

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

December 21, 2020

Background

A judgment handed down earlier this month rendered an important decision in consumer law¹. 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.

By

[Stéphane Pitre](#), [Anne Merminod](#), [Alexandra Hebert](#), [Alexis Leray](#)

Expertise

[Disputes](#), [Class Actions](#), [Consumer Goods](#)

BLG | Canada's Law Firm

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 725 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

blg.com

BLG Offices

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing unsubscribe@blg.com or manage your subscription preferences at blg.com/MyPreferences. If you feel you have received this message in error please contact communications@blg.com. BLG's privacy policy for publications may be found at blg.com/en/privacy.

© 2024 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.