

C A N A D A

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

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

NO: 500-06-000920-187

ADAM CHARLES BENJAMIN

Plaintiff

v.

CANADIAN DEALER LEASE SERVICES
INC. ET AL.

Defendants

**APPLICATION FOR THE ISSUANCE OF A CLOSING JUDGMENT REGARDING
DEFENDANT CANADIAN DEALER LEASE SERVICES INC.**

**(Sections 596 C.c.p. and 42 of the *Act respecting
the Fonds d'aide aux actions collectives*)**

**TO THE HONOURABLE PIERRE NOLLET OF THE SUPERIOR COURT OF QUEBEC,
SITTING IN AND FOR THE DISTRICT OF MONTREAL, CANADIAN DEALER LEASE
SERVICES INC. RESPECTFULLY SUBMITS THE FOLLOWING:**

1. Defendant Canadian Dealer Lease Services Inc. ("Defendant CDLSI") hereby seeks the issuance of a closing judgment.
2. On April 5, 2018, the Plaintiff filed an *Application for Authorization to Institute a Class Action and to Appoint the Status of Representative*, which was amended on October 4, 2018, reamended on February 19, 2019, and re-re-amended on April 30, 2019 (the "Re-Re-Amended Application for Authorization"), against Defendant CDLSI as well as other lessors of long-term vehicle leases in Québec (collectively, the "Defendants"), in proceedings before the Superior Court of Québec bearing Court file No. 500-06-000920-187 (the "Class Action").
3. On February 7, 2020, the Honourable Justice Pierre-C. Gagnon of the Superior Court of Québec dismissed the Plaintiff's Re-Re-Amended Application for Authorization.
4. On or about March 5, 2020, the Plaintiff filed a Notice of Appeal in the Court of Appeal file bearing no. 500-09-028885-200.
5. On or about March 13, 2020, the Defendant CDLSI filed a Representation Statement in the Court of Appeal file bearing no. 500-09-028885-200.

6. On or about February 25, 2021, a settlement agreement regarding the CDLSI Class Members was reached, and was amended on October 15, 2021.
7. In October 2021, the Honourable Justice Pierre-C. Gagnon of the Superior Court of Québec refused to adjudicate on the Plaintiff's and Defendant 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 previous dismissal of the Re-Re-Amended Application for Authorization by the Superior Court of Québec in February 2020.
8. On October 4, 2022, the Court of Appeal granted the Plaintiff's Re-Re Amended Application for Authorization, authorizing the Plaintiff to institute a class action against the Defendants on behalf of the following class and sub-class (the "**Class Authorization Judgment**"):

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**".

9. On or about May 1, 2023, the Plaintiff and the Defendant CDLSI entered into a Re-Amended Settlement Agreement, which reflected the latest procedural developments and extended the Class Period in accordance with the terms thereof (the "**Settlement Agreement**").
10. The Plaintiff and the Defendant CDLSI reached an agreement without prejudice or admission whatsoever, by way of mutual concessions, as between themselves only and as regarding the following sub-class:

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 Defendant CDLSI ("Lease") and who were charged fees ("Transfer Fees"), in the capacity of assignor or assignee, to effect the assignment of the vehicle lease since April 5, 2015.

the "**CDLSI Sub-Class**" or the "**CDLSI Sub-Class Members**";

11. The class period in the Settlement Agreement refers to the period from April 5, 2015, to February 2, 2023 (the "**Class Period**").
12. The Settlement Agreement provides for the collective recovery of the CDLSI Sub-Class Members' alleged claims.

13. Pursuant to the Settlement Agreement, Defendant CDLSI agreed to pay:
 - (a) To each CDLSI Sub-Class Members whose Leases contained the Clerical Error and for which Transfer Fees were paid to transfer the Leases, an amount of \$350 ("**Compensation A**"), for a total and final amount in Compensation A to be paid by Defendant CDLSI to the CDLSI Sub-Class Members of \$262,500.00 (which represents \$350 for 750 CDLSI Sub-Class Members), minus any amount payable to the *Fonds d'aide aux actions collectives* under the applicable regulations; and
 - (b) To each 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, an amount of \$27 ("**Compensation B**"), for a total and final amount in Compensation B to be paid by Defendant CDLSI to the CDLSI Sub-Class Members of \$113,427.00 (which represents \$27 for 4,201 CDLSI Sub-Class Members), minus any amount payable to the *Fonds d'aide aux actions collectives* under the applicable regulations.
14. On September 6, 2023, the Settlement Agreement was approved by the Superior Court of Québec (the "**Settlement Approval Judgment**").
15. The Settlement Approval Judgment orders, *inter alia*, Defendant CDLSI to mail a cheque in the amount of \$350 to the members of Compensation Group A, and a cheque in the amount of \$27 to the members of Compensation Group B, by November 6, 2023 (par. 71).
16. The Settlement Approval Judgment (i) praises act of the Defendant CDLSI's undertaking to contact by telephone the CDLSI Sub-Class Members whose envelopes containing the notices of the settlement approval hearing (approved by the Court on May 31, 2023), had been returned to sender and for whom Defendant CDLSI had telephone numbers on file, to obtain their mailing addresses, and if the defendant obtained such mailing addresses, to send them cheques in the distributions; (ii) exempts Defendant CDLSI from issuing and sending cheques to the CDLSI Sub-Class Members among those whose envelopes had been returned to sender for whom Defendant CDLSI had not succeeded in obtaining new mailing addresses, and (iii) declares that the compensation relating to these persons forms part of the remaining balance (par. 72 to 75).

II. CLASS COUNSEL FEES

17. This Court approved Class Counsel Fees of \$67,389.00, plus GST and PST in the Settlement Approval Judgment.
18. The approved Class Counsel Fees were paid to Class Counsel on or around November 1, 2023.

III. THE DISTRIBUTIONS PURSUANT TO THE SETTLEMENT AGREEMENT

19. On or about June 23, 2023, Defendant CDLSI retained the services of Concilia Services Inc. (formerly doing business as Velvet Payments, the “**Claims Administrator**”) to administer the distributions and to issue the cheques to all CDLSI Sub-Class Members, pursuant to the Settlement Agreement.
20. On July 4, 2023, the Claims Administrator sent a total of 4,955 envelopes to CDLSI Sub-Class Members containing the notices approved by the Court on May 31, 2023, to give notice of the Settlement Agreement, of which 482 envelopes were returned to the Claims Administrator and considered undeliverable. Following direct phone calls to the telephone numbers on file, 57 mailing addresses were successfully updated. Therefore, a total of 425 envelopes were considered undeliverable by the Claims Administrator for the purposes of sending the cheques, as appears from page 2 of the Final Closing Distribution dated July 10, 2024 (the “**Final Closing Report**”), a copy of which is communicated herewith as **Exhibit R-1**.
21. On November 6, 2023, the Claims Administrator issued 4,527 cheques, which represents: 4,955 eligible recipients minus 3 opt-outs and 425 undeliverable envelopes, as appears from page 3 of the Final Closing Report.
22. The Claims Administrator delivered by cheques a total of \$335,732.00 to the CDLSI Sub-Class Members, allocated as follows:
 - (a) 661 cheques of \$350 each were sent to the CDLSI Sub-Class Members who were eligible to receive Compensation A, representing a total value of \$231,350.00, and as of the date of the Final Closing Report, 393 cheques (out of the 661 cheques issued) were confirmed to have been deposited, representing a value of \$137,550.00;
 - (b) 3,866 cheques of \$27 each were sent to the CDLSI Sub-Class Members who were eligible to receive Compensation B, representing a total value of \$104,382.00, and as of the date of the Final Closing Report, 2,516 cheques (out of the 3,866 cheques issued) were confirmed to have been deposited, representing a value of \$67,932.00;
 - (c) The undelivered and/or uncashed cheques as of June 6, 2024 (one month past the 6-month validity period of the cheques), were added to the remaining balance;
23. Following the distributions made by the Claims Administrator, there remained a balance of \$170,553.00 to which the Claims Administrator added interest earned minus income tax withholdings in the amount of \$854.63, bringing the remaining balance to a total of **\$171,407.63** (the “**Remaining Balance**”), as appears from pages 3 and 4 of the Final Closing Report.

24. As such, in accordance with the Settlement Approval Judgment, section 596 C.c.p. and section 42 of the *Act respecting the Fonds d'aide aux actions collectives* (CQLR c. F-3.2.0.1.1), the Remaining Balance was subject to the withholding fee pursuant to section 1(1) of the *Regulation respecting the percentage withheld by the Fonds d'aide aux actions collectives* (CQLR, c. F-3.2.0.1.1, r. 2).
25. Therefore, on or about July 10, 2024, the Claims Administrator sent a cheque in the total amount of **\$102,844.58** (60% of \$171,407.63) from the Remaining Balance to the *Fonds d'aide aux actions collectives*, as appears from pages 3 and 4 of the Final Closing Report.
26. In addition, on or about July 10, 2024, the Claims Administrator sent a cheque in the total amount of **\$68,563.05**, corresponding to the remainder of the Remaining Balance, to the organization United Ways Greater Montreal (*Centraide du Grand Montréal*), as appears from pages 3 and 4 of the Final Closing Report.
27. These distributions made to the *Fonds d'aide aux actions collectives* and to the organization United Ways Greater Montreal (*Centraide du Grand Montréal*), in the amounts of \$102,844.58 and \$68,563.05, respectively, completed the distributions to be made pursuant to the Settlement Agreement.

IV. CONCLUSION

28. In summary, and as provided in the Settlement Agreement and the Settlement Approval Judgment, the total distributions in the amount of **\$508,115.11** were allocated as follows:
 - (a) **\$137,550.00** to CDLSI Sub-Class Members who were eligible to receive Compensation A;
 - (b) **\$67,662.00** to CDLSI Sub-Class members who were eligible to receive Compensation B;
 - (c) **\$77,480.50** to Class Counsel;
 - (d) **\$102,844.58** to the *Fonds d'aide aux actions collectives*;
 - (e) **\$68,563.05** to United Ways Greater Montreal (*Centraide Grand Montréal*); and
 - (f) **\$54,014.98** to the Claims Administrator as fees for their services.
29. Considering the above, Defendant CDLSI is well founded in fact and in law to seek a closing judgment with regard to its involvement in the present class action.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

- [1] **GRANT** the *Application for the Issuance of a Closing Judgment Regarding Canadian Dealer Lease Services Inc.*;
- [2] **DECLARE** that Concilia Services Inc. (formerly doing business as Velvet Payments) has fulfilled its obligations pursuant to the Settlement Approval Judgment rendered by this Honorable Court dated September 6, 2023, and is released and discharged from its mandate;
- [3] **DECLARE** that Canadian Dealer Lease Services Inc. has fulfilled its obligations as per the Settlement Agreement and the Settlement Approval Judgment rendered by this Honorable Court dated September 6, 2023;
- [4] **DECLARE** that the Plaintiff and the CDLSI Sub-Class Members are bound by the release contained in the Re-Amended Settlement Agreement dated May 1, 2023;
- [5] **ISSUE** a closing judgment as regards to Canadian Dealer Lease Services Inc.;
- [6] **THE WHOLE**, without legal costs.

Montréal, August 15, 2024

Osler, Hoskin & Harcourt

OSLER, HOSKIN & HARCOURT LLP
1000 de La Gauchetière Street West, # 2100
Montréal, Québec H3B 4W5
Telephone : (514) 904-8100
Lawyers for Defendant,
CANADIAN DEALER LEASE SERVICES INC.
c/o Mtre Jessica Harding
Mtre Sophie Courville-Le Bouyonne
jharding@osler.com
scourville@osler.com
Our file: 1192877

NOTICE OF PRESENTATION

To: **IMK s.e.n.c.r.l.**
c/o Mtre Mouna Aber
Mtre Jean-Michel Boudreau
3500 De Maisonneuve Blvd. W.
Suite 1400
Montréal, Québec H3Z 3C1

Attorneys for Plaintiff

To: **Osler, Hoskin & Harcourt LLP**
c/o Mtre Kristian Brabander
Mtre Marie-Laure Saliah-Linteau
1000 de la Gauchetière St. West
Suite 2100
Montréal, Québec H3B 0A2

Attorneys for Defendant Crédit VW Canada Inc.

To: **Stikeman Elliott s.e.n.c.r.l., s.r.l.**
c/o Mtre Yves Martineau
Mtre Guillaume Boudreau-Simard
1155 René-Lévesque Blvd. West,
41st Floor
Montreal (Quebec) H3B 3V2

Attorneys for Defendant Toyota Credit Canada Inc.

To: **Lavery, de Billy s.e.n.c.r.l.**
c/o Mtre Laurence Bich-Carrière
Mtre Dominique Vallières
1 Place Ville Marie, Suite 4000
Montréal, Québec H3B 4M4

Attorneys for Defendant Honda Canada Finance Inc.

To: **INF s.e.n.c.r.l.**
c/o Mtre Josée Cavalancia
Mtre Laurent Nahmias
255 St-Jacques Street, 3rd Floor
Montréal (Quebec) H2Y 1M6

Attorneys for Defendants
Corporation de Services Financiers
Mercedes-Benz Canada and
Compagnie de gestion Canadian
Road

To: **McCarthy Tétrault s.e.n.c.r.l., s.r.l.**
c/o Mtre Sarah Woods
Mtre Catherine Martin
1000 de la Gauchetière St. West
MZ400
Montréal, Québec H3B 0A2

Attorneys for Defendants Services Financiers Nissan Canada Inc. and
BMW Canada Inc.

To: **Fonds d'aide aux actions collectives**
c/o Mtre Ryan Mayele
1, Notre-Dame Str. East, Suite 10.30
Montréal, Québec H2Y 1B6

Attorneys for Impleaded Party

TAKE NOTICE that the present *Application for the Issuance of a Closing Judgment Concerning Canadian Dealer Lease Services Inc.* will be presented before the Honourable Justice Nollet of the Superior Court of Quebec, sitting in and for the District of Montreal, if deemed necessary by the Court, at a date and time to be determined and in a room to be determined at the Montreal Courthouse, located at 1 Notre-Dame Street East, Montreal, Quebec.

DO GOVERN YOURSELVES ACCORDINGLY.

Montréal, August 15, 2024

Osler, Hoskin & Harcourt

OSLER, HOSKIN & HARCOURT LLP
1000 de La Gauchetière Street West, # 2100
Montréal, Québec H3B 4W5
Telephone: (514) 904-8100
Lawyers for Defendant,
CANADIAN DEALER LEASE SERVICES INC.
c/o Mtre Jessica Harding
Mtre Sophie Courville-Le Bouyonnec
jharding@osler.com
scourville@osler.com
Our file: 1192877

C A N A D A

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

NO: 500-06-000920-187

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

ADAM CHARLES BENJAMIN

Plaintiff

v.

CANADIAN DEALER LEASE SERVICES
INC. ET AL.

Defendants

LIST OF EXHIBITS

EXHIBIT R-1: Concilia's Final Closing Report dated July 10, 2024.

Montréal, August 15, 2024

Osler, Hoskin & Harcourt

OSLER, HOSKIN & HARCOURT LLP
1000 de La Gauchetière Street West, # 2100
Montréal, Québec H3B 4W5
Telephone: (514) 904-8100
Lawyers for Defendant,
CANADIAN DEALER LEASE SERVICES INC.
c/o Mtre Jessica Harding
Mtre Sophie Courville-Le Bouyonnec
jharding@osler.com
scourville@osler.com
Our file: 1192877

**SUPERIOR COURT
(Class Actions Division)
DISTRICT OF MONTRÉAL**

ADAM CHARLES BENJAMIN

Plaintiff

v.

CANADIAN DEALER LEASER SERVICES INC. ET AL.

Defendants

**APPLICATION FOR THE ISSUANCE OF A CLOSING
JUDGMENT REGARDING DEFENDANT CANADIAN
DEALER LEASE SERVICES INC.**

**(Sections 596 C.c.p. and 42 of the *Act respecting the
Fonds d'aide aux actions collectives*)**

AND EXHIBIT R-1

ORIGINAL

Code : BO 0323

O/f: 1192877

Mtre Jessica Harding
Mtre Sophie Courville-Le Bouyonnec
Osler, Hoskin & Harcourt, LLP
1000 de La Gauchetière St. West, Suite 2100
Montréal, Québec H3B 4W5

Tel.: (514) 904-8100 / Fax: (514) 904-8101

Emails: jharding@osler.com; scourville@osler.com;
notificationosler@osler.com