SUPERIOR COURT

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No: 500-06-000261-046

DATE: March 6, 2007

IN THE PRESENCE OF: THE HONOURABLE ROGER E. BAKER, J.S.C.

STÉPHANE VERMETTE
Co-Petitioner/Designated person
and
ASSOCIATION POUR LA PROTECTION AUTOMOBILE
Co-Petitioner
v.
GENERAL MOTORS DU CANADA LIMITÉE
and
GENERAL MOTORS CORPORATION
Respondents

JUDGMENT

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[1] The Court has heard a Requête amendée pour autorisation d'exercer un recours collectif et pour être représentant.

[2] The class, or persons who Petitioners seek to represent, are described as follows:

JB 3018

> "toutes les personnes physiques [...] résidant au Québec et toutes les personnes morales de droit privé, sociétés ou associations [...] résidant au Québec [...] et comptant, en tout temps au cours de la période de 12 mois qui précède la présente requête pour autorisation [...] sous leur direction ou sous leur contrôle au plus 50 personnes liées à elles par contrat de travail, [...] qui ont acheté ou loué un véhicule de marque Chevrolet, modèle Venture des années 1997 à 2004, ou [...] un véhicule de marque Pontiac, modèles Trans Sport/Montana des années 1997 à 2004, ou un véhicule de marque Oldsmobile, modèle Silhouette des années 1998 à 2004, faisant l'objet et/ou ayant fait l'objet de problèmes de corrosion et/ou d'écaillement de la peinture "[1].

[3] The facts that Co-Petitioner Stéphane Vermette asserts which give rise to his rights against these Respondents are the following:

1 - M. Vermette leased a new Chevrolet Venture from 1998 until 2001, which vehicle he subsequently purchased, and then owned as of the date of these proceedings.

2 - In August or September 2004, M. Vermette noticed rust (*rouille*) on the roof of the Chevrolet Venture.

3 - He was advised by a mechanic at a service station that this was abnormal corrosion and that he should inform the Respondent General Motors du Canada Limitée (G.M. Canada).

4 - He next brought the Chevrolet Venture to a G.M. Canada dealer (Ste-Thérèse Autos Inc.) who inspected the vehicle and advised that there was rust in other places than the roof; this mechanic, it is alleged, stated that he had seen other Chevrolet Venture's in this condition, as well as Pontiac Trans Sport/ Montana.

5 - M. Vermette, after having gone to several garages, returned to Ste-Thérèse Autos Inc. in mid-September 2004, which garage after three weeks advised him that the Respondents would not assume the cost of repair of the Chevrolet Venture.

6 - He received an estimate from Fix Auto Blainville for the cost of repairs in the amount of $2,835.00.

[4] Petitioner M. Vermette asserts the position that as the Respondents are professional vendors, a latent defect is presumed, as a consequence of which M. Vermette, being covered by legal warranty is entitled to claim for the cost of replacing the roof of the Chevrolet Venture as well as for any other part of the vehicle which has

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[1] Requête amendée pour autorisation d'exercer un recours collectif et pour être représentant, par. 1.1.

corrosion or rust undoubtedly resulting from latent defects and the manufacturing process.

[5] There are four threshold conditions set out in the Code of Civil Procedure (C.C.P.) to enable the authorization of a class action:

> "**1003**. The Court authorizes the bringing of the class action and ascribes the status of representative to the member it designates if of opinion that:
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> *(a)* the recourses of the members raise identical, similar or related questions of law or fact;
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> *(b)* the facts alleged seem to justify the conclusions sought;
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> *(c)* the composition of the group makes the application of article 59 or 67 difficult or impracticable; and
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> *(d)* the member to whom the court intends to ascribe the status of representative is in a position to represent the members adequately."

[6] The Respondents raise firstly against the authorization that the criteria of 1003 *(a)* are not met; that is, the recourses of the members of the class do not raise issues which are identical, similar or related questions of fact or law.

[7] The factual basis for this proceeding for authorization encompasses a huge number of potential members of the anticipated class, with potentially distinct and different problems in their respective vehicles, which may or may not have their origins in sources so diverse that no trial for all members would resolve the issue for many of the individuals. The problem foreseen is that a huge number of mini trials might be required to determine the claims of those who fall into the class only by the scope of its very broad definition, which itself is the problem, and possibly the impediment to certifying the class as defined.

[8] Petitioners have alleged that the number of vehicles sold in Quebec involved in the determination of these proceedings might well exceed 80,000.[2]

[9] It was never intended by the legislator to simply "bunch" together many diverse claims related only by some similarities so that fewer trials against any particular defendant might be the result. The objective of class actions here in Quebec and elsewhere on the continent is social in purpose; this means that where large groups of people have been injured or prejudiced in the same way by the same defendant, their relief may be sought together as a group so as to save time, money, and avoid the real possibility of many different judgments.

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[2] Id., par. 5.5.

[10] Much care must be given therefore at the accreditation stage of a class action to determine, to the extent possible, that a full hearing will serve the purpose for which these cases are purportedly brought: the solution for a large group with similar or identical problems which naturally lends itself to one common trial.

[11] Historically in Quebec, it is 1003 *(a)* C.C.P. which has given rise to much of the class action debate. The question as to quite how to determine whether the factual issues of a wide variety of people are "identical, similar or related" is not easily determined.

[12] In the seminal case of *Comité d'environnement de La Baie inc.* v. *Société d'électrolyse et de chimie Alcan ltée*[3], M. Justice Rothman, as he then was, set out the analysis which ought be conducted:

> "[22] But art. 1003(a) does not require that *all* of the questions of law or of fact in the claims of the members be identical or similar or related. Nor does the article even require that the majority of these questions be identical or similar or related. From the text of the article, it is sufficient if the claims of the members raise *some* questions of law or of fact that are sufficiently similar or sufficiently related to justify a class action.
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> [23] I dot not, of course, wish to suggest that any common questions in the claims of the members will do, however trivial. But the common questions of fact and of law in this case would appear to be far from trivial. On the face of things, the common questions seem to me substantial and of considerable importance in relation to the individual questions to be decided.
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> [...]
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> [25] The proof of facts giving rise to responsibility, particularly the technical evidence, is likely to be the same in each case, as is much of the defence evidence on responsibility. [...]"

[13] What is abundantly obvious from the above is that the Court of Appeal intended that, at least so far as the technical evidence was concerned where the context of the facts led to responsibility or lack thereof, the underlying facts would "likely to be the same in each case." Thus, too great a distinction in the individual causes of action, or individual set of facts, might well not meet the criteria of 1003 *(a)*.

[14] In the case at bar, the question might be put as follows: is some rust and paint chipping in some cars, given the myriad of possibilities that may have caused these effects, sufficient to say that the exigencies of 1003 *(a)* have been met? When can it be said that the test of commonality has been met?

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[3] EYB 1990-63507 (C.A.).

[15] Respondents argue that any determination of the possible existence of a corrosion, rust, or paint chipping problem would require the specific examination of a myriad of individual issues, such as:

- the date the vehicle was leased and/or purchased;
- where the vehicle was leased and/or purchased and used;
- who drove the vehicle;
- the use of the vehicle and conditions to which it was subjected;
- the climate in which it was used;
- the mileage on the vehicle;
- where each vehicle was routinely parked or garaged since its purchase or lease;
- whether the vehicle was properly maintained;
- whether any modifications were made to the vehicle and when;
- whether the vehicle was involved in any accidents;
- when the alleged defects first appeared;
- whether the corrosion and/or paint chipping was serious and affected the intended use of the vehicle;
- whether the vehicle was promptly brought in for repairs;
- whether the vehicle had already been repaired and by whom;
- whether such repairs were performed according to standard;
- whether the vehicle was new when leased or purchased;
- whether the vehicle was properly maintained;
- whether the vehicle was involved in any accidents;
- the use of the vehicle and conditions to which it was subjected.

[16] In *Rumley* v. *British Columbia*[4], the Supreme Court found:

> "[29] There is clearly something to the appellant's argument that a court should avoid framing commonality between class members in overly broad terms. As I discussed in *Western Canadian Shopping Centres*, *supra*, at para. 39, the guiding question should be the practical one of "whether allowing the suit to proceed as a representative one will avoid duplication of fact-finding or legal analysis". It would not serve the ends of either fairness or efficiency to certify an action on the basis of issues that are common only when stated in the most general terms. Inevitably such an action would ultimately break down into individual proceedings. That the suit had initially been certified as a class action could only make the proceeding less fair and less efficient."

[17] The claims of the requested class as alleged by Petitioners are remarkable by their diversity and individuality. The variety of possible causes of rust and paint chipping is sufficiently broad to query whether there is sufficient common ingredient to warrant certifying in this case. Care must be taken where a defendant in a class action might be forced into literally hundreds, if not thousands of different factual defences as a result of members of a class having too varied causes of action. In *Western Canadian Shopping Centres Inc.* v. *Dutton*[5], the Supreme Court dealt with this issue of common facts or law of all class members as follows:

> "[39] Second, there must be issues of fact or law common to all class members. Commonality tests have been a source of confusion in the courts. The commonality question should be approached purposively. The underlying question is whether allowing the suit to proceed as a representative one will avoid duplication of fact-finding or legal analysis. Thus an issue will be "common" only where its resolution is necessary to the resolution of each class member's claim. It is not essential that the class members be identically situated *vis-à-vis* the opposing party. Nor is it necessary that common issues predominate over non-common issues or that the resolution of the common issues would be determinative of each class member's claim. However, the class members' claims must share a substantial common ingredient to justify a class action. Determining whether the common issues justify a class action may require the court to examine the significance of the common issues in relation to individual issues. In doing so, the court should remember that it may not always be possible for a representative party to plead the claims of each class member with the same particularity as would be required in an individual suit.
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> [40] Third, with regard to the common issues, success for one class member must mean success for all. All members of the class must benefit from the successful prosecution of the action, although not necessarily to the same extent. A class action should not be allowed if class members have conflicting interests."

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[4] [2001] 3 S.C.R. 184, 200.
[5] [2001] 2 S.C.R. 534, 554-555.

[18] A single trial for all members of the contemplated class could not possibly resolve the varied factual issues leading to responsibility in the individual cases of those comprising the class. One cannot contemplate that common evidence on the cause of the defects such as are alleged in this case could be made applicable to the thousands of members of the class. Each would need to assert and prove all the facts which give rise to his or her claim against these Respondents. This kind of process is not the purpose of class action legislation. Article 1003 *(a)* C.C.P. is unquestionably the most difficult condition which must be met by those seeking accreditation for a class: it is a condition which has not been met here.

[19] This is not a case for a class action, and accordingly the Petition must be dismissed.

FOR THESE REASONS, THE COURT:

[20] **DISMISSES** the Requête amendée pour autorisation d'exercer un recours collectif et pour être représentant;

[21] **WITH COSTS.**

ROGER E. BAKER, J.S.C.

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Date of hearing: August 24, 2006
Written Arguments: September 29, 2006