

SUPERIOR COURT
(Class Action)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No: 500-06-001098-207

DATE: December 9, 2021

BY THE HONOURABLE DONALD BISSON, J.S.C.

(JB4644)

DAVID IBARRA
Applicant

v.

LA CORPORATION CADILLAC FAIRVIEW LIMITEE
LOCATIONS GALERIES D'ANJOU INC.
LE CARREFOUR LAVAL (2013) INC.
Defendants

JUGDMENT

(On an Application to Stay the Class Action)

[1] **CONSIDERING** that the Applicant seeks a temporary stay of the Application for Authorization to Institute a Class Action and to Obtain the Status of Representative which was filed on or about November 3, 2020 (Quebec Class Action), with such stay to remain in place unless and until the Supreme Court of British Columbia declines to adjudicate the claims brought on behalf of Quebec residents whose claims are based on attending shopping malls in Quebec in the putative class action before the Supreme Court of British Columbia *in Cleaver et al. v. The Cadillac Fairview Corporation Limited et al.* in court file number VLC-S-S-2012347 (the "BC Action") or as may be further ordered by the Court.

[2] **CONSIDERING** that the B.C. Class Action was also filed by Applicant's counsel and raises the same issues and includes the same members as those of the Québec Class Action.

[3] **CONSIDERING** that the application seeks to avoid the possibility of contradictory

judgments and to ensure a sound and efficient use of judicial resources, all the while protecting the interests of the putative class members who are Québec residents.

[4] **CONSIDERING** that both proceedings concern the same parties, are based on the same facts and have the same subject;

[5] **CONSIDERING** that the Court is of the view that the temporary stay of the Québec Class Action in favour of the B.C. Class Action will serve the rights and interests of Québec members in accordance with article 577 of the Code of Civil Procedure for the following reasons:

- a) The causes of action to be asserted in the B.C. Class Action will include all those asserted in the Québec Class Action;
- b) The parties are represented by the same counsel in B.C. and Québec and in the context of the stay, counsel for the Applicant and for the Defendants, both in B.C. and Québec, have agreed to cooperate to ensure the efficient conduct of the proceedings and coordination of the Québec Class Action and the B.C. Class Action;
- c) Class counsel for the B.C. Class Action have established a bilingual website and registration system and at least one member of the consortium is bilingual and available to respond to any inquiries that putative class members in the Québec Class Action may have;
- d) Since the filing of the BC Action on November 19, 2020, Ontario class counsel have been working on preliminary steps to the preparation of a certification record, and reaching an agreement on venue with defence counsel;
- e) On October 5, 2021, Justice Winteringham has been assigned to case manage the putative class proceeding in British Columbia;
- f) A case management conference was held by Justice Winteringham on November 2, 2021. During said case management conference, counsel for the Plaintiffs advised the court that the Plaintiffs' motion record will be delivered in early January 2022; and
- g) The Québec Action has not progressed since its filing on November 3, 2020 and no procedural steps other than the present Application have been taken.

[6] **CONSIDERING** the Applicant David Ibarra agrees that the Québec Class Action should be temporarily stayed in favour of the B.C. Class Action and also agrees to swear an Affidavit as a class member in the B.C. Class Action.

[7] **CONSIDERING** the Defendants consent to this Application.

[8] **CONSIDERING** that the parties undertake to provide this Court, on a semi-annual

basis, with update on the status of the B.C. Class Action, and to advise this court within 30 days of any significant development in the B.C. Class Action that may affect the course of the Québec Class Action.

[9] **CONSIDERING** the principles of proportionality and judicial economy.


WHEREFORE, THE COURT:

[10] **GRANTS** the Application to Temporarily Stay the Québec Class Action;

[11] **STAYS** the present Québec Class Action with such stay to remain in place unless and until the Supreme Court of British Columbia declines to adjudicate the claims brought on behalf of Quebec residents whose claims are based on attending shopping malls in Quebec in the putative class action before the Supreme Court of British Columbia in *Cleaver et al. v. The Cadillac Fairview Corporation Limited et al.* in court file number VLC-S-S-2012347, or as may be further ordered by this Court;

[12] **ORDERS** the parties to provide this Court, on a semi-annual basis, with an update on the status of the B.C. Class Action and to advise this court within 30 days of any significant development in the B.C. Class Action that may affect the course of the Québec Action, including but not limited to providing a copy of any and all judgments rendered in the B.C. Class Action;

[13] **THE WHOLE**, without legal costs.



DONALD BISSON, J.S.C.

M^e Theodore P. Charney
CHARNEY LAWYERS
Attorneys for the Applicant

Me Michael Simkin
SIMKIN LÉGAL

M^e Malgorzata Weltrowska
DENTONS CANADA LLP
Attorneys for the Defendants

Hearing date: December 8, 2021 (on file)