Case In Point

Class Action Dismissed in Favour of Defendant Employer

Date: July 28, 2022

In Rebuck v. Ford Motor Company, the Ontario Superior Court recently granted the defendants' motion for summary judgment to dismiss the plaintiff's class action. The class action involved an allegation of misleading advertising under the federal *Competition Act*.

Factual History

In 2014, a consumer filed a lawsuit after noticing that the miles per gallon (MPG) on his leased 2014 Ford Edge were significantly lower than the estimated MPG printed on an "EnerGuide" label affixed to the vehicle.

The action was converted into a class action in early 2016, on behalf of the approximately 600,000 Canadians who had purchased or leased a new 2013 or 2014 Ford vehicle, alleging that the defendant knew that the 5-Cycle Test was a more accurate representation of real-world driving behaviour but continued to use the 2-Cycle Test that understated actual fuel consumption by some 15 %.

The plaintiff alleged that Ford violated the misleading advertising provisions in the federal *Competition Act* and provincial consumer protection laws and claimed for damages of $1.5 billion as compensation for the alleged 15% overpayment in fuel charges incurred over the course of the ownership or lease of their vehicles.

The action was certified as a class proceeding by Justice Morgan in 2018, and proceeded to a summary judgment motion before Justice Belobaba.

The Court's Analysis and Decision

Justice Belobaba concluded that the plaintiff had not established that the defendants breached section 52(1) of the *Competition Act*, for two reasons:

- the defendants' compliance with federal government guidelines (which prescribed the design and content of the EnerGuide Label and the required fuel-consumption test method) could not fairly or reasonably amount to a breach of federal competition law, and
- the plaintiff had not established an evidentiary basis for its "general impression" argument that, regardless of the literal meaning of the Label, its general impression was misleading.

Justice Belobaba also dismissed the plaintiff's "general impression" argument with respect to whether the defendants had breached sections 14 and 17 of the *Consumer Protection Act* and parallel provisions of provincial consumer protection legislation. Justice Belobaba gave more credence to the plaintiff's argument based on alleged "non-disclosure", agreeing that while federal laws precluded the Defendants from unilaterally changing the EnerGuide Label, there was nothing to legally prevent the defendants from affixing a *second* label to their vehicles. Nonetheless, this argument also failed as Justice Belobaba concluded that the defendants were not legally *obligated* to add a second label because the plaintiff had not proven that the defendants knew or ought to have known that the EnerGuide Label was deficient.

As Justice Belobaba had found no contraventions of the *Competition Act* or the *Consumer Protection Act* (or any other parallel provincial legislation), he did not substantively assess whether the class members were entitled to damages. But His Honour did make the following telling comments about the lack of evidence:

In my view, even if the plaintiff had prevailed on liability (the first two issues), he probably would not have prevailed on the damages issue. […]

In sum, this is a class action that was burdened with both legal and evidentiary challenges but failed primarily because of the latter — a complete absence of evidence for any of the plaintiff's key allegations.

Key Takeaways

This decision is significant for employers facing a class proceeding because it serves as a helpful reminder that, without a proper evidentiary basis (including adequate witness and expert evidence), a plaintiff's class proceeding – even if certified – is not likely to be ultimately successful on the merits.