

C A N A D A

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

N° 500-06-000920-187

(Class Actions Division)
S U P E R I O R C O U R T

ADAM CHARLES BENJAMIN

Applicant

v.

CREDIT VW CANADA INC.

-and-

TOYOTA CREDIT CANADA INC.

-and-

HONDA CANADA FINANCE INC.

-and-

CORPORATION DE SERVICES

FINANCIERS MERCEDES BENZ CANADA

-and-

BMW CANADA INC.

-and-

SERVICES FINANCIERS NISSAN CANADA

-and-

CANADIAN DEALER LEASE SERVICES INC.

-and-

COMPAGNIE DE GESTION CANADIAN

ROAD

Respondents

**RE-AMENDED SETTLEMENT AGREEMENT
CANADIAN DEALER LEASE SERVICES INC.**

- A. **WHEREAS** on or around April 5th, 2018, Paul Benjamin, filed an *Application for Authorization to Institute a Class Action and to be Attributed the Status of Representative Plaintiff* which was later amended on October 4th, 2018, reamended on February 19th, 2019 and re-re-amended on April 30, 2019 (the “**Re-Re-Amended Application for Authorization**”), seeking permission by Applicant, Adam Charles Benjamin, to institute a class action on behalf of the following groups:

*All natural persons, private legal persons, companies or associations residing or having resided in Quebec, who contracted for the long-term lease of a vehicle with one of the defendants and who were charged fees, in the capacity of assignor or assignee, to effect the assignment of the vehicle lease since April 5, 2015 (the “**Class**”).*

*All consumers residing or having resided in Quebec, who contracted for the long-term lease of a vehicle with one of the defendants and who were charged fees to effect the assignment of the vehicle lease that were not divulged, in full or in part, in the vehicle lease since April 5, 2015 (the “**Consumer Sub-Class**”).*

*Collectively, the “**Class**” or the “**Class Members**”.*

- B. **WHEREAS** the Class Action was instituted against ten respondents who acted directly, or through affiliated companies, as the lessor of long-term vehicle leases (« **Lease** ») in Québec, (collectively, the “**Respondents**”);
- C. **WHEREAS** Canadian Dealer Lease Services Inc. (“**CDLSI**”), is one of the Respondents;
- D. **WHEREAS** the Applicant alleges, *inter alia*, that the Respondents, including CDLSI, breached provisions of the *Civil Code of Québec* and/or the *Consumer Protection Act*, RLRQ c. P-40.1, by charging fees to the Class Members to effect the assignment of a Lease (the “**Transfer Fees**”);
- E. **WHEREAS** on or about May 7, 2018, CDLSI filed an *Answer to Summons* stating its intention to contest the Application for Authorization;
- F. **WHEREAS** on February 7, 2020, the Honourable Pierre-C. Gagnon J.S.C. dismissed the Re-Re-Amended Application for Authorization;
- G. **WHEREAS** on or about March 5, 2020, Applicant filed a Notice of Appeal in the Court of Appeal’s record bearing number 500-09-028885-200;
- H. **WHEREAS** on or about March 13, 2020, CDLSI filed a Representation Statement in the Court of Appeal’s record bearing number 500-09-028885-200;
- I. **WHEREAS**, on or about February 25, 2021, a settlement agreement was reached regarding the CDLSI Class Members (as defined below);
- J. **WHEREAS**, subsequent to February 25, 2021, CDLSI conducted additional due diligence to confirm certain information that led to the execution of an Amended Settlement Agreement on October 15, 2021;
- K. **WHEREAS** the Court refused to adjudicate on the Applicant and CDLSI’s Joint Application for Authorization to Institute a Class Action for Settlement Purposes Only and for Approval of Notice to Class Members, given the dismissal by the honourable Pierre-C. Gagnon J.S.C. of the Re-Re-Amended Application for Authorization;
- L. **WHEREAS**, on October 4, 2022, the Court of Appeal authorized the Applicant to bring a class action on behalf of all persons in the following class (the “**Class Action**”):

*All natural persons, private legal persons, companies or associations residing or having resided in Quebec, who contracted for the long-term lease of a vehicle with one of the defendants and who were charged fees, in the capacity of assignor or assignee, to effect the assignment of the vehicle lease since April 5, 2015 (the “**Class**”).*

*All consumers residing or having resided in Quebec, who contracted for the long-term lease of a vehicle with one of the defendants and who were charged fees to effect the assignment of the vehicle lease that were not divulged, in full or in part, in the vehicle lease since April 5, 2015 (the “**Consumer Sub-Class**”).*

*Collectively, the “**Class**” or the “**Class Members**”.*

- M. **WHEREAS**, on or about January 4, 2023, the Applicant filed an Originating Application, in which the Applicant asks the Court to grant the Class Action;
- N. **WHEREAS** CDLSI and the Applicant wish to settle this Class Action without prejudice or admission whatsoever, by way of mutual concessions, pursuant to the terms hereof;
- O. **WHEREAS**, in April 2023, CDLSI and the Applicant entered into the present Re-Amended Settlement Agreement, which reflects the latest procedural developments and extends the Class Period (as defined below) in accordance with the terms hereof.

1. Definitions

The following terms are defined for the purposes of this Re-Amended Settlement Agreement, including the Recitals:

- a) “**Applicant**” refers to Adam Charles Benjamin;
- b) “**Approval Order**” means the order of the Court approving this Re-Amended Settlement Agreement;
- c) “**Class Counsel**” refers to the law firm IMK LLP;
- d) “**Class Member**” means a member of the Class that did not exclude themselves in accordance with the provisions of Article 580 of the *Code of Civil Procedure*;
- e) “**Class Period**” refers to the period from April 5th, 2015 to February 2, 2023;
- f) “**Class Action**” means the legal proceedings in *Paul Benjamin v. Credit VW Canada inc. et al.* (Court File: 500-06-000920-187), pending in the Superior Court of Quebec, district of Montréal;

- g) “**Court**” means the Superior Court of Québec or the Québec Court of Appeal, as the case may be;
- h) “**Respondents**” refers to all respondents in the Class Action;
- i) “**CDLSI**” refers to the defendant Canadian Dealer Lease Services Inc.;
- j) “**CDLSI Affidavit**” refers to the affidavit of Larry Marion, President of Canadian Dealer Lease Services Inc., dated April 11, 2023;
- k) “**CDLSI Counsel**” refers to the law firm Osler, Hoskin & Harcourt, LLP;
- l) “**CDLSI Sub-Class Member**” means a Class Member who entered into a Lease with CDLSI and who was charged Transfer Fees, in the capacity of assignor or assignee, to effect the assignment of the Lease during the Class Period;
- m) “**Final**” means, when used in relation to a judgment or order, the time at which said judgment or order has been entered and all rights of appeal therefrom have been exhausted, such that the judgment or order has acquired the status of *res judicata*;
- n) “**Lease**” means a long-term vehicle lease entered into between a Class Member and one of the Respondents;
- o) “**Lease Transfer Agreement**” refers to the agreement entered into between a Class Member and one of the Respondents to effect the assignment of the Lease;
- p) “**Parties**” means, collectively, the Applicant, its attorneys as identified herein, and CDLSI;
- q) “**Pre-Approval Notice**” means the *Notice of settlement of a class action authorization and settlement approval hearing* that will be a) substantially in the form of Appendix A hereto and b) approved by the Court;
- r) “**Pre-Approval Order**” means the order of the Court approving the Pre-Approval Notice;
- s) “**Released Claims**” means any and all claims, demands, rights, liabilities, and causes of action that the Applicant, or any CDLSI Sub-Class Member, has or may have against the Released Persons arising out of or in any way related to the facts alleged in any version of the Re-Re-Amended Application for Authorization or the Clerical Error and notwithstanding the legal basis, whether expressly alleged or not.
- t) “**Released Persons**” means CDLSI and the Bank of Nova Scotia, and their respective partners, members of the same group, previous or successor

companies, directors, officers, shareholders, partners, representatives, employees, agents, insurers, assigns, successors, legal counsels, parent companies, related or affiliated companies, affiliates, subsidiaries, predecessors, mandataries, associates and assignees, past or present.

- u) **“Settling Parties”** means, collectively, the Released Persons, the Applicant and all CDLSI Sub-Class Members;
- v) **“Transfer Fees”** means all fees that were charged to the Class Members to effect the assignment of a Lease, whether they were characterized as assignment fees, administrative fees, documentation fees, or otherwise.

2. Recitals and Definitions Included

The Recitals and Definitions form an integral part of this Re-Amended Settlement Agreement.

3. Required Approval of Settlement

If this Re-Amended Settlement Agreement is not approved by the Court or the Re-Amended Settlement Agreement is terminated, it will become null and void, with the exception of paragraphs 4(a), 16 and 17, and will not generate any other rights or obligations either for the Parties or the Class Members; the Settling Parties will be restored to their respective positions in the Litigation before the Re-Amended Settlement Agreement was executed.

4. No Admission of Liability

- a) CDLSI denies all allegations and legal claims asserted in the Re-Re-Amended Application for Authorization, including any and all charges of wrongdoing or liability arising out of any of the conduct, statements, acts or omissions alleged in the Re-Re-Amended Application for Authorization. The Re-Amended Settlement Agreement (or anything contained herein) does not constitute, is not intended to constitute, and will not under any circumstances be deemed to constitute, an admission of wrongdoing or liability by CDLSI, such wrongdoing and liability being expressly denied.
- b) Nonetheless, CDLSI has concluded that further conduct of the Class Action and associated costs would be disproportionate with the amount of the claims at issue and that it is desirable that the Class Action against CDLSI be fully and finally settled in the manner and upon the terms and conditions set forth in this Re-Amended Settlement Agreement.

5. Application for Pre-Approval Order

Within fifteen (15) days after execution of this Re-Amended Settlement Agreement, Applicant will apply to the Court for the Pre-Approval Order.

6. Communication of the Pre-Approval Notice

- a) After the Pre-Approval Order is rendered, CDLSI or a third party of mandated by it, will email a copy of the Pre-Approval Notice to each CDLSI Sub-Class Member, where possible, or send the notice by mail where no email address is on file within thirty (30) days of the judgment ordering such Pre-Approval Notice or on the date fixed by the Court for the sending of such a notice.
- b) The Pre-Approval Notice will inform the CDLSI Sub-Class Members that the hearing on the approval of the Re-Amended Settlement Agreement will be held on a date to be determined by the Court.

7. Application for Approval Order

Within thirty (30) days after communication of the Pre-Approval Notice to the CDLSI Sub-Class Members, Applicant will apply to the Court for the Approval Order and request that the Court:

- a) declare that this Re-Amended Settlement Agreement is fair, reasonable and in the best interests of the CDLSI Sub-Class Members;
- b) approve this Re-Amended Settlement Agreement and order the Parties and the CDLSI Sub-Class Members to comply with it;
- c) approve the legal fees to be paid as part of the Re-Amended Settlement Agreement;
- d) order that the cheque in the amount of the compensations as set forth under section 9 of this Re-Amended Settlement Agreement be sent by mail, or via an electronic transfer, to the CDLSI Sub-Class Members within sixty (60) days after the Approval Order;
- e) declare that the Class Action against CDLSI is settled out of Court; and
- f) order any other measure it should deem required to facilitate the approval, implementation or administration of this Re-Amended Settlement Agreement.

8. Releases

- a) Upon the Approval Order becoming Final, the Applicant and each of the CDLSI Sub-Class Members will be deemed to have, and by operation of the Approval Order will have, fully, finally, and forever released, relinquished, and discharged the Released Persons from all Released Claims.
- b) Class Counsel, as well as M^e Jean-Michel Boudreau, personally and in his function as attorney, undertake not to institute proceedings, whether class proceedings or otherwise, against CDLSI or any of the Released Persons, or act as counsel to any plaintiff, or act as an advisor to any other firm, for any claim

relating to the facts alleged in any version of the Re-Re-Amended Application for Authorization or the Clerical Error and notwithstanding the legal basis, whether expressly alleged or not, for such claim.

- c) In the event that Class Counsel or M^e Jean-Michel Boudreau should hereafter make any claim or demand or commence or threaten to commence any action, claim or proceeding against CDLSI or any of the Released Persons in connection with the facts relating to the Re-Re-Amended Application for Authorization or the Clerical Error, this Re-Amended Settlement Agreement may be raised as a complete bar to any such demand, action, claim or proceeding.

9. Compensations to the CDLSI Sub-Class Members

9.1 Whereas the Applicant alleges in the Re-Re-Amended Application for Authorization that, depending on the vehicle brand, CDLSI has charged Transfer Fees to CDLSI Sub-Class Members to effect the assignment of a Lease during the Class Period;

9.2 Whereas the CDLSI Affidavit states that:

- a) CDLSI charged Transfer Fees of \$350 to all CDLSI Sub-class Members to effect the assignment of a Lease during the Class Period;
- b) the \$350 fee has never been increased, despite inflation and despite increases in the paperwork associated with Lease assignments;
- c) although the Transfer Fees are designed to set off a portion of the approximate cost that CDLSI incurs whenever a Lease is assigned, the amount of \$350 does not cover all of CDLSI's fees, with the result that Lease assignments are processed at a loss to CDLSI. In addition, the cost to CDLSI of processing Lease assignments, although it varies amongst car manufacturers serviced by CDLSI, remains greater than \$350;
- d) the cost to CDLSI of processing Lease assignments must account for fixed and variable costs to CDLSI, fees with respect to the partially processed lease transfer applications which are not completed for various reasons, fees incurred in cases where no Lease Transfer Fee is collected despite a lease transfer being completed, as well as other costs which may vary with time;
- e) a mapping error with the lease agreement portal caused certain Leases to populate the relevant disclosure provision with "\$0" rather than "\$350". In other words, where the Transfer Fees should have indicated "\$350", there are certain Leases where this provision specifically indicates that the Transfer Fees are "\$0" ("**Clerical Error**");
- f) Between April 5, 2015 and February 2, 2023, CDLSI levied a fee regarding 4,997 Lease assignments.

9.3 Therefore, as full and final compensation for the Released Claims:

- a) CDLSI Sub-Class Members whose Leases contained the Clerical Error and for which Transfer Fees were paid to transfer the Leases, will receive a direct payment from CDLSI or on its behalf in the total amount of **\$350** (the "**Compensation A**"), for a total and final amount in Compensation A to be paid by CDLSI to the CDLSI Sub-Class Members of **\$262,500.00** (which represents \$350 x 750), minus any amount payable to the Fonds d'aide aux actions collective under the applicable regulations.
- b) CDLSI Sub-Class Members whose Leases adequately disclosed the \$350 Transfer Fees or whose Leases prohibited the transfer and for which Transfer Fees were paid to transfer the Leases, will receive a direct payment from CDLSI or on its behalf in the total amount of **\$27** (the "**Compensation B**"), for a total and final amount in Compensation B to be paid by CDLSI to the CDLSI Sub-Class Members of **\$113,427.00** (which represents \$27 x 4,201), minus any amount payable to the Fonds d'aide aux actions collective under the applicable regulations.

10. Collective Recovery

The Parties agree that the present settlement provides for the collective recovery of the CDLSI Sub-Class Members' alleged claims.

11. Delivery of Compensation

- a) CDLSI will directly, or via a third party administrator which it may select at its sole discretion, issue to each CDLSI Sub-Class Member a cheque in the amount of the Compensation A or Compensation B, as applicable and as described above, by mail to their most recent available address, or proceed by electronic transfer.
- b) In the event a third party administrator is retained by CDLSI, costs associated with the retainer of this administrator will be borne by CDLSI in addition to the compensation payments to CDLSI Sub-Class Members.
- c) The funds remaining from any CDLSI Sub-Class Members' uncashed cheques six (6) months after they have been mailed will be donated to United Ways, minus any amount payable to the Fonds d'aide aux actions collectives under the applicable regulations.

12. Class Counsel Fees and Expenses

- a) CDLSI agrees to pay Class Counsel, in full and final compensation for its fees, disbursements and judicial cost, the amount of sixty-seven thousand three hundred and eighty-nine dollars (\$67,389.00) plus applicable taxes (collectively, "**Class Counsel Fees**") payment of which shall be remitted to Class Counsel within thirty (30) days after the judgment of the Court approving such fees.
- b) Class Counsel will be responsible for filing and presenting an application before the Court requesting payment of its fees.

- c) This Re-Amended Settlement Agreement is in no way conditional upon the approval of Class Counsel's Fees by the Court. Any order or proceeding relating to Class Counsel's Fees, or any appeal from any order relating thereto or reversal or modification thereof, shall not operate to terminate or cancel the Re-Amended Settlement Agreement.

13. Other Costs

- a) CDLSI will not be liable to pay any other costs or fees to the Applicant, to CDLSI Sub-Class Members or to Class Counsel, other than the Compensation A or Compensation B, as applicable and subject to the payment to the Fonds d'aide aux actions collectives, and Class Counsel Fees as provided for in this Re-Amended Settlement Agreement.
- b) However, CDLSI will assume the costs of sending notices to be made under this Re-Amended Settlement Agreement and as ordered by the Court, subject to Section 14 (c) herein.
- c) No notices will be issued and no press release will be issued other than the transmission by email or mail of the Pre-Approval Notice and explanatory note accompanying the payment sent to CDLSI Sub-Class Members by CDLSI or a third party administrator it may select at its sole discretion. Should the Court order a notification process other than the notification of the Pre-Approval Notice in the manner set out in Section 6 above, any additional costs will be deducted from the Compensation payments to CDLSI Sub-Class Members.

14. Cooperation and Best Efforts

The Parties agree to cooperate to the extent reasonably necessary to give effect to and implement all terms and conditions of this Re-Amended Settlement Agreement and to exercise best efforts to fulfil the foregoing terms and conditions of this Re-Amended Settlement Agreement.

15. Negotiated Agreement

The Parties intend the Re-Amended Settlement Agreement to be a final and complete resolution of all disputes between them with respect to the Class Action. The Parties agree that the consideration provided to the CDLSI Sub-Class Members and the other terms of the Re-Amended Settlement Agreement were negotiated at arm's length and in good faith by the Parties, and reflect a settlement that was reached voluntarily after consultation with competent legal counsel.

16. Not Admissible As Evidence

- a) Neither the Re-Amended Settlement Agreement, nor anything contained herein, nor any of the negotiations, nor any related document, nor any other action taken to carry out the Re-Amended Settlement Agreement shall be referred to, offered

as evidence or received in evidence in any pending or future civil, criminal, regulatory or administrative action or proceeding against the Released Persons.

- b) Notwithstanding the above, the Re-Amended Settlement Agreement may be referred to or offered as evidence in a proceeding to approve or enforce the Re-Amended Settlement Agreement, to defend against the assertion of Released Claims, and as otherwise required by law.

17. Notices

Any notification, request, instruction or other document to be given by one Party to the other (other than class-wide notification) shall be in writing (including email) and transmitted to:

If to the Applicant: c/o M^e Jean-Michel Boudreau and M^e Mouna Aber
IMK LLP
Place Alexis Nihon | Tower 2
3500 De Maisonneuve Boulevard West, Suite 1400
Montréal, Québec H3Z 3C1
jmboudreau@imk.ca
maber@imk.ca

If to CDLSI: c/o M^e Éric Préfontaine and M^e Jessica Harding
Osler, Hoskin & Harcourt LLP
1000 de la Gauchetière, Suite 2100
Montréal, Québec, H3B 4W5
eprefontaine@osler.com
jharding@osler.com

18. Jurisdiction

The Court will retain jurisdiction with respect to implementation and enforcement of the terms of this Re-Amended Settlement Agreement and all Parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the Re-Amended Settlement Agreement.

19. Governing Law

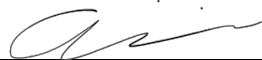
This Re-Amended Settlement Agreement is a transaction pursuant to sections 2631 and following of the *Quebec Civil Code* and will be construed and enforced in accordance with and governed by the laws of the Province of Québec.

20. Miscellaneous Provisions

- a) The plural of any defined term in this Re-Amended Settlement Agreement includes the singular, and the singular of any defined term in this Re-Amended Settlement Agreement includes the plural, as the case may be.

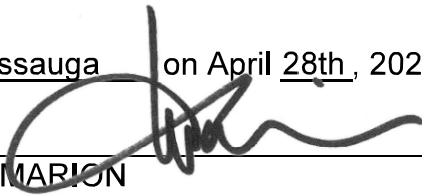
- b) All of the Appendices to this Re-Amended Settlement Agreement are material and integral parts hereof and are fully incorporated by this reference.
- c) This Re-Amended Settlement Agreement may be amended or modified only by a written instrument signed by or on behalf of all Parties.
- d) This Re-Amended Settlement Agreement and the Appendices attached constitute the entire agreement among the Parties, and supersedes prior exchanges, oral or in writing, between CDLSI Counsel and Class Counsel.
- e) Each counsel or other person executing this Re-Amended Settlement Agreement or any of its Appendices on behalf of any Party hereby warrants that such person has the full authority to do so.
- f) This Re-Amended Settlement Agreement may be executed in one or more counterparts. All executed counterparts and each of them will be deemed to be one and the same instrument. A complete set of original counterparts will be filed with the Court.
- g) The Signatory Parties have agreed to an English version of the Agreement being duly signed and have translated it into a French version. In the event of ambiguity regarding the present Re-Amended Settlement Agreement, the English version must be used as the official reference to interpret the meaning and scope of the present agreement. / *Les Parties Signataires ont accepté que la présente Entente soit rédigée et signée dans la langue anglaise et de la traduire dans la langue française. En cas d'ambiguïté, la version anglaise servira de référence pour comprendre le sens et la portée des présentes.*

Signed in Montreal on April 2023-04-26, 2023



ADAM CHARLES BENJAMIN

Signed in Mississauga on April 28th, 2023



Name: LARRY MARION

Title: President

Duly authorized representative of Canadian Dealer Lease Services Inc.

Signed in _____ on April _____, 2023

Jean-Michel Boudreau

Digitally signed by Jean-Michel Boudreau
DN: cn=Jean-Michel Boudreau, o=IMK s.e.n.c.r./LLP, ou,
email=jmboudreau@imk.ca, c=CA
Date: 2023.05.01 13:29:32 -04'00'

Name: Jean-Michel Boudreau

Title: Partner
Duly authorized representative of IMK LLP

Signed in _____ on April _____, 2023

Jean-Michel Boudreau

Digitally signed by Jean-Michel Boudreau
DN: cn=Jean-Michel Boudreau, o=IMK s.e.n.c.r.l./LLP, ou,
email=jmboudreau@imk.ca, c=CA
Date: 2023.05.01 13:30:06 -0400

Me JEAN-MICHEL BOUDREAU