



Court of Queen's Bench of Alberta

Citation: Macaronies Hair Club and Laser Center Inc. v BofA Canada Bank, 2018 ABCJ 633

**Date: 20180830
Docket: 1203 18531
Registry: Edmonton**

Between:

Macaronies Hair Club and Laser Center Inc., Operating As Fuze Salon

Plaintiff

- and -

BofA Canada Bank, Bank of Montreal, Bank of Nova Scotia, Canadian Imperial Bank of Commerce, Capital One Bank (Canada Branch), Citigroup Inc., Federation Des Caisses Desjardins Du Quebec, MasterCard International Incorporated, National Bank of Canada Inc., Royal Bank of Canada, Toronto-Dominion Bank and Visa Canada Corporation

Defendants

**Decision
of the
Associate Chief Justice
J.D. Rooke**

[1] The application by the Representative Plaintiffs for approval of the settlement between the Representative Plaintiffs and the Defendants, MasterCard International Incorporated (MasterCard), National Bank of Canada Inc. (National) and Visa Canada Corporation (Visa) (collectively the Settling Defendants, this settlement known as the MNV Settlement), which came before this Court on July 5 and August 23, 2018, is hereby granted.

[2] In the result, Counsel for the Plaintiffs may re-present final versions of the proposed Settlement Approval Orders (making sure that the recital paragraphs, release provisions and all other intervening changes since July 5, 2018 are in order) for my execution effective this date.

[3] The details of this proposed settlement and the opposition of Wal-Mart Canada Corp. (Wal-Mart) and Home Depot of Canada Inc. (Home Depot) only, substantially identical in substance in Alberta as in British Columbia, has been memorialized by the Reasons for Judgment of Weatherill J. in *Coburn and Watson's Metropolitan Home v. BMO Financial Group*, 2018 BCSC 1183 (the *Coburn 2018 Decision*)¹.

[4] This is a pan-Canadian settlement, which is, I suspect, subject of the same arguments as before Weatherill J, and me, as it will be before Perrell J. in Ontario on September 4, Barrington-Foote J. in Saskatchewan on September 5, and Corriveau J. in Quebec (whose statutory provisions are somewhat different from the common law provinces) on October 15, 2018. As such, this process, to save valuable judicial resources, should have been convened as a joint judicial hearing, pursuant to the Canadian Bar Association Task Force on Class Actions, Resolution 18-03-A, adopted by the Canadian Judicial Council, on April 5, 2018, relating to, *inter alia*, the “Canadian Judicial Protocol for the Management of Multijurisdictional Class Actions ...” (2018 Protocol). Furthermore, I understand that the *Coburn 2018 Decision* is already the subject of an appeal before the British Columbia Court of Appeal, as I suspect this Decision will be before the Alberta Court of Appeal, and the decisions of the other Trial Courts in the other three jurisdictions – thus, I suggest that those appeals might proceed under the 2018 Protocol, to save further valuable judicial resources.

[5] This Decision is released now, rather than later, as a result of the impending hearings in Ontario, Saskatchewan and Quebec.

[6] Reasons for this Decision will be released at a later time. They will, however, endorse the *Coburn 2018 Decision* of Weatherill J., who has lived with this case, for which all proceedings are substantially the same². for much of the 7+ years of litigation in these actions against these Defendants, while proceedings in other jurisdictions, including Alberta, have been stayed, with the Courts in those jurisdictions, in effect, maintaining a “watching brief” on the BC proceedings. The decision to endorse the *Coburn 2018 Decision* is consistent with the principles of judicial comity, based on the cases of, *inter alia*: *Ali Holdco Inc. v. Archer Daniels Midland Company*, 2010 ONSC 3075, at para. 27; *N.N. v. Canada (Attorney General)*, 2018 BCCA 105, at para. 82; *McKay v. Air Canada*, 2016 BCSC 1671, at para. 33, *Gill v. Yahoo Canada Co.*, 2018 BCSC 290, at para. 34; *Quenneville v. Volkswagen*, 2016 ONSC 7959, at paras. 20-21; *Frohlinger v. Nortel Networks Corporation*, 2007 CanLII 696 (ONSC), at paras. 31-32; and *Jeffrey v. Nortel Networks Corporation*, 2007 BCSC 69, at paras. 78b-79. The Reasons will, as appropriate, add Alberta based considerations to the proceedings here, and follow, in due course.


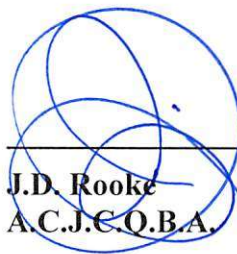
¹ The terms used herein are intended to track the terms as defined in the *Coburn 2018 Decision*.

² This action in Alberta, and the actions in all the other jurisdictions, have been stayed pending decisions in British Columbia, and there have been amendments to pleadings in British Columbia that have not been “caught up” in Alberta and other jurisdictions, but generally, the substance has been the same.

[7] Costs against Wal-Mart and Home Depot in favour of the Plaintiffs and Settling Defendants are reserved and can be spoken to at the instigation of the latter parties.

Heard on the 5th day of July and the 23rd day of August, 2018.

Dated at the City of Edmonton, Alberta this 30th day of August, 2018.

S.N. Mandziuk

Appearances:

R. Mogerman
J. Winstanley
L. Brasil
C. Hermanson,
for the Plaintiffs

S. Griffen
A. Brylowski,
for National Bank of Canada Inc.

R. Kwinter,
for Visa Canada Corporation

J.B. Simpson
J. Musgrove
N. Epara,
for MasterCard International Incorporated

E.J. Babin
M. Booknan,
for Wal-Mart Canada Corp.

K. Taylor,
for Home Depot of Canada Inc.

D. Royal,
for Non-Settling Defendants