle of the sound administration of justice, the Plaintiffs have undertaken to duly inform the putative members of the group of the discontinuance through the class counsel Website in order for them to govern themselves accordingly, as the case may be;

[12] **CONSIDERING** the fact that both Plaintiffs might be personally refunded or gain some kind of personal advantage from Defendants and the fact that the Plaintiffs can be reimbursed for the fees of their attorneys do not transform the discontinuance into a formal transaction for the class to be authorized by the Court, as the parties represented that there are no common questions and no class, and that as a result there can be no formal transaction;

[13] **CONSIDERING** therefore that the Fonds d'aide aux actions collectives does not need to be involved in the matter of the present judgment;

[14] **CONSIDERING** that the situation would be different if the parties had not represented that there were no common questions and no class;

[15] **CONSIDERING** that no other form of notice is required;

[16] **CONSIDERING** that the Application for Discontinuance is well founded;

³ *Supra*, note 1.

FOR THESE REASONS, THE COURT:

[17] **AUTHORIZES** the Plaintiffs to discontinue their Application for Authorization against the Defendants without judicial costs, and **AUTHORIZES** the Plaintiffs to file a discontinuance in the Court record within ten days of the present judgment;

[18] **TAKES ACT** of the Plaintiffs' undertaking to ensure that a copy of the discontinuance is published on the class action registry and on the Website of their attorneys De Louya Markakis;

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



DONALD BISSON, J.S.C.

M^e Tomy Markakis and M^e Louis-Cédric Ilias Karkaselis
DE LOUYA MARKAKIS
Attorneys for Plaintiffs

M^e Emmanuel Laurin-Légaré, M^e Alissa Stachrowski,
M^e Camille Lefebvre and M^e Matthew Maloley
DE GRANDPRÉ CHAIT S.E.N.C.R.L.
Attorneys for Defendants

Hearing date : October 19, 2021 (on file)