Duguay v. GM: Superior Court clarifies the plaintiff's burden of proof at the merits stage of a class action lawsuit

April 29, 2024

On July 31, 2023, the Honourable Justice Karen M. Rogers of the Québec Superior Court (the Judge) dismissed, on the merits, the class action lawsuit filed by Mr. Frédérick Duguay (the Plaintiff) against General Motors LLC and General Motors of Canada Ltd. (GM).

Mr. Duguay alleged that GM had failed to inform consumers that the Volt, an electric vehicle equipped with a battery as well as a gasoline-powered generator, could consume small quantities of gas when outside temperatures are cold, even if the battery is fully charged. Following an analysis of all submissions, the Judge concluded that GM had not wrongfully represented the Volt's functioning and dismissed the action.

Analysis

In her judgment, the Judge clarified the Plaintiff's burden of proof at the merits stage of a class action lawsuit and the practical application thereof:

- **Burden of proof at the merits stage of a class action**: The Plaintiff must prove the existence of all of the constituent elements of liability in respect of each of the members of the group. Since a class action is a procedural vehicle, it creates no substantive rights and "can succeed only if each claim it covers, taken individually, could serve as a basis for court proceedings".[1] In this instance, the evidence did not indicate that all the group members had a common experience with respect to the allegedly misleading representations.
- **The ordinary rules of evidence apply to class actions**: presumptions of fact must be serious, precise and concordant. Although the Plaintiff is not required to have each of the group members testify and is allowed to proceed on the basis of presumptions, such presumptions must not stem from pure hypothesis, speculation, vague suspicions or mere conjecture. As with any other matter, they must be serious, precise and concordant.
- **Group members' awareness of the representations**: As regards false or misleading representations under the *Consumer Protection Act* (CPA), it is incumbent on the Plaintiff to prove that the group members were aware of the

> allegedly misleading representations on an individual basis prior to purchasing the vehicle: [translation] “The mere existence of brochures and the website containing the quoted excerpts […] cannot, in and of itself, establish a presumption that the group members were aware of the central message”. [2]

In light of the evidence, the Judge held that the “central message,” when considered in its entirety, was not that the Volt’s stated driving range was exclusively electric and uninterrupted. Moreover, the Plaintiff did not establish that all of the group members were aware of the supposed “central message” before they bought their vehicle. Furthermore, this feature was not important to the Volt purchasers, who were specifically attracted by the vehicle’s one-of-a-kind technology. Therefore, there was no omission. Consequently, the Judge dismissed the class action on the merits.

Comment

The Duguay case is a very important judgment in the area of class actions. This is a landmark ruling that clarifies and details the analytical framework for the plaintiff’s burden of proof in connection with the merits stage of a class action, in particular the application framework of presumptions. It also clarifies that each member of the action must individually be aware of the representations.

[1] *Bou Malhab*, para. 52 cited in para. 66

[2] Para. 83

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