Banque de Montréal v. Chevrette: The Court of Appeal reverses the Superior Court's decision to grant authorization

April 30, 2024

On April 19, 2023, in its decision in Banque de Montréal c. Chevrette, 2023 QCCA 516, the Court of Appeal reversed the Superior Court's decision and dismissed the authorization to institute a class action, which had initially been granted against four defendants. These defendants were alleged to have included negative equity in the refinancing of automobiles.

This is a particularly important decision in the area of class actions. Not only does it clarify the *Consumer Protection Act* (CPA) and the liability of automobile distributors, but it is also one of the first cases where the Court of Appeal has overturned a Superior Court decision authorizing a class action.

Negative equity and the trial decision

When purchasing their new vehicles, the representative plaintiffs refinanced the debt incurred to purchase their previous vehicles. This had the effect of raising the price of their new vehicle. They allege that this practice is illegal under sections 148 and 224(c) of the CPA.

In the first instance, the plaintiffs were granted authorization to institute the class action. The defendants appealed on two points:

- For Kia and Fiat Chrysler Automobiles (FCA), there was no legal relationship, as the instalment sale contract and associated financing were concluded with dealers and financial institutions. As distributors, Kia and FCA cannot be held liable for including the negative equity, regardless of the legality of this practice.
- Section 148 CPA, on which the plaintiffs rely, does not prohibit including negative equity, and the judge should have decided this question at the authorization stage, as it is a pure question of law.

The decision, section 148 CPA and the absence of a legal relationship

With respect to the **legal relationship** , the contracts filed as evidence clearly contradict the plaintiffs' assertion that they contracted directly with Kia or FCA. In addition, Kia and FCA adduced evidence that the dealers are separate legal entities and thus neither of them were party to the instalment sale contracts at issue. Since none of the allegations could be proven in support of the argument that there was an apparent mandate, which would have created a legal relationship with Kia and FCA, the Court of Appeal concluded that the trial judge should have dismissed the application as against Kia and FCA.

The judges of the Court of Appeal also found in favour of the appellants on the interpretation of **section 148 CPA** . The Court thus rejected the interpretation proposed by the respondents, that is, that the refinancing of vehicles was not tantamount to "goods sold on the same day" and that the purpose of this provision is to protect consumers from over-indebtedness. This provision is aimed rather at determining the allocation of payments and the time when ownership of the thing sold is transferred to the consumer. Following its analysis and interpretation of the provision, the Court of Appeal concluded that the class action should be dismissed.

Comment: A noteworthy decision

This Court of Appeal decision is very important for several reasons:

- From a procedural perspective, the rarity of judgments overturning authorized class actions since the 2016 reform underscores the importance of this ruling. It sets a precedent for appeals in cases where the trial judge may have misapplied the authorization criteria.
- The decision underscores the importance of addressing pure questions of law during the authorization process. It reaffirms the principle that if a legal issue is pivotal to the authorization, the court must resolve it.
- The causes of action asserted in this case did not give rise to an inquiry into the legality of the practice of including negative equity.

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