SUPERIOR COURT

(Class Action)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No: 500-06-000583-118

DATE: AUGUST 11, 2020

PRESIDED BY: THE HONOURABLE SILVANA CONTE, J.S.C.

MICHAEL BLACKETTE
Plaintiff/Class Representative

v.

BLACKBERRY LIMITED (FORMERLY, RESEARCH IN MOTION LIMITED)
Defendant

JUDGMENT

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[1] Plaintiff seeks a temporary stay of the Quebec class action pursuant to articles 49 and 577 CCP in order to allow it to proceed with discoveries in the Ontario class action, which was filed after the Quebec class action.

FACTS

[2] On March 10, 2013, the Court authorized Plaintiff to act as the representative of the persons included in the class herein described as:

> All persons who are consumers (as defined in the Québec Consumer Protection Act) residing in Québec who had a BlackBerry smartphone, paid for a monthly data plan, and had their e-mail, BlackBerry Messenger ("BBM"), and/or internet services interrupted during the period of October 11 to 14, 2011;"

[3] The Court identified the following common issues:

> 3.1. Did the Respondent fail to provide BlackBerry users with adequate e-mail, BlackBerry Messenger Service ("BBM"), and/or internet services during the period of October 11 to 14, 2011?
>
> 3.2. Is the Respondent liable to the class members for reimbursement of the prorated amount of their monthly data plans for the time period that they were deprived of proper services?

[4] The originating application sought a national class which was contested by Defendant. Plaintiff therefore limited the class to the residents of the Province of Quebec.

[5] On April 2, 2013, Glen Snowball filed a statement of claim in Ontario seeking a national class action against Blackberry on the same issues, excluding Quebec residents.

[6] Both class actions remained dormant until a certification record was filed in Ontario in October 2018.

[7] On March 18, 2019, Defendant consented to the certification of the Ontario class action.

[8] Defendant requested that Plaintiff amend the national class to include Quebec residents in order to proceed in one jurisdiction. However, Plaintiff refused and instead seeks to temporarily stay the Quebec class action for one year in order to proceed with discovery in Ontario.

ARGUMENTS

[9] Relying on the Court's inherent discretionary power in article 49 CCP, Plaintiff requests a temporary stay of the Quebec class action in order to proceed first with discovery in Ontario and thereafter either avoid or limit the scope of discovery in the Quebec class action with the permission of Defendant and the Court.

[10] Defendant contests the application to stay on the grounds that the request is abusive and constitutes forum shopping which is not in the interests of justice. Defendant argues that the choice to proceed in Ontario is to take advantage of the broader rules for discovery which do not exist in Quebec, as recognized in *Médac*[1] and *Ouellet*[2].

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1 2015 QCCS 4273.
2 2017 QCCS 1181.

[11] Moreover, Defendant argues that the implied undertaking rule (recognized in *Lac D'amiante*[3]), requires that leave be obtained in Ontario in order for the discovery material to be used in the Quebec proceeding such that, there may not be any benefit to a stay.

ANALYSIS

[12] Pursuant to article 3137 CCQ, the Court may grant a stay of a Quebec proceeding where there is litispendence with a foreign action that is pending at the time the Quebec action is filed and the decision to be rendered in the foreign action may be recognized in Quebec in accordance with article 3155 CCQ.

[13] The Court of Appeal has held that where the conditions in article 3137 CCQ are not met, the Court has discretion to grant a stay as part of its inherent jurisdiction under article 49 CCP in the case of *FCA Canada inc.* v. *Garage Poirier & Poirier inc.*[4], as follows:

> [76] Cette flexibilité est tout autant de mise en matière d'actions collectives parallèles à travers le Canada.
>
> [77] Il pourrait arriver que la multiplicité des instances jette un discrédit sur l'administration de la justice. La duplication des procédures doit être évitée. La saine gestion des recours doit être prise en considération, notamment, à titre d'exemple, lorsqu'on sait qu'un règlement prochain devant le tribunal étranger pourrait avoir un impact sur le recours québécois. La coopération internationale entre les tribunaux dans un tel contexte est de mise.
>
> [78] Si l'intérêt des membres putatifs et l'administration de la justice militent pour la suspension de l'instance, le juge désigné doit pouvoir utiliser sa compétence inhérente pour ordonner une telle suspension (temporaire par sa nature) lorsque l'existence d'une procédure étrangère est susceptible d'avoir un impact sur le déroulement de l'instance québécoise. Ceci, même si les conditions de l'article 3137 C.c.Q. ne sont pas satisfaites. L'article 577 C.p.c. n'y crée pas obstacle, tout au contraire.
>
> [emphasis added]

[14] As is the fundamental rule in class actions, the Court takes into consideration the protection of the rights and interests of the class members when exercising its discretion to stay a Quebec proceeding under article 577 CCP.

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3 *Lac d'Amiante du Québec Ltée* v. *2858-0702 Québec inc.*, [2001] 2 S.C.R. 743.

4 2018 QCCA 490 (CanLII).

[15] In addition, under its general powers of case management[5], the Court has discretion to suspend a proceeding if it is in the proper administration of justice and having regard to the principle of proportionality set out in article 18 CCP.

[16] The Court considers that, in the present case, issuing a temporary stay will prevent or limit the costly duplication of judicial and legal resources resulting from proceeding with the same discoveries in two jurisdictions and that the stay would benefit both the class members and Defendant.

[17] It is not, with respect to Defendant, an abuse or forum shopping to proceed with discovery first in Ontario. While the rules of procedure between Ontario and Quebec may differ, transparency and the search for the truth underlies the broad exploratory stage of the pre-trial discovery process in both provinces, as was recognized by the Supreme Court case of *Imperial Oil v. Jacques*[6].

[18] Moreover, it is clear that the discovery process in Ontario is likely to have an impact on the proceedings in Quebec. Once the discovery stage is completed, and assuming there is no settlement agreement, it is expected that each party would consent to filing of some or all of the evidence adduced in Ontario into the record as counsel are duty bound to cooperate and avoid unnecessary duplication of the discovery of the same witnesses or at a minimum, limit the discovery to issues that were not covered previously or are particular to the Quebec class action[7].

[19] In the absence of consent and with leave from the Ontario Court, the implied undertaking rule could be waived in order to allow the filing of all relevant and otherwise admissible evidence in the Quebec proceeding.

[20] The introduction of evidence adduced in Ontario would not be tantamount to importing Ontario rules of procedure as was the case in Médac and *Ouellet* decisions[8]. The rules of Quebec civil procedure regarding the admissibility of evidence will continue to govern the parties.

[21] Finally, the Court emphasizes that in the present case, there has been a *de facto* stay of the Quebec proceedings for more than seven years with little interest by either side to activate the file. It is only at the request by the Court that the parties either set down a case protocol or present an application to stay, that the application was filed. As such a temporary stay will not cause Defendant a prejudice.

FOR THESE REASONS, THE COURT:

[22] **GRANTS** Plaintiff's application for a temporary stay;

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5 Art. 158 CCP.
6 *Imperial Oil* v. *Jacques*, [2014] 3 SCR 287, 2014 CSC 66 (CanLII) at paras 24-29.
7 Articles 18 and 20 CCP.
8 *Supra*, footnotes 1 and 2.

[23] **STAYS** the present class action proceedings for a period of one year from the date of this judgment;

[24] The whole with legal costs to follow suit.

Silvana Conte

SILVANA CONTE, J.S.C.

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