

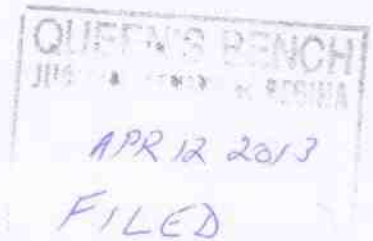
CANADA)
PROVINCE OF SASKATCHEWAN)

**IN THE COURT OF QUEEN'S BENCH
JUDICIAL CENTRE OF REGINA**

BETWEEN:

HELLO BABY EQUIPMENT INC.

Plaintiff



- and -

BOFA CANADA BANK, BANK OF MONTREAL, BANK OF NOVA SCOTIA, CANADIAN IMPERIAL BANK OF COMMERCE, CAPITAL ONE BANK (CANADA BRANCH), CITIGROUP INC., FEDERATION DES CAISSES DESJARDINS DU QUEBEC, MASTERCARD INTERNATIONAL INCORPORATED, NATIONAL BANK OF CANADA INC., ROYAL BANK OF CANADA, TORONTO-DOMINION BANK and VISA CANADA CORPORATION

Defendants

Brought under The Class Actions Act

NOTICE OF MOTION

TAKE NOTICE that an application will be made by the Plaintiff to the Honourable Mr. Justice Ball at the Court House in Regina, Saskatchewan, on a date and time to be designated or so soon thereafter as counsel can be heard on behalf of the Plaintiff, for an Order that:

- (a) the Action originally commenced by Canada Rent a Heater (2000) Ltd. and currently prosecuted by the Crown and Hand Pub Ltd. (the "**MLG Plaintiff**") against Bank of America Corporation and Others, Court of Queen's Bench for Saskatchewan, QB No 1206 of 2012 (the "**MLG Saskatchewan Action**") be stayed until the certification application in *Hello Baby Equipment Inc v BofA Canada Bank and others*, Court of

Queen's Bench for Saskatchewan, QB No 133 of 2013 (the "**Consortium Saskatchewan Action**") is decided;

- (b) An Order that the commencement of further class proceedings in the Province of Saskatchewan in respect of fees paid by merchants from March 28, 2001 onwards in connection with the acceptance of Visa or MasterCard credit cards as payment for goods or services be prohibited without leave of the Court until the certification application in the Consortium Saskatchewan Action is decided;
- (c) An Order that the law firms of Branch MacMaster LLP and Camp Fiorante Matthews Mogerman LLP be granted carriage of proposed class action proceedings in the Province of Saskatchewan in respect of fees paid by merchants from March 28, 2001 onwards in connection with the acceptance of Visa or MasterCard credit cards as payment for goods or services;
- (d) An Order that Hello Baby Equipment Inc. shall be at liberty to apply for a continuation of the Order staying the MLG Saskatchewan Action if certification is granted in the Consortium Saskatchewan Action;
- (e) An Order that, if certification is not granted in the Consortium Saskatchewan Action, the stay of the MLG Saskatchewan Action and the prohibition against the commencement of further class proceedings in the Province of Saskatchewan in respect of fees paid by merchants from March 28, 2001 onwards in connection with the acceptance of Visa or MasterCard credit cards as payment for goods or services shall both be lifted;

- (f) An Order that the Applicant shall report to this Court regularly on the status of the British Columbia Action, as defined below, and no less frequently than as reported to the other courts;
- (g) An Order that the MLG Plaintiff shall pay the Applicant's costs in this application; and
- (h) Such further and other relief and directions as counsel may request and this Honourable Court deems just.

ON THE FOLLOWING GROUNDS:

- (a) In the MLG Saskatchewan Action, which was commenced on July 12, 2012, the MLG Plaintiff proposes to advance claims on its own behalf, and on behalf of a proposed national class (the "Saskatchewan Proposed National Class") with respect to the fees paid by merchants as a result of accepting Visa or MasterCard credit cards as payment for services or products for the period commencing in 2003;
- (b) The claims advanced in the Merchant Law Group Saskatchewan Action are already being advanced in the Consortium Saskatchewan Action and in proposed class actions filed against the same Defendants in British Columbia, Ontario, Quebec and Alberta (collectively, the "Consortium Credit Card Actions"), as follows:
 - i. *Watson v Bank of America Corporation et al*, SCBC Vancouver Registry No VLC-S-S-112003 (the "**BC Action**"), which is being case managed by Chief Justice Bauman;
 - ii. *Bancroft-Snell et al v Visa Canada Corporation et al*, OSCJ No CV-11-426591CP (Toronto) (the "**Ontario Action**"), which is being case managed by Madam Justice Horkins;

- iii. *9085-4886 Quebec Inc and Bakopanos v Visa Canada Corporation et al*, Superior Court of Quebec No 500-06-000549-101 (Montreal) (the “**Quebec Action**”), which is being case managed by Madam Justice Corriveau; and
 - iv. *Macaronis Hair Club and Laser Center Inc operating as Fuze Salon v BofA Canada Bank et al*, Alberta QB File No 1203-18531 (Edmonton) (the “**Alberta Action**”), which is being case managed by Associate Chief Justice Rooke.
- (c) The BC Action, the Ontario Action, and the Quebec Action (collectively, the “**Original Consortium Actions**”) were commenced on March 28, 2011, May 16, 2011, and December 17, 2010, respectively;
 - (d) The Alberta Action was commenced on December 14, 2012.
 - (e) Collectively, the Consortium Credit Card Actions seek to advance claims on behalf of all persons in Canada who, during the period commencing at least as early as May 16, 2001 and continuing through to the present, accepted payment for the supply of goods and services by way of Visa or MasterCard credit cards pursuant to the terms of merchant agreements. As such, the Consortium Credit Card Actions already advance claims on behalf of the Merchant Law Group Plaintiff and of the Proposed Saskatchewan National Class;
 - (f) The Consortium Credit Card Actions have been and are being prosecuted in a coordinated and efficient manner with the assistance of a uniform team of lawyers (collectively, the “**Consortium**”), comprised of the following counsel:
 - i. Ward K. Branch, Luciana P. Brasil and Greg McMullen of Branch MacMaster LLP in Vancouver, British Columbia;

- ii. J.J. Camp. Q.C., Sharon Matthews, Q.C., Reidar Mogerman and David Jones of Camp Fiorante Matthews Mogerman in Vancouver, British Columbia; and
 - iii. Jeff Orenstein of Consumer Law Group in Quebec.
- (g) By agreement of the Defendants and with the consent of the three appointed case management judges, the British Columbia Action is serving as the lead action for the prosecution of the Original Consortium Actions;
 - (h) To this end, a certification schedule was put into place in British Columbia on February 22, 2012. This schedule set matters in motion for a scheduled certification hearing over the two weeks from April 22 to May 3, 2013;
 - (i) Certification materials, including an expert report and a supporting affidavit from the Retail Council of Canada, which represents more than 43,000 merchants across Canada, including in Saskatchewan, were delivered to the Defendants on January 9, 2012;
 - (j) Responding materials were delivered on October 15, 2012;
 - (k) Reply materials were delivered on November 30, 2012;
 - (l) Cross-examination of experts was completed in February, 2012;
 - (m) The Consortium has reported regularly to Ontario and Quebec judges on the status of the British Columbia Action. A formal limited-time stay order was also sought and obtained from the Quebec Court;
 - (n) The Consortium posted the existence of the Consortium Credit Card Actions on the National Class Action website as they were filed in

December 2010, March 2011 and May 2011. The Consortium also issued a press release on March 28, 2011;

- (o) There was substantial press coverage when the British Columbia and Ontario Actions were filed, which coverage extended to the Provinces of Saskatchewan and Alberta;
- (p) The subject matter of the Consortium Credit Card Actions is also the subject matter of class proceedings in the United States, which have been consolidated in the United States District Court, Eastern District of New York under the name "*In Re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation*" (the "**US Credit Card Proceedings**");
- (q) The Consortium has also entered into a strategic consulting relationship with the lead counsel in the US Credit Card Proceedings;
- (r) During the week of July 9, 2012, there were numerous public reports that the parties to the US Credit Card Proceedings had reached a settlement. Those reports predicted that the value of the settlement in the US Credit Card Proceedings could range from USD\$8 billion to USD\$12 billion;
- (s) On July 12, 2012, and almost immediately following the issuance of the various news reports predicting an imminent (and now materialized) proposed settlement in the US Credit Card Proceedings, Canada Rent-A-Heater (2000) Ltd. commenced the Merchant Law Group Saskatchewan Action. On the following day, a similar proceeding was commenced by 1023926 Alberta Ltd. in the Alberta Court of Queen's Bench on behalf of, which at the time was another client of the Merchant Law Group (the "**MLG Alberta Action**");
- (t) No contact was made by anyone from the Merchant Law Group to the Consortium to determine the status of the Consortium Credit Card

Actions, or to raise concerns about the conduct or nature of those proceedings;

- (u) The original forms of the Statement of Claim filed in the MLG Saskatchewan Action and of the Statement of Claim filed in the MLG Alberta Action were virtually identical to the Notice of Civil Claim originally filed in the BC Action, to the point of containing an identical typographical error and the same misnomer in relation to the corporate name of one of the Defendants;
- (v) Amended Statement of Claims were filed in both the MLG Alberta Action and in the MLG Saskatchewan Action. Again, those amendments track the form of a proposed Amended Notice of Civil Claim in the BC Action, which form was filed in the Supreme Court of British Columbia (and publicly available) on April 23, 2012. The amendments in the MLG Saskatchewan Action also included a removal of the original plaintiff Canada Rent-A-Heater (2000) Ltd. and the addition of the MLG Plaintiff as the sole plaintiff;
- (w) The MLG Saskatchewan Action and the MLG Alberta Action seek to advance claims on behalf of proposed national classes which overlap not only with each other, but also with the proposed classes in the Consortium Credit Card Actions;
- (x) The fact that the pleadings in the MLG Saskatchewan Action are essentially an (ongoing) copy of the pleadings either filed or proposed to be filed in the Consortium Credit Card Actions amounts to an endorsement by the MLG Plaintiff and by its counsel as to the quality of the pleadings and approach adopted in the Consortium Credit Card Actions;

- (y) It would be preferable for Saskatchewan residents to have their claims adjudicated in the Consortium Saskatchewan Action as part of the Consortium Credit Card Actions national litigation effort;
- (z) In the circumstances, the continuation of the MLG Saskatchewan Action would be an abuse of process, and would undermine the judicial economy goal of class proceedings legislation. These purposes were recently emphasized by the amendments to the CAA regarding multi-jurisdictional proceedings;
- (aa) Staying the MLG Saskatchewan Action does not cause any injustice to the MLG Plaintiff, who is already included as part of the proposed class in the Consortium Saskatchewan Action. The MLG Plaintiff was also originally included as part of the proposed class in the Consortium Ontario Action;
- (bb) Rule 173 of the *Queen's Bench Rules of Saskatchewan*;
- (cc) Sections 14 and 15 of the CAA;
- (dd) Section 37 of the *Queen's Bench Act, 1998*, SS 1998, c Q-1.01; and
- (ee) The inherent jurisdiction of this Honourable Court

AND FURTHER TAKE NOTICE that in support of the said application will be read:

1. The pleadings and proceedings previously had and taken herein;
2. The Affidavit of Luciana P. Brasil, sworn March 28, 2013;
3. The Affidavit of Amy Habich, sworn March 27, 2013;
4. The Affidavit of Jonathon Bancroft-Snell, affirmed March 28, 2013

5. Such further and other material as counsel may advise and this Honourable Court may permit.

DATED at Vancouver, British Columbia, this 3rd day of April, 2013



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Counsel for the Plaintiff

To: The Plaintiff in Crown and Hand Pub Ltd. (the "Respondent") against Bank of America Corporation and Others, Court of Queen's Bench for Saskatchewan, Q.B. No. 1206 of 2012

by their Solicitors, Merchant Law Group, LLP

The Defendants

by their Solicitors

This document was delivered by:

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