Martel v. Kia Canada: Clarifications on applying the legal warranty of conformity (ss. 40 to 42 CPA)

April 30, 2024

In the wake of the Fortin decision, the Court of Appeal rendered another precedent-setting decision in a judgment on the merits of a class action. The decision in *Martel c. Kia Canada inc.* (2022 QCCA 1140) is precedent-setting as it is the first judgment clarifying the applicable test for establishing a breach of the legal warranty of conformity under sections 40 to 42 of the *Consumer Protection Act* (the "CPA").

The Martel class action was dismissed in its entirety, further illustrating that the authorization of a class action has no incidence on the merits of a case.

Context of the proceeding

Ms. Martel alleged that Kia imposed a maintenance program on its dealers that did not conform to and was more onerous than that set out in the owner's manual, by recommending the "intense" maintenance frequency, which was more frequent than the "normal" frequency considering Canada's harsh climate.

In its decision, the Court of Appeal confirmed the dismissal of the class action and the tenor of the representations that give rise to the warranty of conformity:

- **The legal warranty of conformity applies to the representations that played a role in the consumer's decision:** The Court of Appeal confirmed that the legal warranty under sections 40 to 42 CPA encompasses representations that influenced the consumer's decision to enter into a contract constituting the "contractual agreement".[1] Therefore, for a representation to have influenced a consumer's decision, they must necessarily have read it beforehand.
- **The non-conformity must reach a certain threshold:** The Court of Appeal pointed out that the failure to conform must be *sufficiently material* to justify granting the remedy sought. Thus, a minor discrepancy does not give rise to the remedy.[2]
- **The warranty of conformity excludes representations that post-date the contract:** The Court of Appeal also confirmed that for the purposes of the legal warranty of conformity, only pre-contractual and contractual representations are

relevant for determining the description of the product acquired. Representations made *after* delivery of the product do not impact the manufacturer's obligation. While they are relevant for establishing whether or not the product conforms to the contract, they cannot broaden or increase the obligations under the contract.[3]

- **The warranty of conformity calls for the application of the credulous and inexperienced consumer test:** The Court of Appeal points out that the credulous and inexperienced consumer test, articulated in the Supreme Court's decision in *Richard v. Time* (2012 SCC 8) in respect of prohibited practices (ss. 219 and 228 CPA), also applies to the legal warranty of conformity (ss. 40 to 42 CPA). The impugned representations must be construed from this standpoint.
- **A dealer is a separate entity from the automobile manufacturer or distributor:** The dealers are separate legal entities from Kia. Thus, the dealers' representations regarding maintenance do not render Kia liable unless it directly or indirectly imposed, encouraged or tolerated such representations regarding maintenance and the warranty.

In this instance the Court of Appeal confirms that the brochures post-dating the sale are not indicative of any lack of conformity. Ms. Martel's action was thus dismissed in its entirety, with legal costs.

Comment

This decision is significant in that it specifies that the applicability conditions of the legal warranty of conformity under Title I of the CPA are not significantly different from those under Title II. Thus, with respect to an action pursuant to sections 41 and 42 CPA:

1. the representation must be construed from the standpoint of a credulous and inexperienced consumer;
2. it must have influenced the consumer's decision (and thus must have been read);
3. it must be material.

Moreover, this decision further illustrates that while the threshold may be low at the authorization stage, the burden of proof on the merits remains that of the plaintiff, and failure to discharge it will result in the action being dismissed.

[1] *Martel c. Kia Canada inc.*, 2022 QCCA 1140, para 101.

[2] *Martel c. Kia Canada inc.*, 2022 QCCA 1140, paras 73-75.

[3] *Martel c. Kia Canada inc.*, 2022 QCCA 1140, paras 57 and 101.

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