

# SUPERIOR COURT

(Class Actions Division)

CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

No.: 500-06-000905-188

DATE: April 29, 2024

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**BY THE HONOURABLE DOMINIQUE POULIN, J.S.C.**

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**CARLA PACIUCCI**  
et  
**VALÉRIE CHAMPAGNE**  
Plaintiffs  
v.  
**FCA CANADA INC.**  
Defendant

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JUDGMENT  
(AUTHORIZATION OF A CLASS ACTION)

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## **OVERVIEW**

[1] The Court authorizes a class action against the defendant FCA Canada inc. (“**FCA**”) on behalf of all persons in Quebec who purchased or leased vehicles of the brand and models Fiat 500 and Fiat 500 *Abarth trim line* during the years 2012 to 2019 (the “**Subject Vehicles**”).

[2] The Subject Vehicles were manufactured and distributed by FCA. They are allegedly equipped with defective door handle mechanisms. More particularly, a design or manufacturing defect would cause the door handle mechanism to jam and block the opening of the door.

[3] FCA is blamed for this design or manufacturing defect, which it would have known for many years, and for failing to implement a proper repair program or recall.

[4] The defect would create a safety hazard for the Class Members and would cause them damages, including the costs to repair their vehicle, as well as inconveniences and loss of time.

## **ANALYSIS**

[5] The parties have reached an agreement on all issues regarding the certification of the Class Action.

[6] This agreement led the applicants to request permission to modify their application for authorization ( the “**Application**”), in order to amend the Class definition and the list of Subject Vehicles. The wording of the proposed common issues of law and fact, as well as the proposed conclusions are also the object of modifications.

[7] The Court agrees that the proposed modifications should be authorized. More particularly, the Court finds that the modification of the Class, which seeks to limit the Class to a Quebec-only Class and to Fiat 500 models, is in line with the evidence adduced by the parties and conforms to the applicable principles enunciated by the Court of Appeal regarding the modifications of an application.<sup>1</sup>

[8] The class definition includes a list of *Subject Vehicles* which would be equipped with the same allegedly defective door handle design as the one alleged in the Application, which allegations and exhibits concern Fiat 500 model including the *Abarth trim line*. Both applicants are owners of this specific 500 Fiat model.

[9] The class definition is restricted to Quebec-only Class Members who would have sustained damages in Quebec. It is not contested that the Court has jurisdiction over these claims under article 3148, para 1(3) C.C.Q.

[10] The modification has the effect of limiting the Class and the Court ascertained that the conditions of approval of a withdrawal as regards certain putative Class Members are met.<sup>2</sup> The Court will order that the putative Class Members who communicated with Class counsel or the applicants to manifest their interest in the Class Action and who are no longer included in the Class definition be duly informed of the modification and of the fact that the limitation period as regards their putative right of action begins to run again from the date of the present judgment.

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<sup>1</sup> *Raymond Chabot Administrateur provisoire inc. c. Ventilation RS Air. Inc.*, 2017 QCCA 1107.

<sup>2</sup> The Court refers to the principles enunciated in *École Communautaire Belz c. Bernard*, 2021 QCCA 905.

[11] For the following reasons, the Court also agrees that the Application<sup>3</sup> meets the criteria set forth by article 575 C.C.P.

1. **THE FACTS ALLEGED APPEAR TO JUSTIFY THE CONCLUSIONS SOUGHT (ART. 575 (2) C.C.P.**

[12] The role of the Court at this stage is to filter frivolous claims and not to make determinations on the merits of the issues raised. The burden of the applicants is no more than establishing a mere possibility of succeeding on the merits, as the Court of Appeal reiterated in *Davies c. Air Canada*.<sup>4</sup>

[13] The “situation” described in the Application gives ample details regarding the alleged defect affecting the concerned door handles and as to the damages allegedly resulting therefrom.

[14] The allegations giving rise to an individual action by the applicants also give ample details regarding the problematic situation which they would have encountered with the door handles on their Fiat 500 models and the damages which they allegedly sustained, including repair costs. The details alleged describe that the Subject Vehicles are equipped with door handles affected by a latent defect which manifests at different times, starting by the handle beginning to loosen, then to get jammed shut and ultimately falling completely. The applicants visited their dealership multiple times and needed to replace their door handles more than once. They had to enter and exit through the passenger door, or through the hatchback trunk for one of them. They were prevented from using their vehicle as they pleased.

[15] The applicants allege that each Class Member’s consent was vitiated as a result of the discovery of this serious defect and security risk, that they would not have purchased or leased the Subject Vehicles had they been made aware of the defects. They invoke the deceitful actions and malicious intention on the part of FCA in refusing to recall and repair the Subject Vehicles, for which they claim punitive damages.

[16] They argue that the Subject Vehicles:

- are not fit for the purposes they are ordinarily used, contrary to article 37 of the *Consumer Protection Act* (“**C.P.A.**”);<sup>5</sup>
- are not durable in normal use for a reasonable length of time having regards to their price and condition of their use contrary to article 38 C.P.A.

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<sup>3</sup> *Re-re-Amended Application for Authorization to Institute a Class Action (“Re-re-Amended Application”)*.

<sup>4</sup> *Davies c. Air Canada*, 2022 QCCA 1551 at paras 16 et 30.

<sup>5</sup> *Consumer Protection Act*, ch P-40.1 (“**C.P.A.**”) at art. 37.

[17] They also invoke that FCA withheld information regarding the Subject Vehicles contrary to article 228 C.P.A. and failed to provide adequate solution to the issue, for which they claim punitive damages under article 1621 C.C.Q. and 272 C.P.A.

[18] The conclusions sought include orders that FCA issue a recall of the Subject Vehicles and repair or replace the door handle parts, failing which the sales and lease contracts shall be annulled and FCA shall be condemned to reimburse the total amounts paid by applicants and the Class Members for their Subject Vehicle, plus compensatory damages, including any repair costs disbursed, other disbursements incurred, loss of time, inconvenience, loss of use of the Subject Vehicle. The applicants also claim for moral damages and punitive damages.

[19] The applicants request the collective recovery of the above amounts.

[20] The Court agrees that the facts as alleged appear to justify the conclusions of the proposed Class Action.

**2. THE CLAIMS OF THE MEMBERS OF THE CLASS RAISE IDENTICAL, SIMILAR OR RELATED ISSUES OF FACTS OR LAW ( ART. 575 (1) C.C.P**

[21] The parties have agreed on a list of issues of fact and law which are common to the Class Members.

[22] Under the reserve that the issues concerning the quantification of the damages and the form of a potential recovery may ultimately need to be determined on an individual basis, if the recourse succeeds on the merits, the Court agrees that there exist sufficient issues that are common to the Class Members in order to meet the criteria set forth by article 575 (1) C.C.P.

[23] The issues of facts and law as they are identified by the parties appear to be common to the Class Members at the present stage.

**3. THE COMPOSITION OF THE CLASS MAKES IT DIFFICULT OR IMPRACTICABLE TO APPLY THE RULES FOR MANDATE OR FOR CONSOLIDATION OF PROCEEDINGS (ART. 575 (3) C.C.P.**

[24] The applicants are unaware of the specific number of persons who purchased the Subject Vehicles. A certain number of Class Members have already communicated with the applicants and the lawyers for the Class.

[25] It is foreseen that the Class Members who have purchased a Subject Vehicle over the years 2012 to 2019 are numerous and spread over the province. It would be impractical to contact each individual to obtain mandates and join them in one action. It would go against the interest of justice to expect each Class Member to institute his own action.

[26] The context does not require the applicants to show that several other persons are in the same situation as them. At this point, the Tribunal may infer this.<sup>6</sup>

[27] A class action appears to be the appropriate procedural vehicle to address issues like the present one, which FCA acknowledges.

**4. THE APPLICANTS ARE IN A POSITION TO PROPERLY REPRESENT THE CLASS MEMBERS (ART. 575 (4) C.C.P.)**

[28] The Court agrees that the allegations demonstrate that the applicants are willing and capable of ensuring an adequate representation of the Class Members. They have a personal interest to seek the proposed conclusions. There exist no apparent conflict between their interests and those of the Class Members.

[29] They clearly appear to be in a position to properly represent the Class Members, which is not questioned by FCA.

**FOR THESE REASONS, THE COURT:**

[30] **GRANTS** the *Re-re-Amended Application for Authorization to Institute a Class Action*;

[31] **AUTHORIZES** the institution of a class action in the form of an originating application in damages, product liability, consumer protection, and injunctive relief;

[32] **APPOINTS** the Plaintiffs as the Representative Plaintiffs representing all persons included in the Class herein described as:

“(…)

*All persons in Quebec who purchased or leased one or more of the following vehicles:*

*2012 to 2019 Fiat 500*

*2012 to 2019 Fiat 500, Abarth trim line*

*collectively (the “Subject Vehicles”).”*

[33] **IDENTIFIES** the principal issues of law and fact to be treated collectively as the following:

- a) Do the door handles of Subject Vehicles suffer from a latent design and/or manufacturing defect?
- b) Did Defendant know of this issue and fail to warn Class Members of the defect and if they knew, when they knew or should have known?

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<sup>6</sup> *Lévesque c. Vidéotron, s.e.n.c.*, 2015 QCCA 205 at para 33.

- c) Did Defendant fail to disclose material information to Class Members regarding the door handle of the Subject Vehicles?
- d) If the answer to (c) is yes, is Defendant's omission of material facts misleading and/or reasonably likely to deceive a Class Member?
- e) Is Defendant legally obligated to recall, repair and/or replace the door handles of the Subject Vehicles with replacement parts that do not suffer from the alleged latent design and/or manufacturing defect?
- f) Do the door handles of the Subject Vehicles perform in accordance with the standard of fitness for the purposes for which the Subject Vehicles are normally used?
- g) Do the door handles of the Subject Vehicles perform in accordance with the standard of durability for normal use for a reasonable length of time, having regard to the price, terms of the contract and conditions of use for the Subject Vehicles?
- h) Are the Class Members entitled to seek the annulment or *résiliation* of their sale or lease contracts for the Subject Vehicles and, if so, under what conditions?
- i) Are the Class Members entitled to seek the reduction of their obligations (of the Subject Vehicle purchase or lease price) and, if so, in what amount?
- j) Is Defendant liable to pay compensatory and/or moral damages to the Class Members, and if so, in what amount, including without limitation for the reimbursement of the purchase or lease price (or a portion thereof), any repair costs disbursed, other disbursements incurred, loss of time, loss of use of the Subject Vehicle, embarrassment and inconvenience?
- k) Is Defendant liable to pay exemplary and/or punitive damages to the Class Members, and if so, in what amount?

[34] **IDENTIFIES** the conclusions sought as follows:

- a) GRANT the class action of the Representative Plaintiffs and each of the Class Members;
- b) ORDER Defendant to issue a recall of the Subject Vehicles and to repair or replace the door handle parts of the Subject Vehicles FAILING WHICH: ANNUL the sale or lease contract signed by Plaintiffs and the Class Members for the Subject Vehicles and ORDER and CONDEMN Defendant to reimburse the total amounts paid by Plaintiffs and the Class Members for their Subject Vehicle (or different amount to be determined by the Court) and ORDERS Defendant to then retake possession and ownership of the said vehicles, at Defendant's costs;
- c) CONDEMN the Defendant to pay to Plaintiffs and each of the Class Members a sum to be determined in compensatory damages, including without limitation for

the reimbursement or reduction of the purchase or lease price, any repair costs disbursed, other disbursements incurred, loss of time, inconvenience, loss of use of the Subject Vehicle, and ORDER collective recovery of these sums;

- d) CONDEMN the Defendant to pay to Plaintiffs and each of the Class Members a sum to be determined in moral damages, including without limitation for embarrassment, and ORDER collective recovery of these sums;
- e) CONDEMN the Defendant to pay to each of the Class Members a sum to be determined in punitive and/or exemplary damages, and ORDER collective recovery of these sums;
- f) CONDEMN the Defendant to pay interest and additional indemnity on the above sums according to the Law from the date of service of the original Application for Authorization to Institute a Class Action;
- g) ORDER the Defendant to deposit in the office of this Court the totality of the sums which forms part of the collective recovery, with interest, additional indemnity, and costs;
- h) ORDER that the claims of individual Class Members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;
- i) CONDEMN the Defendant to bear the costs of the present action, including experts' fees and all notice fees;
- j) RENDER any other order that this Honorable Court shall determine and that is in the interest of the Class Members;
- k) THE WHOLE with interest and additional indemnity provided for in the *Civil Code of Quebec* and with full costs and expenses, including expert's fee and publication fees to advise the Class Members;

[35] **DECLARES** that all Class Members who have not requested their exclusion from the Group in the prescribed delay to be bound by any Judgment to be rendered on the class action to be instituted;

[36] **FIXES** the time limit for opting out of the Class at thirty (30) days from the date of the publication or notification of the notice to the Class Members;

[37] **ORDERS** the publication or notification of a notice to the Class Members in accordance with article 579 C.C.P., within sixty (60) days from the Judgment to be rendered herein, by way of direct mail and or emails to Class Members, bilingual press releases, and notices published in LA PRESSE, the MONTREAL GAZETTE, the GLOBE AND MAIL, and the NATIONAL POST, and **ORDERS** Defendant to pay for all said publication costs;

[38] **ORDERS** the notification of a notice by way of direct mail and or emails to the putative Class Members who are no longer included in the definition of the Class following the present judgment and who communicated with the Class solicitors or the applicants to manifest their interest in the proposed Class Action, in order to inform them of the modification and of the fact that the limitation period as regards their putative right of action begins to run again from the date of the present judgment;

[39] **ORDERS** that said notices be available on all of Defendant's websites, Facebook page(s), and Twitter account(s) regarding the Subject Vehicles, with a link stating "*Fiat Door Handle Defects - Important notice to all past or present purchasers, lessees, or users of a Fiat vehicle*";

[40] **THE WHOLE** with legal costs, including all publication costs.

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DOMINIQUE POULIN, J.S.C.

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Hearing date:      Written submissions:  
                                 *Plaintiffs' Argument Plan in Support of the Application for Authorization to Institute a Class Action*, on April 9, 2024;  
                                 *Defendant's Written Submissions*, on April 10, 2024;