Securities and class actions: the Court of Appeal clarifies jurisdictional criteria in private international law

June 28, 2022

Introduction

The Court of Appeal rendered a seminal judgment regarding securities class actions in *Chandler* v. *Volkswagen Aktiengesellschaft*, 2022 QCCA 272. This decision has a major effect on the scope of the Québec *Securities Act* (QSA) as regards foreign issuers and provides much needed clarity on the territorial jurisdiction of Québec courts in class actions.

The Court of Appeal confirmed the trial court's decision to grant the declinatory exception raised by Volkswagen Aktiengesellschaft (Volkswagen AG), dismissing plaintiff Lawrence Chandler (Chandler)'s class action on the ground that Québec courts had no territorial jurisdiction.

Case summary

Mr. Chandler was authorized to institute a class action against Volkswagen AG (*Chandler* v. *Volkswagen Aktiengsellschaft*, 2018 QCCS 2270) to compensate investors who allegedly suffered losses due to a drop in the share price of Volkswagen AG, a German corporation, after an emissions standards scandal became public.

Key points

The Court of Appeal confirmed that none of the connecting factors listed in Article 3148 CCQ were met. This decision is significant for several reasons:

Territorial jurisdiction can be contested even after a class action is authorized . First, the Court of Appeal confirmed that it is possible to contest an authorization to institute a class action and to later raise the jurisdictional argument on the merits without attornment. The Court of Appeal thus clarified that a declinatory exception can be raised at the merits stage even though it was not raised or was dismissed at the authorization stage, since this decision is not *res judicata*.

Security "distribution" requirement and section 236.1 QSA . The appellant invoked section 236.1 QSA, which sets out that an action in respect of facts related to the *distribution of a security* may be brought before the court of the plaintiff's residence. The Court of Appeal dismissed this argument as the claim was based on misrepresentations or omissions (Art 1457 CCQ) and concluded that there was no "distribution of a security" in this case as no securities had been issued in Québec. This conclusion is significant because it rightly limits the scope of section 236.1 QSA. As noted by the Court, the interpretation proposed by the appellant would have allowed any Québec investor to bring an action before the Québec courts for any securities acquired abroad.

Real and substantial connection applicable to the entire class . Citing *Sanexen*[1] and the general principles governing class actions in Québec, the Court of Appeal confirmed the need to prove a real and substantial connection for all class members. Simply put, Québec courts' jurisdiction cannot be artificially engaged by combining several causes of action.

The agent and the concept of "injury" in determining jurisdiction . The Court emphasized that economic injury must be *suffered* and not merely *recorded* in Québec. It concluded that in the case at hand, the location of the injury is determined by the location of the formation of the securities purchase contract. The fact that investors may have given an order to purchase in Québec is irrelevant.

No fault committed in Québec . The fact that an investor had access to documents containing potential misrepresentations cannot be a fault in and of itself. For Québec courts to have jurisdiction in this case, the documents in question had to have been prepared or published in Québec.

[1] *Sanexen Services environnementaux inc. c. Englobe Corp.*, 2021 QCCA 1284.

By

Stéphane Pitre, Karine Chênevert, Alexis Leray

Expertise

Class Action Defence, Securities Disputes

BLG | Canada's Law Firm

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 800 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

blg.com

BLG Offices

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749