CITATION: Molot v. Worldstrides Canada Inc., 2022 ONSC 3899
COURT FILE NO.: CV-20-00649798-00CP
DATE: 20220630

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: TANDIA MOLOT, A MINOR BY HER LITIGATION GUARDIAN, DAWN MOLOT, DAWN MOLOT, OWEN MUNGY and LUCINDA MUNGY, Plaintiffs

– and –

WORLDSTRIDES CANADA, INC., ARCH INSURANCE CANADA LTD/ARCH ASSURANCES CANADA LTEE. and OLD REPUBLIC INSURANCE COMPANY OF CANADA/L'ANCIENNE REPUBLIQUE, COMPAGNIE D'ASSURANCE DU CANADA, Defendants

BEFORE: E.M. Morgan, J.

COUNSEL: *Jordan Goldblatt, Michael Gerhard, Lauren Baker, and Travis Payne,* for the Plaintiffs

Nicole Henderson, Ara Basmadjian, and Vanda Santini, for the Defendants

HEARD: June 29, 2022

OMNIBUS SETTLEMENT MOTION

[1] In this proposed class action, the Plaintiff moves for certification, approval of its notice proposal for the class, approval of a proposed settlement, and approval for class counsel's legal fees. In an unusual move, it is seeking all of these orders in one fell swoop.

[2] The Plaintiff and putative class are students who had paid for educational travel experiences but whose trips were cancelled due to the COVID-19 pandemic; they seek a refund of the money they paid. The Defendant, Worldstrides Canada Inc., runs educational travel programs under the business name Explorica ("Explorica"), and the Defendants, Arch Insurance Canada Ltd. ("Arch") and Old Republic Insurance Company ("ORIC"), are the travel insurers for Explorica's trips.

[3] Some of the proposed class members were booked on trips insured by Arch while others were booked on trips insured by ORIC. Prior to commencement of this action, neither Explorica nor either of its insurers had reimbursed the class members for the cancelled trips.

[4] The action has now settled. Both insurers have agreed to pay out all of the claims made by the class members.

[5] Formally speaking, it is only ORIC that is settling its case. Arch has paid out in full the claims submitted by those class members who are its insureds, but has not sought a formal settlement of the action against it. It has simply asked that the action be discontinued on a no-costs basis.

[6] Given that it no longer owes any money to any class member and has satisfied its liability in its entirety, I see no reason not to grant Arch's request. No one appears prejudiced by it. It is not as formal a conclusion as a settlement approval and a dismissal of the claim, but it practically does the same thing. This efficiency is in the best interest of the class and promotes expedited justice.

[7] As for ORIC, it too has paid all of the claims submitted by class members who are its insureds. However, it seeks to have the arrangement formally approved as a settlement in accordance with section 27.1(1) of the *Class Proceedings Act, 1992*, SO 1992, c. 6 ("CPA"), and to have the action against it dismissed. Again, while the settlement of a class action requires court approval, ORIC, like Arch, has already paid out the settlement funds. In this context, ORIC seeks to have the order dismissing the action to contain the wording of a full and final release.

[8] As indicated, under the settlement arrangement, the class members have received from one or the other of the insurers the entirety of their claim. Given the straightforward nature of the settlement and the undeniably advantageous terms it represents for the class – payment of 100 cents on the dollar – Plaintiffs' counsel has brought the certification, settlement approval, notice approval, discontinuance, and legal fee approval motions together.

[9] Turning first to certification of the claim as against ORIC, I can think of no reason not to certify this claim under section 5(1) of the CPA. In any case, the certification criteria, while still meaningful, can be "less rigorously applied" in the context of certification for the purposes of settlement: *Osmun v. Cadbury Adams Canada Inc*., 2009 CanLII 72092, at para 21.

[10] Here, there is a cause of action in breach of contract and there is an identifiable class of disappointed travellers who paid to go on the Explorica trips. The class is defined in the settlement agreement as follows:

> All persons in Canada who entered into a contract with Explorica for Trip(s) which were to occur any time during the period from January 1, 2020 to the date of certification, who entered into a contract of insurance with Old Republic Insurance Company of Canada related to such Trip(s), whose Old Republic Insured Trip(s) did not occur because of covered reason "O" in the Old Republic policy.

[11] The position of the class members *vis-à-vis* Explorica and ORIC is a common one. As a consequence, common issues can be fashioned in order to avoid duplication of fact finding and legal analysis in the class members' claims. Specifically, the parties agree that the common issues are to be defined as follows:

(a) Did Explorica enter into a contract with the Class Members for the purchase of Trip(s)?

(b) Did Explorica breach the contract?

(c) Is Explorica liable for damages to the Class?

(d) Did Old Republic enter into a contract with the Class Members for the purchase of insurance for the Trip(s)?

(e) Are the Class Members "insured persons" pursuant to the insurance policy administered by Old Republic?

(f) Did Old Republic breach the terms of the Old Republic Policy? and

(g) Is Old Republic liable for damages to the Class?

[12] There is some basis in fact for each of the proposed common issues: *Hollick v. Toronto (City)*, [2001] 3 SCR 158, at para 25.

[13] Given this commonality and the relatively small size of each individual claim, a class action is obviously the preferred forum. It represents a fair, efficient and manageable method of determining the common issues, and will advance the proceeding in accordance with the goals of judicial economy, access to justice and the modification of behaviour: *Hickey-Button v. Loyalist College of Applied Arts & Technology* (2006), 267 DLR (4th) 601, at para 54 (Ont CA).

[14] The representative Plaintiffs appear to be capable of instructing counsel and guiding this case to a successful conclusion. The proposed representative plaintiffs Lucinda Mungy, and her son, Owen Mungy, entered into contracts with Explorica and ORIC for a trip that did not occur. Dawn Molot, on behalf of her daughter Tandia Molot, entered into contracts with Explorica and Arch for a trip that likewise did not occur. None of these Plaintiffs have any interest in conflict with the interests of the other class members.

[15] All of the section 5(1) criteria are readily fulfilled.

[16] Similarly, I can think of no reason not to approve the proposed settlement. In approaching the question of settlement approval, "the court, without making findings of fact on the merits of the litigation, examines the fairness and reasonableness of the proposed settlement and whether it is in the best interests of the class as a whole having regard to the claims and defences and any objections raised to the settlement": *Mancinelli v. Royal Bank of Canada*, 2016 ONSC 6953, at para 31.

[17] The settlement was reached after the parties participated in arms-length negotiations, as well as mediation with Justice Myers. It is patently obvious that the settlement terms are fair and reasonable. Given that the settlement compensates class members in full, it is undoubtedly in the

best interest of the class. It is hard to do better than for each claiming class member to receive payment representing 100% of his or her claim.

[18] Although this is called a "settlement", there is no element of compromise in it; each claimant will be made entirely whole. It is reasonable for the order implementing the settlement to also contain a release, as there is nothing left of the claim.

[19] As for the notice of the settlement, the parties have agreed on the form, content, and method of dissemination for the Notice of Hearing and the Notice of Opt-Out. They request that the Notice of Hearing be approved *nunc pro tunc*. While counsel for all parties accept that the 'normal course' would be to provide the class with notice in advance of a settlement approval hearing, this is an unusual case.

[20] Section 19(3) of the CPA authorizes the court to determine when notice is to be given, while section 17 (2) of the CPA allows for notice to be dispensed with altogether if the court determines that is appropriate. In my view, approving a Notice of Hearing respecting the settlement approval hearing *nunc pro tunc* is appropriate here, as it fosters judicial economy without in any discernable way prejudicing the class. If the Class Members do not like the settlement, they can opt out.

[21] Notice of certification and settlement has gone out to class members by email and on Facebook. Counsel advise that the vast majority of participants in the Explorica trips have been notified of the settlement in this way. In addition, cheques have gone out from ORIC by regular mail to all known class members.

[22] Given the nature of the class and the fact that all members had signed up for trips, Explorica can be counted on as having the most reliable contact list. I am satisfied that the form of notice proposed by counsel is effective and appropriate.

[23] Finally, class counsel seek approval of their legal fees in the amount of $300,000 in respect of the ORIC claim and $135,000 in respect of the Arch claim.

[24] These amounts are over and above the full compensation received by the class members. Unlike many class action settlements, it is not coming out of the funds set aside for the class but rather is being paid to class counsel in addition to what is being paid to the class.

[25] The fee request by class counsel is proportionate and reasonable in the circumstances. It will be paid in a way that does not reduce the compensation of the class members. Class counsel worked diligently to bring the action to a successful resolution for their clients. I see no reason that the fees as requested should not be approved.

[26] Certification is granted, the notice is approved as requested, the settlement is approved, the discontinuance against Arch is approved, and the fee request by class counsel is approved.

[27] The full omnibus has reached its destination.

[28] There will be Orders to go as submitted by class counsel.

Date: June 30, 2022 Morgan J.