

SUPERIOR COURT
(Class Action)

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL

N°: 500-06-000490-090

DATE : July 7, 2011

IN THE PRESENCE OF THE HONORABLE ROBERT CASTIGLIO, J.C.S.

RYAN SCHACHTER
Petitioner

v.

TOYOTA CANADA INC.
and
TOYOTA MOTOR CORPORATION
Respondents

**REVISED MOTIVES OF THE JUGDMENT
RENDERED ORALLY ON JUNE 22, 2011**

[1] Respondents request the authorization to examine Petitioner, in the context of a class action instituted by Petitioner for alleged defects of his Toyota Camry.

[2] The facts alleged are relatively simple.

[3] Petitioner bought a Toyota Camry in 2006. He later learned of sudden accelerator crashes in San Diego.

[4] Concerned about his safety, he contacted his dealership where he had bought the car to inquire whether the car was equipped with the ETCS-i, a system that electronically controls the engine's throttle.

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[5] Petitioner was then told that his car was in fact equipped with this system and that he should remove his driver's side floor mat, and that there would eventually be a recall in Canada to change the gas pedal, sometime in April 2010.

[6] Petitioner removed his driver's side floor mat, but was not satisfied with the solution that did not alleviate his safety concerns.

[7] In particular, Petitioner alleges that he must drive his car all winter without the floor mat and that this situation damages the car. This solution would also bring inconvenience since he would have to bring the car for repair.

[8] Petitioner claims different damages.

[9] On paragraph 19 of his Motion, Petitioner refers to the recall notices issued by Toyota Canada Inc. dealing with the alleged defects.

[10] At the stage of the authorization, the allegations of the Motion are deemed to be true. Accordingly, an examination of Petitioner is not permitted to verify the truthfulness of the allegations.

[11] The Court will authorize an examination only if the allegations of the Motion are vague of incomplete.

[12] As Mr. Justice Poirier ascertained in the case of *Ben-Eli v. Toshiba of Canada Ltd*¹:

"[9] The examination is not permitted if the purpose is:

1. to contradict the allegations of the Motion;
2. to permit a pre-emptive investigation to verify if the class action is well founded;
3. to probe the Petitioner's arguments in relation to the merits of the class action,; or
4. to obtain information for the Respondents to have an expertise undertaken."

[13] In order to decide if a request for examination of the Petitioner should be permitted, Mr. Justice Gascon summarized the state of the jurisprudence in the decision *Option Consommateurs c. Banque Amex du Canada*².

¹ *Ben-Eli v. Toshiba of Canada Ltd.*, 2010 QCCS 4844.

² *Option Consommateurs c. Banque Amex du Canada*, 2006 QCCS 6290.

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[14] Without referring to the seven criterias enunciated by Mr. Justice Gascon, the principal criteria is for the Court to determine whether the precise examinations being sought are appropriate or useful to determine whether the conditions of article 1003 of the *Code of Civil Procedure* have been met.

[15] Since the allegations of the Motion to Authorize are deemed to be true, and that Petitioner's sole burden is one of demonstration, prudence should be exercised in determining what examination, if any, should be allowed.

[16] For these reasons, it is the burden of Respondents to convince the Court that an examination is warranted, on a precise subject.

[17] Respondents have not specified the precise subject matters on which they need to examine Petitioner, in order to enlighten the Court in relation to the criterias set forth in article 1003 *C.c.p.*

[18] In fact, Respondents' argument would result in a situation where an examination of the Petitioner should always be permitted.

[19] This was the case prior to the amendments of the *Code of Civil Procedure* where a Motion for Authorization had to be supported by affidavit. It is not the state of the law today.

[20] The situation set out by Petitioner in paragraph 10 to 19.4 of the Motion deals with how ETCS-i works and the problems encountered in the United-States and the recalls in Canada.

[21] The individual actions by Petitioner are set out in paragraphs 20 to 25 and the individual actions by each of the members of the group are detailed in paragraphs 28 to 30 of the Motion.

[22] Finally, paragraphs 44 to 51 of the Motion are sufficient, at this stage, as far as Petitioner's request to be awarded the status of representative.

[23] These different allegations are deemed to be true and are sufficiently precise for the Court to decide whether or not the conditions of article 1003 *C.c.p.* are met.

[24] Consequently, Respondents have not convinced the Court that an examination of Petitioner on specific matters is necessary.

[25] In fact, Respondents want to generally verify the veracity of the allegations contained in the Motion.

[26] This verification, at this stage, is not relevant in order for the Court to decide if the conditions of the law are met.

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FOR THESE REASONS, THE COURT:

[27] **DISMISSES** Respondent's Motion to Adduce Evidence by Way of Cross-Examination of Petitioner;

[28] **WITH COSTS.**


ROBERT CASTIGLIO, J.C.S.

Me Jeffrey Orenstein
Lawyer foR Plaintiff

Me Guy Lemay
Me Jean-Philippe Rincourt
LAVERY, DE BILLY
Lawyers for Respondents

Date of hearing: June 22, 2011