

June 28, 2019

Maginnis et al v FCA Canada et al

DV-17-567691-CP

- *Mr. Leclerc, Mr. Seddigh and Ms. Cuberovic* for Proposed Rep Plaintiffs (“Ps”)
- *Mr. Pliszka and Mr. Maladwala* for FCA defendants (“D”)
- *Mr. Kwinter and Ms. Henderson* for Bosch defendants
- *Ms. Shoom* for Scarsview Motors defendant

This pre-certification motion brought by the proposed rep plaintiffs in this proposed class action is dismissed: Unintended confusion without consequence provides no basis for judicial intervention under ss. 12 or 19 of the *Class Proceeding Act*.

The settlement of the class action in the U.S. has naturally led to some unintended confusion on the part of some Canadian customers re the reach of this settlement in Canada or the status and future of this proposed Canadian class action. This confusion can be corrected to some extent by class counsel via their website or participation in various on-line chat groups. In any event, any confusion at this stage is without consequence – there is no evidence of any harm or prejudice; the Canadian class action is not being undermined in any way and, if certified, will proceed.

D has done nothing that is improper or inappropriate. More to the point, D has not engaged in any unfair or deceptive practices that unfairly impinge on the proposed class action. Court intervention is not justified.

D has every right to recall the Canadian vehicles and repair the “emissions control systems software.” Canadian owners/lessees have every right to accept the recall (no charge / no release) repair offer (and putative class counsel would be wise to advise class members accordingly). Any damage or related claims that remain will be advanced in the Canadian class action, if certified.

- There is no good reason to direct D to disclose contact information re the approx. 36,000 customers at this (pre-certification) stage of the proceeding;
- There is no good reason to direct D to send the suggested Recall Notice as drafted by class counsel (the third paragraph of which only compounds any “confusion”).
- Even assuming I had jurisdiction to do so, there is no good reason to direct that D revise its U.S. Website as suggested by Ps.

Ps’ motion is dismissed.

Costs: I find it fair and reasonable to fix costs in the amount of \$13,000 all-inclusive – payable forthwith by P to D.


Justice Edward P. Belobaba