

WHAT ARE "MORAL DAMAGES" WORTH? QUEBEC COURT OF APPEAL LIMITS WHEN CONSUMERS' FRUSTRATION CONSTITUTES A RECOVERABLE HARM

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On January 20th, 2020, the Quebec Court of Appeal rendered its judgement in *Meubles Léon v. Options Consommateurs*.^[1] This class action dealt with allegations of illegal advertising of consumer financing plans for the purchase of furniture, as well as allegations of improper fees charged on said consumer financing plans.

Although it accepted that Meubles Léon was liable for these prohibited practices, the Court of Appeal limited the amounts that the class members could recover in a judgement that has important ramifications for class actions and the interpretation of Quebec's *Consumer Protection Act* (the "**CPA**").

Background and Facts

Meubles Léon is the Quebec branch of Canadian furniture retailer Leon's Furniture. As part of its sales model, Meubles Léon offers financing plans on the purchase of its products. From 2000 until 2009, Meubles Léon provided the financing plans through CitiFinancière Canada ("**Citi**"). Meubles Léon promoted these plans in its furniture advertisements.

In 2008, Citi faced financial difficulties and imposed a \$21 "annual fee" on adherents to two of Meubles Leon's financing plans. In early 2009, Meubles Léon stopped doing business with Citi, and began offering financing plans through Desjardins.

Option Consommateurs and class representative Chantal Noël de Tilly sued Meubles Léon for two reasons. First, they alleged that Meubles Léon's advertisements for the financing plans were illegal under the CPA (the "**Credit Advertisement Claim**"). Second, they alleged that the \$21 annual fee was also charged illegally under the CPA (the "**Annual Fees Claim**"). The class action was certified, and was heard on the merits by the Quebec Superior Court.

The Superior Court found that Meubles Léon was liable for both claims. It ordered the reimbursement of all annual fee payments, awarded \$100 per class member as moral damages, and ordered the payment of \$1,000,000 in punitive damages. Of the punitive damages, \$600,000 (\$85 per member) were awarded for the

Credit Advertisement Claim, and \$400,000 (\$57 per member) were awarded for the Annual Fees Claim.

Court of Appeal Judgement

The Court of Appeal confirmed the trial judge's finding that Meubles Léon was liable for both claims. First, the Court of Appeal ruled that Meubles Léon's promotion of consumer financing plans was contrary to the CPA's regulations on the promotion of financing plans in advertisements for goods and services. Second, the Court of Appeal found that Meubles Léon did not warn consumers that they may have to pay annual fees. However, the Court of Appeal greatly limited the damage amounts to which class members were entitled.

At the outset, the Court remarked that a previous class action regarding the Credit Advertisement Claim had already been settled. Mrs. Noël de Tilly was the only class member to opt out of that settlement. As such, only Mrs. Noël de Tilly could recover for the Credit Advertisement Claim. The other class members had already benefitted from the settlement. They could not "double-dip" by again collecting damages for the Credit Advertisement Claim.

But most importantly, the Court of Appeal limited the amount that all class members could recover for moral and punitive damages.

1. Moral damages

Generally, moral damages are awarded to compensate for injuries to a person's moral integrity (for example, for "pain and suffering"). As a first step, the Court of Appeal did not award moral damages to Mrs. Noël de Tilly for the Credit Advertisement Claim. The Court analyzed witness testimony and found that Ms. Noël de Tilly did not express any dismay at the way Meubles Léon advertised its financing plans.

The Court of Appeal also refused to award moral damages for the Annual Fees Claim. According to the ruling in a previous Supreme Court case,^[2] once an advertisement is found to violate the CPA, the law presumes that the consumer was harmed. However, the Court of Appeal clarified that the presumption that a harm exists is not a presumption of the *monetary value* of that harm. Turning to witness testimonies once again, the Court of Appeal found that class members' discontent or frustration upon suddenly having to pay a fee did not rise to the level of a moral damage worthy of compensation.

2. Punitive damages

The Court of Appeal reiterated that punitive damages are intended to incite wrongdoers to correct their behaviour. The Court found that, when it came to the Credit Advertisement Claim, punitive damages were warranted to prevent Meubles Léon from continuing its advertising practices. As mentioned earlier, this claim was evaluated only with respect to Mrs. Noël de Tilly's individual claim. The Court of Appeal upheld the trial

judge's award of \$85 in punitive damages per member, but solely to Mrs. Noël de Tilly. The final award was thus only \$85 in punitive damages.

The Court of Appeal then ruled that no punitive damages should be awarded for the Annual Fee Claim. Meubles Léon had stopped doing business with Citi in 2009 (Citi being the party charging the \$21 annual fee). The illegal behaviour was corrected and did not persist. The Court of Appeal overturned the trial judge's award of \$400,000 in punitive damages for the Annual Fee Claim.

Analysis

This case illustrates that even when there is a finding of wrongdoing, monetary compensation may not always follow. In particular, claims for moral and punitive damages should be closely scrutinized. This analysis should be undertaken at the authorization/certification stage of class actions in order to strike out claims which are sometimes based on generic allegations of harm, as is often the case for claims premised on moral damages. Doing so could prevent situations where needless litigation could culminate in a merits ruling ultimately finding that class members did not actually suffer a harm, or suffered a harm that is not worthy of compensation by civil law standards.

Should you find yourself the subject of a class action proceeding, do not hesitate to contact McMillan's Class Actions group.

by Sidney Elbaz and Simon Paransky

[1] [Meubles Léon Itée c Option consommateurs, 2020 QCCA 44.](#) [ps2id id='1' target='']

[2] [Richard v Time Inc, 2012 SCC 8 at para 123.](#) [ps2id id='2' target='']

A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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