Québec Superior Court Affirms Ignorance Of The Law Does Not Delay Class Action Prescription Period

June 21, 2018

Segalovich v. C.S.T. Consultants Inc.

In the matter of *Segalovich v. C.S.T. Consultants Inc.*, the Québec Superior Court dismissed the authorization of a class action claiming fees charged to subscribers and contributors of Registered Education Savings Plans ("RESPs"). The Court ruled that the petitioner's personal claim was prescribed, affirming that ignorance of the law does not delay the beginning of the prescription period.

Background

The petitioner alleged that the defendants' practice of charging $200 for each unit of a RESP plan contravened s.1.1(7) and s.1.1(11) of *Regulation no. 15 respecting Conditions Precedent to Acceptance of Scholarship or Educational Plan Prospectuses.* He argued that the law only permits a charge of $200 **per RESP plan**, even where a plan comprises multiple units.

Decision

The Court first analyzed the four-pronged test to be applied to an application for authorization of a class action and concluded that the petitioner had an arguable case in asserting that the word "plan" in the relevant sections of the law refers to an entire plan and not to individual units.

That said, the signature of the contract and the actual payment of the fees associated with the RESP occurred more than three years prior to the institution of the proceedings, thereby rendering the petitioner's claim "prescribed on its face." To circumvent prescription, the petitioner argued that he was not aware of the legal framework governing his claim until he began investigating the facts underpinning the class action. The Court's decision affirmed that the petitioner's justification of ignorance of the law is not to be confounded with an impossibility to act: "Knowledge of the facts

on which a claim can be based is sufficient to commence the prescriptive period, even where the Plaintiff is unaware of the legal basis for his action."

The class action was therefore dismissed for failing to meet the prescription period.

Disclosure: BLG's Anne Merminod and Stéphane Pitre acted as counsel for the defendants C.S.T. Consultants Inc. and Canadian Scholarship Trust Foundation.

By

Stéphane Pitre

Expertise

Class Action Defence

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