

SUPERIOR COURT
(Class Action)

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No: 500-06-000561-114

DATE: August 25, 2016

PRESIDING: THE HONOURABLE MICHELINE PERRAULT, J.S.C.

DE WAYNE MILLER
Petitioner

v.

KABA ILCO INC.
and
KABA ILCO CORP.
and
KABA AG
Respondents

JUDGMENT

Introduction

[1] On March 28, 2011, the Petitioner filed a Motion to Authorize the Bringing of a Class Action & to Ascribe the Status of Representative (the "**Motion for Authorization**") against the Respondents. On July 3, 2013, the Petitioner filed an Amended Motion for Authorization and on April 3, 2014, the Petitioner filed a Re-Amended Motion for Authorization on behalf of the following Class (as re-amended):

“all residents in Canada who have purchased and/or own a pushbutton lock sold under the brand names Unican and Simplex with regard to their Series1000/L1000, 2000, 3000, 5000, 6000, 6200, 7000, 7100, 8100, E-Plex 2000, and any such other locks manufactured by KABA that are capable of being opened with a magnet (the "**Locks**"), or any other group to be determined by the Court;

Alternately (or as a subclass)

all residents in Quebec who have purchased and/or own a pushbutton lock sold under the brand names Unican and Simplex with regard to their Series 1000/L1000, 2000, 3000, 5000, 6000, 6200, 7000, 7100, 8100, E-Plex 2000, and any such other locks manufactured by KABA that are capable of being opened with a magnet (the “**Locks**”), or any other group to be determined by the Court.”

[2] The Re-Amended Motion for Authorization alleged, inter alia, that the Respondents sold the Locks with a design defect such that they were susceptible to being opened through the use of a magnet.

[3] The Petitioner was seeking to bring an action in damages and for injunctive relief pursuant to the *Consumer Protection Act*, CQLR c P-40.1 and the *Civil Code of Quebec*, R.S.Q. 1991, c. 64.

[4] On April 28, 2014, in light of settlement discussions, the Court granted a Joint Motion to Postpone the Hearing of the Authorization of the Class Action.

[5] As at July 7, 2016, following lengthy negotiations, an out-of-court settlement was executed between the parties to the present matter (the “**Settlement Agreement**”)¹.

[6] The Settlement Agreement applies to persons who are members of the following “Settlement Class”:

“All residents in Quebec who use or own a Simplex® or Unican™ Model/Series 1000, L1000, 2000, 3000, 6200, 7000, 7100, 8000 or File Guard mechanical pushbutton lock manufactured before January 1, 2011 (“End-Users”) or who purchased such a lock for re-sale (“Locksmiths”).”

[7] The Petitioner and the Respondents have agreed to the terms of the Settlement Agreement, the whole subject to the approval of the Court, without any admission of liability whatsoever and for the sole purpose of resolving the dispute between these parties.

Authorization

[8] The Respondents consent to the authorization of the present action as a class proceeding for settlement purposes only².

¹ Exhibit R-1.

² *Communication Méga-Sat inc. c. LG Philips LCD Co. Ltd.*, 2013 QCCS 5592; *Lavoie c. Régie de l'assurance maladie du Québec*, 2013 QCCS 866; *Option Consommateurs c. Infineon Technologies, a.g.*, 2012 QCCS 6405; *9085-4886 Québec inc. c. Visa Canada Corporation*, 2014 QCCS 6701.

[9] Where the Respondents consent to the authorization of a class action for settlement purposes only, the analysis of the criteria set forth at article 575 C.C.P. must still be met, but is flexible, and takes into account the fact of the settlement³.

[10] Under reserve of the rights of the Respondents, the Re-Amended Motion for Authorization dated April 3, 2014, the Exhibits in support thereof and the Affidavit of the Petitioner dated July 12, 2016 justify granting said Motion in accordance with the criteria set forth at article 575 C.C.P. for settlement purposes only.

[11] The facts alleged appear to justify the conclusions sought⁴.

[12] The composition of the Class makes it difficult or impracticable to apply the rules for mandates to sue on behalf of others or for consolidation of proceedings:

- a) Potential Group Members are dispersed across Quebec;
- b) Given the costs and risks inherent in instituting an action before the Courts, people could hesitate to institute an individual action against the Respondents;
- c) Individual litigation of the factual and legal issues raised would increase delay and expenses to all parties and to the Court system in general.

[13] The Petitioner, who is requesting to be designated as representative, will fairly, properly, and adequately protect and represent the interest of the Class Members since the Petitioner:

- a) Is a Class Member;
- b) Was instrumental in instituting this class action and engaging counsel with extensive experience in class actions;
- c) Provided his attorneys with relevant information and instructed them to proceed with the present proceedings;
- d) Ensured that the Class Members would be kept up-to-date through his attorneys' website;
- e) Participated in the settlement negotiations by providing input to his attorneys, ultimately instructing its attorneys to sign the Settlement Agreement;
- f) Has a good understanding of what this class action is about and what the settlement provides to Class Members;
- g) Has performed his responsibilities as the representative of the Class and he will continue to do so insofar as the proposed settlement is concerned;

³ *Vallée c. Hyundai Auto Canada Corp.*, 2014 QCCS 3778; *Schachter c. Toyota Canada inc.*, 2014 QCCS 802; *Markus c. Reebok Canada inc.*, 2012 QCCS 3562; *Richard c. Volkswagen Group Canada inc.*, 2012 QCCS 5534; *9085-4886 Québec inc. c. Visa Canada Corporation*, 2015 QCCS 5914.

⁴ Articles 37, 38, 41, 53, 54, 215, 216, 218, 219, 220 (a), 221 (g), 228, 253, 270, and 272 of the *Consumer Protection Act*, CQLR c P-40.1, articles 6, 1375, 1400, 1401, 1407, 1457, and 1726 of the *Civil Code of Quebec*, LRQ, c C-1991, and sections 36 and 52 of the *Competition Act*, RSC 1985, c C-34.

- h) Has always acted in the best interest of the Class Members;
- i) Has not indicated any possible conflict of interest with the Class Members.

Class Notice

[14] In accordance with the Settlement Agreement and with the Notice Plan, the Pre-Approval Notice will be published in the following manner:

By way of publication once in the form of an approximately 1/4 of a page advertisement in the following French or English newspapers:

- La Presse+
- Le Soleil
- The Montreal Gazette
- The Canadian Jewish News
- The Heimishe Newsflash
- The Suburban.

[15] The Pre-Approval Notice will also be posted on the Settlement Website at www.simplexlockcase.ca as well as on Class Counsel's website at www.clg.org and on its Facebook and Twitter pages;

POUR CES MOTIFS, LE TRIBUNAL : WHEREFORE, THE COURT:

[17] **ACCUEILLE** la présente requête; [17] **GRANTS** the present Motion;

[18] **ORDONNE** que, pour l'application du présent jugement, les définitions contenues dans la Convention de règlement, pièce R-1, s'appliquent et y sont incorporées par renvoi; [18] **ORDERS** that for the purposes of this judgment, the definitions contained in the Settlement Agreement, Exhibit R-1, shall apply and are incorporated by reference;

[19] **AUTORISE** l'exercice de cette action collective contre les Intimées pour les fins d'un règlement hors cour seulement, sous réserve des conditions de la Convention de règlement, pièce R-1; [19] **AUTHORIZES** the bringing of a class action against the Respondents for the purposes of settlement only, subject to the terms of the Settlement Agreement, Exhibit R-1;

[20] **NOMME** le requérant représentant du groupe ci-après décrit :

« Tous les résidents du Québec qui utilisent ou possèdent un Simplex® ou Unican™ Modèle / Série 1000, L1000, 2000, 3000, 6200, 7000, 7100, 8000 ou une mécanique de verrouillage à bouton-poussoir File Guard fabriqué avant le 1^{er} janvier 2011 (les « Utilisateurs Finaux ») ou qui a acheté une telle serrure pour la revente (les « Serruriers ») »;

[21] **FIXE** l'audience d'approbation du règlement au **22 NOVEMBRE 2016 à 12:00, en salle 2.08** [ou toute autre salle d'audience, qui sera indiquée par avis affiché à l'extérieur de la salle d'audience 2.08] au Palais de justice de Montréal, 1, rue Notre-Dame Est (« l'Audience d'Approbation du Règlement »), au cours de laquelle cette Cour devra déterminer :

- a) s'il convient d'approuver la Convention de règlement et de la déclarer juste, raisonnable et dans le meilleur intérêt des Membres du Groupe;
- b) si la requête des Procureurs du Groupe relativement aux frais, débours et taxes applicables devrait être accordée;
- c) s'il convient d'accorder une rémunération incitative au représentant des Membres du Groupe; et
- d) toutes autres questions que la Cour jugera appropriées;

[22] **APPROUVE** la forme et le contenu de l'Avis de préapprobation, essentiellement en la forme de l'avis se trouvant dans l'Annexe « B » de la

[20] **APPOINTS** the Petitioner as representative of the group herein described as:

“All residents in Quebec who use or own a Simplex® or Unican™ Model/Series 1000, L1000, 2000, 3000, 6200, 7000, 7100, 8000 or File Guard mechanical pushbutton lock manufactured before January 1, 2011 (“End-Users”) or who purchased such a lock for re-sale (“Locksmiths”);

[21] **SETS** the hearing for Settlement Approval on **NOVEMBER 22, 2016 at 12:00 PM, in room 2.08** [or any other courtroom, which will be indicated by the posting of a sign outside of courtroom 2.08] at the Montreal Courthouse, 1, Notre-Dame Street East (the “Settlement Approval Hearing”), at which time this Court will be asked to decide:

- a) whether to approve the Settlement Agreement as fair, reasonable and in the best interest of the Class Members;
- b) whether Class Counsel's application for fees, disbursements and applicable taxes should be granted;
- c) whether to grant an honorarium award to the Class Representative; and
- d) any other matters as the Court may deem appropriate;

[22] **APPROVES** the form and content of the Pre-Approval Notice, substantially in the form as set forth in Schedule “B” to the Settlement Agreement and produced

Convention de règlement et produit as Exhibit R-2;
comme pièce R-2;

[23] **ORDONNE** que l'Avis de préapprobation soit publié et diffusé essentiellement en conformité au Plan de notification indiqué à la Convention de règlement;

[23] **ORDERS** that the Pre-Approval Notice shall be published and disseminated substantially in accordance with the Notice Plan as set forth in the Settlement Agreement;

[24] **APPROUVE** la forme et le contenu du Formulaire de Réclamation, essentiellement en la forme se trouvant dans l'Annexe « A » de la Convention de règlement et produit comme pièce R-3;

[24] **APPROVES** the form and content of the Claim Form, substantially in the form as set forth within Schedule "A" to the Settlement Agreement and produced as Exhibit R-3;

[25] **APPROUVE** la forme et le contenu de la Formulaire d'Exclusion, essentiellement en la forme se trouvant dans l'Annexe « D » de la Convention de règlement et produit comme pièce R-4;

[25] **APPROVES** the form and content of the Opt-Out Form, substantially in the form as set forth within Schedule "D" to the Settlement Agreement and produced as Exhibit R-4;

[26] **FIXE** la date limite de toute opposition à la Convention de règlement par un Membre du groupe au plus tard 10 jours avant l'Audience d'Approbation du Règlement;

[26] **SETS** the deadline for Class Members to object to the Settlement Agreement as no later than 10 days before the Settlement Approval Hearing;

[27] **FIXE** la date limite d'exclusion au plus tard 45 jours après la première date de publication de L'Avis de préapprobation;

[27] **SETS** the deadline for opting-out as no later than 45 days after the first date of publication of the Pre-Approval Notice;

[28] **ORDONNE** que toute personne, entité ou organisation qui choisit valablement de s'exclure de cette action ne sera pas lié par la Convention de Règlement, n'aura aucun droit à l'égard de l'entente de règlement et ne recevra aucuns bénéfices tel que prévu à la Convention de règlement;

[28] **ORDERS** that any person, entity or organization who validly opts-out of this proceeding shall not be bound by the Settlement Agreement, shall have no rights with respect to the Settlement Agreement and shall receive no benefits as provided in the Settlement Agreement;

[29] **ORDONNE** que RicePoint Administration Inc. soit nommé provisoirement Administrateur des réclamations aux fins de la coordination du Plan de notification, de

[29] **ORDERS** that RicePoint Administration Inc. shall be provisionally appointed as Claims Administrator for the purposes of coordination of the Notice Plan, administration of objections, opt-out

l'administration des griefs, des formulaires d'exclusion, des formulaires de réclamation et des tâches connexes, y compris l'établissement du site Web du Règlement aux fins de l'affichage de l'Avis de préapprobation, de la Convention de règlement et de tous les documents connexes;

forms, claim forms and related tasks, including establishing the Settlement Website for purposes of posting the Pre-Approval Notice, Settlement Agreement and all related documents;

[30] **ORDONNE** que, conformément aux termes de la Convention de règlement, les Intimées doivent payer les coûts associés à l'Avis de préapprobation;

[30] **ORDERS** that, in accordance with the terms of the Settlement Agreement, the Respondents shall pay the costs associated with the Pre-Approval Notice;

[31] **ORDONNE** que la date et l'heure de l'Audience d'Approbation du Règlement soient énoncées dans l'Avis de préapprobation, mais qu'elles peuvent faire l'objet d'ajournement par la Cour sans autre avis aux membres du Groupe que celui qui sera affiché sur le site Web du Règlement;

[31] **ORDERS** that the date and time of the Settlement Approval Hearing shall be set forth in the Pre-Approval Notice, but may be subject to adjournment by the Court without further publication notice to the Class Members other than such notice which will be posted on the Settlement Website;

[32] **LE TOUT**, sans frais de justice.

[32] **THE WHOLE**, without legal costs.


MICHELINE PERRAULT, J.S.C.

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Hearing Date: August 18, 2016