

Court File No. CV-10-397096CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

TRILLIUM MOTOR WORLD LTD.

Plaintiff

- and -

GENERAL MOTORS OF CANADA LIMITED and
CASSELS BROCK & BLACKWELL LLP

Defendants

Proceeding under the *Class Proceedings Act, 1992*

STATEMENT OF DEFENCE

1. The defendant, Cassels Brock & Blackwell LLP ("Cassels"), admits the allegations contained in paragraphs 6, 19 and 82 of the Amended Statement of Claim.
2. Cassels has no knowledge in respect of the allegations contained in paragraphs 4, 5, 8, 12, 14-16, 21, 22, 37, 57, 99 and 114 of the Amended Statement of Claim.
3. Cassels denies each and every other allegation in the Amended Statement of Claim, save as expressly admitted below, and puts the plaintiff to the strict proof thereof.

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Overview

4. Cassels was never in a solicitor-client, or any other, relationship with the plaintiff or the proposed Class with respect to the matters alleged in the Amended Statement of Claim.

5. Cassels was retained by a stranger to this action, the Canadian Automobile Dealers Association ("CADA"), to provide legal assistance in circumstances which never arose: a bankruptcy filing by General Motors of Canada Limited ("GMCL").

6. Cassels owed no duties to the plaintiff or to the proposed Class, whether in negligence, contract, the law of fiduciary duties, or otherwise. It breached none.

Parties

7. Cassels is a limited liability partnership of lawyers carrying on business across Canada.

8. General Motors of Canada Limited ("GMCL") is a company incorporated under the laws of Canada.

9. The plaintiff, Trillium Motor World Ltd., is a former GMCL dealer.

Canadian Automotive Dealers Association

10. In 2009, it was widely known that GMCL was on the verge of insolvency.

11. CADA is the national association for franchised automobile and truck dealerships. In a memorandum to dealers dated May 4, 2009, CADA announced the formation of a General Motors Steering Committee to "ensure that Canadian General Motor dealer interests are represented should General Motors of Canada Ltd. file for bankruptcy protection in Canada in the near future."

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12. The May 4, 2009 memorandum advised dealers that CADA had retained Cassels to provide legal assistance in any bankruptcy filing.

13. With the knowledge of CADA, Cassels erected an ethical wall within the firm in relation to this retainer.

14. CADA established a legal fund, into which its member dealers could contribute. The funds were payable to CADA, to be held by CADA in trust, and were only to be disbursed in the event of a bankruptcy of GMCL.

15. As there was no bankruptcy of GMCL, CADA later returned the funds to the member dealers. None of the funds were ever held by, or in the possession of, Cassels.

Wind-Down Agreements

16. On or around May 20, 2009, GMCL distributed Wind-Down Agreements ("WDAs") to a group of its dealers ("non-retained dealers"). The WDAs provided for the voluntary termination of each dealer's Dealer Sales and Service Agreement in exchange for formula-based payments.

17. GMCL advised the non-retained dealers that "The terms and conditions outlined in the WDA are not subject to negotiation."

18. The WDAs required each dealer to obtain independent legal advice before executing a WDA.

19. On May 22, 2009, CADA sent an email to its dealer members enclosing CADA memos about the WDA and advising the dealers to review the WDA with individual tax and legal counsel:

Please note, there are extremely tight timelines for you to consider the Wind Down Agreement that you have been sent by General Motors and it is CRITICAL that you review the Agreement with your individual legal and business advisors and ensure that you respond before the deadline of May 26, 2009 should you determine to sign the Wind Down Agreement.

20. On May 24, 2009, CADA held a conference call for non-retained dealers. Two lawyers at Cassels were invited to participate in the call.

21. During the call, Cassels was not asked to, and did not, provide advice to the dealers as to whether or not they should sign the WDA. Instead, the dealers were advised to obtain individual legal advice in relation to the WDA.

22. Each of the dealers who signed a WDA did so after obtaining independent legal advice. Cassels did not provide independent legal advice to any of the non-retained dealers.

23. The independent legal advice obtained by the dealers included advice given by some of the most well-known and established law firms in the country.

24. Neither the plaintiff nor any member of the proposed Class relied on Cassels in signing the WDA.

25. Cassels expressly denies that it owed a duty of care to the plaintiff or to any members of the proposed Class. In the alternative, Cassels denies that it breached any duty of care.

26. Cassels denies that it was acting in a conflict of interest in the manners alleged in the Amended Statement of Claim or in any other manner whatsoever.

27. Cassels denies that it was in a contractual relationship with the plaintiff or with any members of the proposed Class. Cassels denies the existence of any contract whatsoever. Cassels denies that it breached any contract.

28. Cassels denies that it owed fiduciary duties to the plaintiff or to any members of the proposed Class. Cassels denies that it breached any fiduciary duties.

29. Cassels was retained to provide representation in the event of GMCL's bankruptcy. There was no bankruptcy filing.

30. The plaintiff pleads no material facts to support the allegations that Cassels sought to hinder the dealers' ability to negotiate as a collective, or that it did anything other than comply with the limited nature of the CADA retainer.

31. Cassels denies that the plaintiff could have obtained a preferable settlement by negotiating, separately or together with other dealers, over the WDA, let alone while also claiming that the WDA was invalid.

Limited Liability Partnership Allegations

32. Cassels denies that any claim could be made against its partners, either as a matter of fact or law, as pleaded in paragraphs 124, 125 and 126 of the Amended Statement of Claim.

Damages

33. Cassels denies the plaintiff's claim for damages. If the plaintiff or the proposed Class members suffered damages, which is denied, these damages were caused by factors and events outside of the control or responsibility of Cassels.

34. The remedies sought by the plaintiff:

- (a) if recovered by success against GMCL, negate any recovery against Cassels; and
- (b) are in any event inconsistent as between the two claims.

35. Cassels denies that any act or omission by it caused or contributed to the losses claimed by the plaintiff and the proposed Class. Alternatively, the losses or damages claimed are excessive and too remote to be recoverable against Cassels. In the further alternative, the plaintiff and the proposed Class have failed to mitigate.

36. It cannot be claimed, nor indeed has it been claimed, that but for Cassels' involvement, the proposed Class members would have refused to sign back the WDAs.

37. Cassels pleads and relies upon the *Class Proceedings Act*, R.S.O. 1992, c. 6 and the *Courts of Justice Act*, R.S.O. 1990, c. C. 43.

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38. Cassels asks that this action be dismissed as against it with costs.

April 29, 2011

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STATEMENT OF DEFENCE

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