

Too Late to Forum Shop: Ontario Superior Court Declines Plaintiffs' Motion to Stay Action

April 29, 2019

In *Jordan v. CIBC Mortgages Inc.*, Justice Raikes of the Ontario Superior Court of Justice dismissed the plaintiffs' motion to stay or adjourn a certification motion in Ontario in order to pursue certification of a national class in a parallel class proceeding in British Columbia.

The *Jordan* action is one of three parallel actions brought in three different provinces — Ontario, British Columbia, and Québec — against the defendant, CIBC Mortgages Inc. The British Columbia action is the most advanced of the three. Importantly, that action was commenced at a time when the B.C. class actions legislation did not provide for national “opt-out” class actions. As a result, the B.C. action was certified on narrow issues for a provincial class only. The Québec action also seeks to authorize a provincial class. By contrast, the *Jordan* action, commenced in October 2011, always sought to certify a national class.

In July 2018, on the eve of the scheduled certification motion in Ontario, plaintiffs' counsel brought a motion to stay the *Jordan* action and adjourn their own certification motion, on the basis that proposed amendments to British Columbia's class proceedings legislation would enable certification of a national class on an “opt-out” basis, and transitional provisions would enable the plaintiffs to apply to amend the existing certification order to certify a national class. The defendant rejected the plaintiffs' request to stay and ordered that the certification motion proceed in Ontario as scheduled.

In dismissing the motion, Justice Raikes held that the relatively last-minute request to stay or adjourn the certification motion was inefficient and unfair to the defendant and to class members. Justice Raikes noted that the plaintiffs had already picked Ontario as the forum to proceed with a national class proceeding and that it was too late in the day to stay the action in favour of British Columbia, especially in light of the uncertainties posed by the proposed legislative amendments.

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