

SUPERIOR COURT
(Class Action)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No: 500-06-000507-109

DATE: SEPTEMBER 11, 2018

IN THE PRESENCE OF: THE HONOURABLE ANDRÉ PRÉVOST, J.S.C.

ERIC LIVERMAN
and
SIDNEY VADISH
Plaintiffs

v.

TECUMSEH PRODUCTS COMPANY
and
TECUMSEH PRODUCTS OF CANADA LIMITED
and
KAWASAKI MOTORS CORP. USA
and
PLATINUM EQUITY, LLC
Defendants

JUDGMENT

[1] **CONSIDERING** Plaintiffs' Motion to Authorize the Bringing of a Class Action and to Ascribe the Status of Representative dated May 3, 2010;

[2] **CONSIDERING** the documents filed by the parties, including the Kawasaki Settlement Agreement dated June 4, 2018 and the Tecumseh Settlement Agreement dated August 10, 2018 (the "Settlement Agreements") (Exhibits R-1 and R-2);

AP1827

[3] **CONSIDERING** Plaintiffs' Application for the Authorization of a Class Action for the Purposes of Settlement and for Approval of Notice to Class Members, which seeks

to: (a) authorize the bringing of a class action against the Settling Defendants for the purposes of settlement only, (b) approve the Notices of Certification/Authorization and Settlement Approval Hearings (the "Pre-Approval Notice") (Exhibits R-3 to R-7) and (c) approve the Plan of Dissemination (Exhibit R-8);

[4] **CONSIDERING** that in the opinion of the Court, the criteria set forth in article 575 of the *Code of civil procedure* (CCP) are met and, therefore, the Class Action shall be authorized for the purposes of settlement¹;

[5] **CONSIDERING** articles 579 and 590 CCP;

[6] **CONSIDERING** that in previous judgements dated September 25, 2013 and September 24, 2015 authorizing the bringing of a class action for the purposes of settlement against the other defendants, the expiry of the opt out period has been fixed to September 17, 2013²;

[7] **CONSIDERING** that the Defendants do not contest Plaintiffs' Application for the Authorization of a Class Action for the Purposes of Settlement and for Approval of Notice to Class Members;

WHEREFORE THE COURT:

[6] **ACCORDE** la présente demande;

[6] **GRANTS** the present application;

¹ *Option Consommateurs c. Banque Toronto-Dominion*, 2015 QCCS 1259, par. 12-17.

² On July 5 2013, the Honourable Madam Justice Danièle Mayrand approved a notice to members in connection with the first two settlement agreements involving Defendants MTD, Sears, Briggs, Electrolux, John Deere, Husqvarna, Kohler and Toro. Said notice, published on July 20, 2013, provided that members had the right to opt out no later than September 17, 2013. The notice was addressed to «*all persons in Canada who between January 1, 1994 and December 31, 2012 purchased Lawn Mowers in Canada, except Defendants and certain parties related to the Defendants*». Said notice to members specified that «*If you opt-out of the Lawn Mowers Class Action, you will not be able to participate in the settlements or any further settlements with or judgments against other Defendants in this litigation*». The authorization to bring the Class Action for the purposes of those two settlements was granted on September 25, 2013. Two years later, a settlement agreement was executed with Honda. In accordance with the terms of the notice to members published on July 20, 2013, the agreement provided that the opt-out period expired on September 17, 2013. The settlement agreement was approved both in Ontario and in Quebec (judgment of Justice Mayrand of September 24, 2015). Similarly, the settlement agreements R-1 and R-2 executed on June 4 and August 10, 2018 with the present remaining Defendants also provide for the expiry of the opt-out period on September 17, 2013. The Parties agree that the notice to members published on July 20, 2013 is binding upon the Class members. Given the particular circumstances of this case, namely the wording used in the notice to members published on July 20, 2013, the position taken by the parties throughout the litigation and confirmed in the settlement agreements as well as the previous judgments rendered by Justice Mayrand, the Court accepts the expiry date of the opt-out period to be September 17, 2013.

[7] **ORDONNE** que, pour l'application du présent jugement, les définitions énoncées dans les Ententes de règlement, pièces R-1 et R-2, s'appliquent et y sont incorporées par renvoi;

[7] **ORDERS** that for the purposes of this judgment, the definitions contained in the Settlement Agreements, Exhibits R-1 and R-2, shall apply and are incorporated by reference;

[8] **AUTORISE** l'exercice de cette action collective contre les Défenderesses Kawasaki Motors Corp. USA, Tecumseh Products Company, Tecumseh Products of Canada Limited et Platinum Equity, LLC pour les fins d'un règlement hors cour seulement;

[8] **AUTHORIZES** the bringing of a class action against the Defendants Kawasaki Motors Corp. USA, Tecumseh Products Company, Tecumseh Products of Canada Limited and Platinum Equity, LLC for the purposes of settlement only;

[9] **ATTRIBUE** aux Demandeurs le statut de représentants du groupe ci-après décrit comme suit :

[9] **APPOINTS** the Plaintiffs as representative of the class herein described as:

« Toutes les personnes résidant au Québec qui ont acheté des tondeuses à gazon au Canada durant la Période du Groupe (entre le 1^{er} janvier 1994 et le 31 décembre 2012) à l'exception des personnes exclues. »

"All persons in Quebec who purchased Lawn Mowers in Canada during the Class Period (from January 1, 1994 to December 31, 2012) except the Excluded Persons."

[10] **IDENTIFIE** aux fins de règlement, la question commune comme étant la suivante :

[10] **IDENTIFIES** for the purposes of settlement, the common issue as follows:

*« Est-ce que les Défenderesses qui règlent ont conspiré pour fixer, maintenir, augmenter ou stabiliser les prix des tondeuses à gazon au Canada, pour réduire indûment la concurrence dans la production, la fabrication, la vente et / ou la fourniture de tondeuses à gazon et moteurs de tondeuse à gazon au Canada, et / ou pour mener des activités contraires à la partie VI de la Loi sur la concurrence, l'article 7 de la Loi sur l'emballage et l'étiquetage des produits de consommation et à la *common law**

"Did the Settling Defendants conspire to fix, maintain, raise or stabilize the prices of Lawn Mowers in Canada, to lessen unduly competition in the production, manufacture, sale and/or supply of lawn mowers and lawn mower engines in Canada, and/or to conduct business contrary to Part VI of the Competition Act, section 7 of the Consumer Packaging and Labelling Act and the common law during the Class Period?"

pendant la Période du Groupe? »

[11] **APPROUVE** la forme et le contenu de l'Avis de pré-approbation joint aux présentes comme pièces R-3, R-4, R-5, R-6, et R-7;

[11] **APPROVES** the form and content of the Pre-Approval Notices attached hereto as Exhibits R-3, R-4, R-5, R-6, and R-7;

[12] **ORDONNE** que l'Avis de pré-approbation soit publié et diffusé en conformité avec le Plan de Diffusion joint aux présentes comme pièce R-8;

[12] **ORDERS** that the Pre-Approval Notice shall be published and disseminated in accordance with the Plan of Dissemination attached hereto as Exhibit R-8;

[13] **ORDONNE** que les frais de diffusion de l'Avis de pré-approbation soient acquittés suivant les termes des Ententes de Règlement;

[13] **ORDERS** that the costs of disseminating the Pre-Approval Notice will be paid for in accordance with the Settlement Agreements;

[14] **DÉCLARE** que la période d'exclusion prévue au jugement de cette Cour du 25 septembre 2013, ayant expiré le 17 septembre 2013, est maintenue et qu'aucune période d'exclusion additionnelle n'est nécessaire;

[14] **DECLARES** that the opt-out period provided pursuant to the Judgment of this Court dated September 25, 2013, having expired on September 17, 2013, stands and that no further opt-out period is necessary;

[15] **ORDONNE** que l'Audience d'Approbation du Règlement soit tenue le 31 octobre 2018 à 14 h 15, en la salle 15.07 du Palais de justice de Montréal, 1, rue Notre-Dame Est (l'« Audience d'Approbation du Règlement »);

[15] **ORDERS** that the Hearing for Settlement Approval is to be held on October 31st, 2018 at 2:15 P.M., in room 15.07 of the Montreal Courthouse, 1, Notre-Dame Street East (the "Settlement Approval Hearing");

[16] **ORDONNE** que la date et l'heure de la tenue de l'Audience d'Approbation du Règlement soient indiquées dans l'Avis de pré-approbation, bien qu'elle puisse être reportée par la Cour sans autre avis signifié aux Membres du Groupe, exception faite d'un avis affiché sur le Site Web du Règlement;

[16] **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;

[17] **ORDONNE** qu'un exemplaire du présent jugement soit affiché sur le Site Web

[17] **ORDERS** that a copy of this Judgment shall be posted on the

du Règlement
www.lawnmowersettlement.ca et sur les
sites Web des Avocats du Groupe;

settlement website at
www.lawnmowersettlement.ca and on
Class Counsels' websites;

[18] **ORDONNE** qu'une version française et
anglaise des Conventions de règlement soit
disponible pour fins de consultation par les
Membres du Groupe;

[18] **ORDERS** that a French and
English version of the Settlement
Agreements be made available to the
Class Members for consultation
purposes;

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

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



ANDRÉ PRÉVOST, J.S.C.

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