Fortin v. Mazda: Damages must be proven for a claim in reduction of obligation

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Background

A judgment handed down earlier this month rendered an important decision in consumer law[1]. The decision by Justice Denis Jacques of the Superior Court confirmed the need to establish damages for a claim in reduction of obligation under section 272 c) of the *Consumer Protection Act*[2] (the CPA). It also clarified the meaning of the presumption of prejudice established in the *Richard v. Time* decision.

The representative plaintiff, Lise Fortin, instituted a class action against Mazda Canada Inc. (Mazda), regarding weakness of the door locking mechanism of certain Mazda vehicle models. Mazda acted quickly, free of charge to its customers, to correct the weakness.

The class action was authorized.[3] On the merits, the issue of liability was split from the quantification of damages. The Superior Court wholly dismissed the allegations of Mazda's liability.[4] The Court of Appeal, however, reversed that judgment in part,[5] concluding that Mazda had failed to observe the duty to inform (section 228 of the CPA) that was owed to a limited number of the class members.[6] The Court of Appeal then remanded the case to the Superior Court to determine the damages.[7]

The decision

Fortin claimed a "reduction of her obligation" under sect. 272 c) of the CPA. To do that, she based her argument on expert evidence in the form of a survey, which asked selected consumers what appropriate compensation would be for a weakness in a vehicle's locking system. The results of that survey were then analyzed and adjusted in a forensic accounting report.

In defence, Mazda objected that there was no damage justifying any indemnification within the meaning of sect. 272 c) CPA for those class members who had suffered no thefts or break-ins, or any attempted thefts or break-ins into their cars, nor any actual financial impact attributable to the weakness of the locking system.

The Superior Court dismissed the price reduction claims asserted by the members of Group 2:

- **Rejection of the survey report**. Justice Jacques found that the plaintiffs' expert report had major shortcomings and was based on a doubtful methodology. Indeed, the price reduction estimated by the consumers surveyed was of the order of $5,000, for a replacement part costing $9. The survey-based evidence was therefore completely set aside as well as the forensic analysis report, which was based on the data from that same survey.
- **Scope of the absolute presumption of prejudice** Justice Jacques then confirmed the meaning of the presumption of prejudice laid down in the Supreme Court's decision in *Time*,[8] and as elucidated by the Court of Appeal in its judgments in *Imperial Tobacco*[9] and *Meubles Léon*.[10]

Indeed, the presumption of prejudice concerns the harmful effect of prohibited practices on the consumer's consent. Plaintiffs alleging a breach of the CPA must nevertheless prove the quantum of their damages – in this case, the actual financial impact on them – even when asserting claims for price reductions under sect. 272 c) of the CPA.

- **Necessity of showing an "actual financial impact"** The Superior Court held that Fortin failed to prove any real financial impact, such as a loss of value of the vehicles concerned, that would justify a price reduction. Although Mazda's repair of those vehicles did not in itself constitute compensation for breaching its duty to inform, Justice Jacques held that to award any compensation, in the absence of evidence (such as of some loss of their value when the vehicles in question were resold), would have the effect of unjustifiably enriching the class members. Furthermore, the Court of Appeal had already dismissed the punitive damage claims for disturbances and inconveniences.

Conclusion

This judgment is significant for class actions at the merits stage, particularly actions for price reductions under section 272 c) of the CPA. The Court dismissed subjective, survey-based evidence to quantify price reduction damages. The Court further confirmed that evidence of some real financial impact is required to determine appropriate price reductions, notwithstanding the absolute presumption of prejudice announced in the *Time* decision. In this case, the decision to award a reduction of obligation of $0 was consistent with the evidence.

Without concluding, however, that the free-of-charge repair of the locking system's weakness, in itself, constituted compensation, any such measure of restitution must be taken into account in determining price reduction-related damages. In addition, the importance of not enriching plaintiffs was held to be so important that the Superior Court declined to award any price reduction whatsoever, although Mazda had been found liable under section 228 of the CPA.

[1] *Fortin c. Mazda*, 2020 QCCS 4270.

[2] CQLR, c P-40.1 [*CPA*].

[3] *Robitaille c. Mazda Canada inc* 2010 QCCS 2630.

[4] *Fortin c. Mazda Canada inc*, 2014 QCCS 2617.

[5] *Fortin c. Mazda Canada inc*, 2016 QCCA 31 (application for leave to appeal to the Supreme Court dismissed, 2016 CanLII 51055 (SCC)).

[6] Group 1 (compensatory damages for the victims of theft) and Group 2 (class members who had purchased their cars between Oct. 3, 2016 and Jan. 28, 2018).

[7] *Fortin c. Mazda Canada inc*, 2016 QCCA 31 (application for leave to appeal to the Supreme Court dismissed, 2016 CanLII 51055 (SCC).). at para 186.

[8] *Richard c. Time*, 2012 CSC 8.

[9] *Imperial Tobacco Canada ltée c. Conseil québécois sur le tabac et la santé*, 2019 QCCA 358, paras. 938-941.

[10] *Meubles Léon ltée c. Option consommateurs*, 2020 QCCA 44 (demande d'autorisation de pourvoi à la Cour suprême rejetée, 2020-10-22), para. 116.

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