

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:)
)
DANIEL BENNETT) *Adrienne Boudreau and Sabrina Callaway*
) for the Plaintiff
Plaintiff)
)
- and -)
)
LENOVO (CANADA) INC. and) *Vlad Calina* for the Defendant Superfish Inc.
SUPERFISH INC.)
Defendants) *Kiran Patel* for the Defendant Lenovo
) (Canada) Inc.
)
)
)
) HEARD: September 28, 2017

PERELL, J.

ENDORSEMENT

[1] This is a class action with two defendants, Lenovo (Canada) Inc. and Superfish Inc. Both defendants were served and Lenovo (Canada) defended and has resisted certification of the action and made a crossclaim against Superfish.

[2] There is a parallel action in the United States.

[3] Superfish did not defend the Canadian action and instead there have been settlement discussions between the plaintiff Mr. Bennett's counsel and lawyers acting for Superfish's insurer. Mr. Bennett moves under Rule 49 to enforce an alleged settlement arising from those discussions. If the Rule 49 motion is granted, he intends to seek approval of the settlement in accordance with the *Class Proceedings Act, 1992*, S.O. 1992, c. 6.

[4] Counsel for Superfish, who is not formally on the record, requests an adjournment to obtain instructions. The adjournment request is opposed by Mr. Bennett.

[5] I am granting the adjournment request and rescheduling this motion for November 2, 2017.

[6] As presently constituted the motion is ill-conceived. In my opinion, in the context of a proposed class action, a Rule 49 motion cannot proceed pre-certification of the action. Once the action is certified, the court would be in a position to both approve and enforce the settlement.

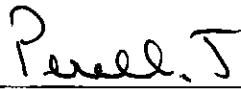
[7] I am, therefore, adjourning the motion to allow Mr. Bennett to properly constitute his motion. To do this, I direct that he serve on Superfish (service to be effected pursuant to Justice Belobaba's Order of May 9, 2016) the following materials:

- (1) a new notice of motion and supporting affidavits for an order certifying the action as against Superfish and for approval and enforcement of the alleged settlement;
- (2) the motion records and factums delivered for the certification motion as against Lenovo (Canada) heard on September 26, 2017;
- (3) the motion record for the motion now being adjourned.

[8] The costs of this adjournment are reserved to the return of the motion.

[9] Mr. Bennett shall also serve a copy of this endorsement pursuant to Justice Belobaba's service Order.

[10] Mr. Bennett may take out an Order in accordance with this endorsement without Superfish's approval as to form and content.



Perell, J.

Released: September 28, 2017

CITATION: Bennett v. Lenovo (Canada) Inc., 2017 ONSC 5794
COURT FILE NO.: CV-15-523714CP
DATE: 20170928

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

DANIEL BENNETT

Plaintiff

– and –

LENOVO (CANADA) INC. and SUPERFISH INC.

Defendants

ENDORSEMENT

PERELL J.

Released: September 28, 2017