

COURT OF APPEAL

CANADA
 PROVINCE OF QUEBEC
 REGISTRY OF MONTREAL

No: 500-09-027629-187
 (500-06-000838-173)

MINUTES OF THE HEARING

DATE: August 22, 2018

THE HONOURABLE MARK SCHRAGER, J.A.

PETITIONER	COUNSEL
VOLKSWAGEN AKTIENGESTLLSCHAFT	Mtre STÉPHANE PITRE Mtre ANNE MERMINOD <i>(Borden Ladner Gervais s.e.n.c.r.l., s.r.l.)</i>
RESPONDENT	COUNSEL
LAWRENCE CHANDLER	Mtre SHAWN FAGUY <i>(Faguy & Cie, avocats inc.)</i>

DESCRIPTION: **Application for leave to appeal from a judgment terminating the proceedings rendered on May 28, 2018, by the Honourable Chantal Chatelain of the Superior Court, District of Montreal.**
(Art. 357, 578 C.C.P.)

 Clerk: Mihary Andrianaivo

 Courtroom: RC.18

HEARING

10:20 Commencement of the hearing.

Submissions by Mtre Stéphane Pitre.

10:36 The Judge exempts Mtre Shawn Faguy from pleading.

BY THE JUDGE: Judgment denying the application with costs – See page 3.

End of the hearing.

Mihary Andrianaivo

Clerk

BY THE JUDGE

JUDGMENT

[1] The Applicant (« Volkswagen ») seeks leave to appeal the judgment rendered on May 28, 2018 by the Superior Court, District of Montreal (the Honourable Chantal Chatelain), authorizing a class action of which Respondent is the representative of the class, being persons who purchased Volkswagen securities between 2009-2015:

[3] Mr. Chandler basically claims that the proposed class members, who invested in VW's securities, suffered monetary damages when the value of their securities dropped as a result of the disclosure of VW's intentional misrepresentations in relation to the compliance of certain of its Volkswagen and Audi diesel-powered automobiles with the applicable emissions standards.

[2] The thrust of the various grounds raised in appeal is the judge's treatment of "reliance" as an element in determining Volkswagen's possible liability. Here is what the judge said on the matter:

[61] VW pleads that Mr. Chandler does not appear to have a valid cause of action because there is no proof that Mr. Chandler relied on VW's misrepresentations to purchase his VW securities.

[62] The Court disagrees, on the basis that reliance is not required under Québec law.

[63] VW conflates the notions of causality and reliance. These are two different, though sometimes overlapping concepts. The confusion of VW seems to originate from its misconception that a claim under Article 1457 CCQ is equivalent to a misrepresentation claim brought under the common law. Again, these are two different concepts.

[...]

[67] The Court is aware that in Theratechnologies, Justice Abella, writing for the Supreme Court of Canada, made reference to reliance in describing the causality requirement. She said:

[28] [...] To establish civil liability, claimants were required to prove a fault, such as the publication of misinformation or the failure to meet a statutory disclosure obligation; that they suffered prejudice; and that there was a causal link between the fault and the prejudice — that is, that they had relied on the misinformation in making the trade [...]

(Our emphasis)

[68] However, at paragraph 27, Justice Abella specifies that reliance is a requisite element of the tort of negligent misrepresentation in the common law jurisdiction. The reference to reliance at paragraph 28 only seems to be an indication of the equivalent, yet different, requirement under Québec law.

[69] Therefore, for the purposes of a claim under Article 1457 CCQ, the Court finds that although reliance may often be sufficient to prove causation, it is not necessary. In other words, reliance is not necessarily a requisite element of causality. Although it may be easier to prove causality in the presence of reliance, there can nevertheless be causality without reliance.

[70] Here, Mr. Chandler claims that the causality element is satisfied in that as a result of VW's fault, its stock was artificially inflated during the class period and plummeted after the publication of the Corrective Disclosure, thus causing the alleged injury.

[...]

[72] In any event, should reliance be a requisite element under Québec civil law, the Court is of the view that the Motion for Authorization alleges reliance with sufficient particularity for the purposes of the authorization stage.

[...]

[75] In addition, Mr. Chandler testified that prior to investing in a company, he systematically reviews its financial statements. He also testified that prior to purchasing VW's ADR, he "debated the merits and looked at some financial data" with his investment counsellor and that he reviewed VW's 2012 financial results. Assuming that reliance is required under Québec law, reliance on some of the financial information of VW is sufficient at this stage.

[76] The fact that Mr. Chandler only reviewed some of the financial information of VW as opposed to the integrality of its annual reports is irrelevant at this stage because Mr. Chandler complains not only that VW made false representations in its financial documents, but also that it failed to disclose the existence of the Cheating Device. Claiming that Mr. Chandler should have reviewed the annual reports to rely on an absence of disclosure is a *non sequitur*.

[3] Where did the fault of omission occur? Petitioner submits that without reliance in Quebec, the courts of this province would have no jurisdiction to hear the matter. How does an investor, rely on an omission to disclose, as the judge indicates in paragraph [76] of the judgment?

[4] Had Volkswagen publicly disclosed any misrepresentation on emissions, would such fact not be reflected in financial statements, information circulars, annual reports or otherwise known to a financial adviser? The judge alludes to this in paragraph [75] of the judgment.

[5] Such questions are rhetorical but they underline the adequacy with which the issue was dealt with by the judge.

[6] Accordingly, I see no issue on the judge's treatment of reliance or otherwise which could merit that leave be granted.

FOR THE FOREGOING REASONS, THE UNDERSIGNED:

[7] **DISMISSES** the Application for leave to appeal, with legal costs.

MARK SCHRAGER, J.A.