

CITATION: Charles Collins v Osram Sylvania Inc., Osram Sylvania Products, Inc.,
and Osram Sylvania, Ltd., 2016 ONSC 5538

COURT FILE NO.: 14-62041CP

DATE: 2016/09/13

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Charles Collins, Plaintiff

AND

Osram Sylvania, Inc., Osram Sylvania Products, Inc., and Osram Sylvania, Ltd.

BEFORE: The Honourable Michel Z. Charbonneau

COUNSEL: Jeff Orenstein and Andrea Grass for the Plaintiff
Cheryl Woodin for the Defendants

HEARD: August 31, 2016

ENDORSEMENT

[1] The plaintiff brings a motion for the following orders:

- (a) An order certifying this action as a class proceeding for settlement purposes pursuant to the *Class Proceedings Act*, 1992 (the “CPA”);
- (b) An order defining the “Class” as:
“All residents in Canada, excluding Québec, who purchased: (i) SilverStar ULTRA, SilverStar, XtraVision, or Cool Blue replacement headlamp capsules (ii) SilverStar, XtraVision, or Cool Blue sealed beam headlamps or (iii) SilverStar fog or auxiliary lights during the Class Period, except those who timely and validly exclude themselves from the Class.”
- (c) An order appointing the Plaintiff, Charles Collins, as the Representative Plaintiff for the Class;
- (d) An order declaring that the Settlement Agreement made between the Parties is fair, reasonable, and in the best interest of the Class;

- (e) An order approving the Settlement Agreement;
- (f) An order appointing Bruneau Group Inc. as the Claims Administrator for the Settlement;
- (g) An order approving the Notice of Certification and Settlement Approval (the "Approval Notice") to Class Members, in English and in French, in the form as attached as Exhibit "B" to the affidavit of Andrea Grass sworn August 25, 2016;
- (h) An order approving the Notice Plan as set forth at section 53 of the Settlement Agreement;
- (i) An order approving the Claim Form in its English and French versions, in the form as attached as Exhibit "C" to the affidavit of Andrea Grass sworn August 25, 2016;
- (j) An order approving the Opt-Out Form in its English and French versions, in the form as attached as Exhibit "D" to the affidavit of Andrea Grass sworn August 25, 2016;
- (k) An order approving Class Counsel fees and disbursements as agreed-upon by the Parties and as reflected in the Settlement Agreement at Section X, and
- (l) An order approving the payment of an honorarium to the Class Representative as agreed-upon by the Parties and as reflected in the Settlement Agreement at Section XI.

[2] The plaintiff commenced this proceeding in September 2014 alleging that the defendants had falsely advertised, promoted and generally represented that three types of halogen automobile lights it manufactured was of superior quality to standard halogen automotive lightning product.

[3] The plaintiff and the defendants have entered into a settlement agreement conditional upon its approval by the Court. The defendants consent to the certification of the Class for settlement purposes. The parties propose the following definition of the class:

"All residents in Canada, excluding Québec, who purchased:

- (1) SilverStar ULTRA, SilverStar, XtraVision, or Cool Blue replacement headlamp capsules (ii) SilverStar, XtraVision, or Cool Blue sealed beam headlamps or (iii) SilverStar fog or auxiliary lights during the Class Period, except those who timely and validly exclude themselves from the Class."

[4] A similar proceeding against the defendants was brought in the Province of Québec by Rino Petrella. Counsel advises that the same terms of settlement have now been accepted by the Québec Superior Court.

[5] The settlement agreement provides that the defendants will pay between \$1,150,000 and \$1,750,000 for the benefit of the Class Members across Canada. The defendants will also introduce new packing for its products which do not contain misleading claims or representations.

[6] The key terms of the settlement are set out as page 10 to 12 of the Motion Record:

ii) The Settlement Amount shall be used to pay:

- (a) All Eligible Claims;
- (b) All Claims Administration Fees and Expenses;
- (c) The cost of the Notice Plan;
- (d) Class Counsel Fees and Expenses in the amount of \$525,000.00 plus applicable taxes;
- (e) Honoraria payments to the Representative Plaintiffs in Ontario and in Québec in an amount of \$5,000.00 each (\$10,000.00 total);
- (f) Any percentage withheld according to law from payments to Québec resident Class Members for the benefit of the *Fonds d'aide aux actions collectives*;
- (g) Any amount designated as a charitable donation (if any); and
- (h) Any other costs and expenses associated with the Settlement; [collectively, the "Settlement Costs"];

iii) If the Settlement Fund Minimum is sufficient to pay all of the Settlement Costs, no further payment from the Defendants will be due; however, if it is insufficient, then no later than ten (10) business days after the Claims Administrator serves its Claims Administration Interim Accounting Report, the Defendants shall deposit an amount equal to the estimated amount needed (the "Third Payment") in escrow;

(iv) If the estimated amount turns out to be insufficient to cover all of the Settlement Costs, then the Defendants shall deposit an amount equal to the remaining funds required no later than ten (10) business days after the Claims Administrator serves its Final Accounting Report (the "Final Payment"); if the estimated amount creates a surplus of funds after all of the above amounts have been paid, the Respondents shall be entitled to a return of such surplus monies;

(v) The relief to be provided to eligible Class Members shall be as follows:

Covered Product	Initial Amount	Maximum Amount
SilverStar Ultra, SilverStar, Xtra Vision, or Cool Blue replacement headlight capsule	\$12.00	\$24.00
SilverStar, XtraVision, or Cool Blue sealed beam headlights	\$12.00	\$24.00
SilverStar fog or auxiliary lights	\$12.00	\$24.00

- If the total amount of eligible Claims, together with the other Settlement Costs is less than the Settlement Fund Minimum, each eligible Class Member's award shall be increased on a pro-rata basis, up to a maximum amount of \$24.00, less the withholding owing to the *Fonds d'aide aux action collectives* as it applies to Québec claims and only if it is applicable, until the Settlement Fund Minimum is reached;
 - If the total amount of eligible Claims, together with the other Settlement Costs is greater than the Settlement Fund Minimum, but less than the Settlement Cap Maximum, each eligible Class Member shall receive the Initial amount of \$12.00, less the withholding owing to the *Fonds d'aide aux action collectives* as it applies to Québec claims and only if it is applicable;
 - If the total amount of eligible Claims, together with the other Settlement Costs will exceed the Settlement Cap Maximum, then each eligible Class Member's award shall be reduced on a pro-rata basis, in order to meet the Settlement Cap Maximum.
9. Following issuance of the Approval Orders and dissemination of the Approval Notice, if, within six (6) months of the payments being issued to Claimants from the Claims Administrator, a balance exists in the Account as a result of uncashed distributions, interest earned, or any other surplus monies, any remaining funds ("Surplus Funds") shall be paid as follows:
- (a) The *Fonds d'aide aux actions collectives* will be entitled to claim the percentage provided for in the *Règlement sur le pourcentage prélevé par*

le Fonds d'aide aux actions collectives, RLRQ cv R-2.1, r 2 on the Québec portion of the remaining funds. Such Québec portion will correspond to 23.6% of the remaining funds;

(b) The balance will be donated to Mothers Against Drunk Driving (MADD Canada);

10. In return, the Defendants will receive a release for any and all claims related to the allegations of the Québec and/or Ontario Proceeding and the Automotive Lighting Products, but do not include any claims for personal injury or products liability – the Parties are not aware of the existence of any such claims to date.

[7] I made an order for the publication of the pre-approval notice. The notice was published and disseminated on June 22, 2016. Over 40,000 claims were received by counsel. There has been no opt-outs nor any objections filed.

Analysis

Certification

[8] I am satisfied that all the prerequisites for certification required by section 5 of the Class Proceedings Act are present. In fact this is exactly the type of case contemplated by the Act in order to promote the objectives of judicial economy, access to the courts and behavior modification. Moreover this being certification for the purpose of settlement, I need not scrutinize it as is the case when a certification application is defended.

Settlement

[9] Reasonableness of the settlement is the test I must apply in deciding whether to approve or not the settlement. All the circumstances must be examined to determine whether the settlement is fair, reasonable and in the best interests of the Class Members as a whole.

[10] The factors in this case which lead me to the conclusion that the settlement should be approved are:

- a) The plaintiff is represented by very experienced counsel who specialize in class proceedings. Counsel recommend this settlement and assure the court it was reached after strenuous negotiations with very experienced counsel for the defendants.
- b) The amount the Class Members will receive is small but represents approximately 40 to 50% of full recovery of each member's actual claim. It is more likely than not that less would be netted after a successful trial.
- c) A similar action in the U.S. was settled for approximately the same amount per member.
- d) As indicated, in a sister action in Québec, the same settlement has been approved.
- e) The number of claims received by counsel is more than the norm. No member has opted-out. No one has objected.

Class Counsel fees and disbursements

[11] Plaintiff's counsel claim \$525,000.00 plus taxes. The amount has been agreed to be paid by the defendants pursuant to the settlement agreement.

[12] The fees are claimed pursuant to the terms of a contingency retainer which provided no fees or disbursements if the litigation is not successful. The amount appears high at first sight but is lower than what the terms of the retainer provide.

[13] Plaintiff's counsel are specialists in this field and undertook all the risks when commencing this action. This matter has been proceeding for two (2) years and counsel has spent considerable time on the file. The results are good to excellent. Counsel has managed to have the settlement administrator reduce its fees by over \$200,000.00. There have been no objection to the fees claimed.

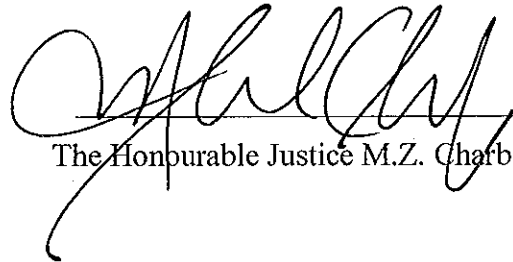
Honorarium of representative

[14] The sum of \$5,000.00 is claimed. I find this amount reasonable.

[15] All other orders sought are hereby granted.

[16] Order accordingly.

Date: September 13, 2016



The Honourable Justice M.Z. Charbonneau

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Charbonneau, J.

Released: September 13, 2016