

Unofficial English Translation of the October 5, 2012 Judgment in Quebec

[1] The applicant, designated as representative of the class, on the one hand, and Building Products of Canada Corp. ("BP"), on the other, are asking the Court to approve the settlement agreement reached between them in the context of class a class action.

[2] After having read the agreement, heard the arguments of both parties and reading the various arguments of the objecting class members, the Tribunal is of the opinion that the agreement meets the proposed criteria applicable for approval in this matter

[3] Broadly speaking, the appeal may be summarized in the following way.

[4] BP manufactures roofing shingles, alleged to fail prematurely. It is in this context that the applicant brought a class action in September 2011.

[5] In March 2012, the undersigned authorized the lawsuit. The judgment awarded to the applicant representative status and approved members in the context of the settlement or the agreement as reached between the parties.

[6] Following the publication of the notice to the members, almost 200 people wished to opt out of the class action. Also, members made written objections stating the reasons they considered the settlement to be unacceptable. Some have attended the hearing and addressed the Court in order to obtain clarification on points that were ambiguous.

[7] The members have two options:

- agree to replacement of the entirety of a section of roof where at least 5% of the shingles are damaged;
- get a refund in cash.

[8] In this case, BP offers \$ 75 per 100 square feet of roof, while the current actual costs for the same dimension is somewhere between \$ 200 and \$ 350.

[9] In the event that BP determines that the damages suffered by a class member were not caused by its shingles, the class member has the burden of proof.

[10] The agreement stipulates that BP administers the claims made by class members. That being said, class members can challenge or have BP decision reviewed by a neutral person named by the Court.

ANALYSIS

1. Settlement Approval

[11] Pursuant to article 1025 C.P.C, any transaction in the matter of a class action requires Court approval after notice has been given to the affected group.

[12] It is for the Court to ascertain that the settlement is fair, reasonable and equitable. It must be in the best interests of class members, but need not be perfect. The Court cannot modify the settlement; it must approve it as is or reject it.

[13] The criteria to guide the Court are defined as follows by the case law:

- The probability of success of the action;
- Extent and nature of the evidence administered;
- The terms and conditions of the settlement;
- Recommendation of lawyers and their experience;
- The anticipated cost and the probable duration of the litigation;
- Where appropriate, the recommendation of a neutral third party;
- The nature and number of objections to the settlement;
- The good faith of the parties and the absence of collusion.

[14] As we know, each case is one of kind and no one criterion is decisive in and of itself.

[15] Unless there are serious reasons to argue against the approval of the settlement, the Court must encourage the conclusion of an amicable settlement.

[16] The reasons given by objectors include the following:

- difficulty in understanding the terms of the agreement;
- the agreement covers only the reimbursement of damaged shingles;
- the agreement is silent as to what happens in case of non availability of shingles;
- the agreement provides for a payment only in proration to the lifetime of la roof.

[17] In the present case, the weight of criteria enumerated above when compared to the various complaints, falls heavily in favor of the approval of the settlement. Listed below are the reasons why the complaints cannot be used to block the approval of the settlement.

Understanding of the Settlement

[18] Although the agreement is long, it is clear.

[19] Notably, the class counsel offers their services free of charge to assist members and answer their questions.

Reimbursement for damaged shingles

[20] The grievances expressed by several members are based on a false perception of the principles of law applicable in the field of contractual liability.

[21] The obligation of the manufacturer is to repair damage caused directly by a manufacturing defect. It goes without saying that this obligation extends only to the damaged portion of the roof.

[22] This is what has emerged from the jurisprudence made by the Court of Quebec's small claims division.

Unavailability of Shingles

[23] Some people have expressed concern that the shingles that they have on their roofs will no longer be available when the time will come to change their roof.

[24] The consumer protection legislation provides that spare parts must be available for a reasonable duration after the formation of the contract. Nothing prevents a member from bringing an individual action in case of non-compliance with this provision, if any. On the other hand, it must be kept in mind that BP is not obligated to produce the same shingle colour indefinitely. Often it is an issue of what is in style over the years rather than legal reasoning.

Proration

[25] The courts are aware of the normal lifetime of a product being taken into account in an action for compensation and claims can be reduced on a pro rata basis.

[26] The case *Dupont c. Building Products Co. Canada* perfectly illustrates that a member would get nothing more than the settlement offers.

Conclusion

[27] There is therefore no real reason to refuse to approve the agreement.

[28] The agreement offers class members with opportunities for compensation similar to those offered by the Civil Code and the consumer protection legislation the field of legal warranties.

[29] The lawyers of the representative have significant expertise in the field of class actions and recommend approval of the settlement. It is the result of a long negotiation. The approval of the agreement settles disagreements between BP and the members of the group. The lawyers have ensured the class of ongoing support.

[30] Finally, although it may seem high, the number of opt-outs is not really significant when compared to the number of persons affected by the case.

[31] For all these reasons, the Court is satisfied that the agreement is drafted in the best interests of Class Members.

2. Approval of fees and disbursements

[32] The agreement provides that BP will pay to all of the attorneys involved in class action lawsuits in the United States, Ontario and Quebec, an aggregate of \$ 2.4 million which will be shared between them. This amount is paid in addition to the allowances to members of the group and does not affect the value of the claim.

[33] Given the magnitude of potential claims in this case, the sum appears to be acceptable and proportionate to the matter.

3. The levy of a percentage to the “Fonds d’aide”

[34] For the compensation paid in the form of payment for repairs or replacement of shingles, there will be no levy by the Assistance Fund in the class action. This levy will only be paid if the class member opts for repayment in cash.

[35] The Assistance Fund Class does not oppose this way of proceeding. It appears reasonable.

FOR THESE REASONS, THE COURT:

[36] APPROVES the request of applicant;

[37] APPROVES and ENTERS the agreement (R-1) and gives it enforceability;

[38] DECLARES that the aforesaid agreement is a transaction within the meaning of Article 2631 CCQ, binding on all parties and all members referred by the regulations;

[39] DECLARES that approval of the agreement and its implementation are consistent under Article 1025 CCP;

[40] DECLARES that the entirety of the agreement (including its preamble and its definitions and its attachments, if any) is approved;

[41] DECLARES that the terms used in the present judgment are the same meanings as given to them in the Settlement Agreement, if they are subject to the Definitions;

[42] DECLARES that under articles 1005 and 1008 of the Code of Civil Procedure of Quebec, all members who not excluded from the group are bound by the settlement agreement and the approval judgment;

[43] DECLARES that for the purposes of administration of the agreement, the Court will have a role of supervision for the purposes of the implementation of and management of the implementation of the agreement, subject to the terms and conditions PROVIDED in section 16.6 of agreement;

[44] AUTHORIZE any party at any time on request, with notice to the other parties, to ask the judge appointed at present or her replacement, guidelines related to the implementation or interpretation of the Settlement Agreement;

[45] ORDERS the parties to comply with their obligations to the Assistance Fund for class actions by informing them of any financial consideration paid to a member of this group and, through a quarterly report disclosing the name of claimant, its coordinates, the amount of the check, the percentage of the levy and the amount of the levy made, and rendering such levies quarterly to help fund class actions;

[46] DECLARES the intention of the parties bound by this judgment is conditional on a approval of similar requests made in other jurisdictions, on related files;

[47] DECLARES the intention of the parties to allow the respondent to terminate the agreement, as the case may be, in accordance with provisions of sections 13.1 to 13.3 of the agreement;

[48] WITHOUT COSTS.