

No ship without a captain – class action decertified in absence of suitable representative plaintiff

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Overview

In [Azar v Strada Crush Limited](#), Justice Morgan of the Ontario Superior Court of Justice, considered whether to re-appoint a previously disqualified representative plaintiff, despite his problematic post-certification conduct. In view of the conduct of the representative plaintiff and with no suitable replacement available, Justice Morgan decertified the class action.

Background and decision

[Azar v Strada Crush Limited](#) involved a class action in which employees of the defendant company claimed for unpaid overtime wages. Justice Morgan certified the class in August 2018, at which time the court determined that the representative plaintiff, George Azar, was an appropriate representative of the class.

Nearly one year after certification, the plaintiff brought a motion to appoint new class counsel. The motion stemmed from a personal and unrelated business dispute between Mr. Azar and class counsel. Class counsel brought a cross-motion to disqualify Mr. Azar as representative plaintiff and to allow counsel time to locate a new representative. Justice Morgan found that Mr. Azar had a conflict of interest and had acted out of personal interest in seeking to replace class counsel, rather than acting in the interests of the class. Accordingly, the plaintiff's motion was denied and Mr. Azar was disqualified as representative plaintiff. The Court granted class counsel 60 days to locate a new representative plaintiff.

Unable to find a replacement, class counsel asked the Court to re-appoint Mr. Azar as representative plaintiff. In response, the defendant sought to have the class decertified arguing that the requirement of a representative plaintiff to "fairly and adequately represent the interests of the class" under s.5(1)(e)(i) of the [Class Proceedings Act, 1992](#), had not been met.

The Court approached the issue by considering whether a class member who was removed as representative plaintiff because he put his own interest ahead of that of the class, can be re-appointed if no replacement can be found.

Justice Morgan found that Mr. Azar was too self-focused and distracted from the interests of the class and concluded that he was not a suitable representative plaintiff. The Court held that the certification requirement for a representative plaintiff had not been satisfied by Mr. Azar and that no suitable representative plaintiff was available. Accordingly, Justice Morgan de-certified the class.

Takeaways

The decision highlights the importance of selecting a suitable representative plaintiff in accordance with the requirements of the [Class Proceedings Act, 1992](#). A representative plaintiff plays a substantive role in the proceedings and must represent the interests of the class fairly and adequately. Representative plaintiffs should not take the responsibilities they owe to other members of the class lightly. [Azar v Strada Crush Limited](#) cautions that the conduct of the representative plaintiff, even after certification, can result in serious ramifications for the class.

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