

SUPERIOR COURT

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

COPIE CONFORME

No. 500-06-000383-071


Greffier adjoint Montréal

DATE: 25 OCTOBRE 2010

IN THE PRESENCE OF THE HONOURABLE GUYLÈNE BEAUGÉ, J.S.C.

GLORIA BORDOFF

Petitioner

v.

GESTION D'ACTIFS CIBC INC./CIBC ASSET MANAGEMENT INC.

Respondent

-and-

MERCHANT LAW GROUP LLP

-and-

FONDS D'AIDE AUX RECOURS COLLECTIFS,

1 Notre-Dame Street East, Suite 10.30, Montreal, Province of Quebec, H2Y 1B6

Mise en cause

JUDGMENT

1. On or about January 3, 2007, the Petitioner filed and served a Motion to Authorize the bringing of a Class Action and to Ascribe the Status of Representative in which Gestion d'actifs CIBC Inc./CIBC Asset Management inc. ("**Talvest**") was named as the Respondent (the "**Litigation**"), as appears from the Court record.

2. This motion alleged, *inter alia*, that a disc drive containing the personal information of approximately 470,000 clients went missing while in transit between Montreal and Markham. These clients were current and former clients of Talvest.
3. The motion further alleged, among other things, that the Petitioner and class members (the "**Class Members**") suffered various damages because they were a potential target for fraud or identity theft and would be inconvenienced by the security measures implemented or that were to be implemented.
4. Subsequently, on or about June 2, 2009, the Petitioner amended this motion (the "**Amended Motion for Authorization**"), as appears from the Court record.
5. Talvest has denied vigorously, and continues to deny, each and every allegation of liability and wrongdoing in the Amended Motion for Authorization.
6. Following the filing of the Amended Motion for Authorization the Parties, through their respective counsel, engaged in good faith, constructive negotiations in order to settle the Litigation.
7. These negotiations allowed the Parties to conclude a settlement agreement to definitively resolve the class proceedings (the "**Agreement**"), Exhibit R-1 of the Motions of Petitioner for the Authorization and Approval of a Class Action Settlement and for the Approval of Class Counsel Fees and Costs (the "**Motions for Settlement and Fee Approval**").
8. On September 22, 2010, the Parties presented a Joint Motion for the Publication of a Pre-Approval Notice.
9. This Motion was granted and the pre-approval notice was published in *La Presse*, *Le Soleil*, *The Globe & Mail* and *The Gazette* on September 25, 2010, as well as posted on the website of Class Counsel, pursuant to the order rendered by this Court.

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10. The Agreement extends the claims process already in place and described below (the "**Claims Process**") by 90 additional days following publication of the Settlement Notice.
11. Among other things, this Claims Process invites clients to contact a customer service telephone line and offers compensation to Class Members who have sustained a documented monetary loss arising directly from the unauthorized use of personal information contained on the disc drive that went missing on or about December 13, 2006.
12. Under the Claims Process, callers who are identified as coming within that process and who indicate their desire to make a claim receive a claim form.
13. Each claim is assessed by Talvest on an individual basis and will necessarily vary according to the facts and amounts stated by the client. The claims must be for a documented monetary loss, excluding non-monetary damages such as inconvenience and stress.
14. In instances where clients are dissatisfied with the decision rendered with respect to their claim, the Claims Process provides that they can proceed, at the sole expense of Talvest, to Alternative Dispute Resolution ("**ADR**") Chambers by completing a request form and sending it directly to same. Hearings take place before an independent adjudicator of ADR Chambers Inc..
15. The Agreement also provides that Talvest will:
 - (a) Donate \$45,000 to the Walrus Foundation;
 - (b) Donate \$45,000 to the Canadian Museum for Human Rights; and
 - (c) Donate \$90,000 to the Segal Cancer Centre of the Jewish General Hospital in Montreal.

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16. The Walrus Foundation has a mandate to promote public discourse on matters of importance to Canadians. It is dedicated to supporting Canadian writers, artists, readers, ideas and debates.
17. The Canadian Museum for Human Rights, located in Winnipeg, was established by Parliament and is envisioned as a centre where people from around the world can engage in discussion and commit to take action against hate and oppression.
18. Finally, the Segal Cancer Centre is a state-of-the-art facility which provides patients with a comprehensive approach to care, combining cancer prevention, diagnosis, treatment, psychosocial support, nutritional support and clinical and fundamental research in cancer.
19. The Petitioner asks that the present class proceedings be authorized for settlement purposes only by way of the Motions for Settlement and Fee Approval.
20. This Court is of the opinion that the class action should be authorized for settlement purposes only.
21. After having considered Agreement, the Motions for Settlement and Fee Approval the proceedings more generally, and having heard the Parties, this Court concludes that the settlement memorialized in the Agreement is fair, reasonable, and in the best interests of Class Members and of Talvest, which does not wish to engage in ongoing litigation with its current and former clients.
22. This Court is also of the opinion that the \$190,000 in fees and costs sought by counsel for the Petitioner are justified given that they carried the Litigation forward and helped to negotiate a beneficial settlement.

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FOR THESE REASONS, THE COURT:

GRANTS the present Motion for Authorization and Approval of a Class Action Settlement and **GRANTS** the present Motion for Approval of Class Counsel Costs and Fees;

AUTHORIZES the class action for settlement purposes only;

ASCRIBES the status of Representative Plaintiff to Petitioner Gloria Bordoff with respect to all persons coming within the group described herein;

DESCRIBES the group as follows:

"All persons in Canada (including their estates, executors, or personal representatives), consumers, corporations with not more than 50 persons bound to them by contract of employment, firms, businesses, and other organizations in Canada, whose personal information was identified by Talvest as having been saved or contained on a portable computer disc drive which went missing while in transit between Talvest's Montreal (Quebec) and Markham (Ontario) offices on or about December 13, 2006. Excluded from the Class are (i) Talvest, (ii) any entity in which Talvest has a controlling interest, (iii) Talvest's directors, officers and employees, (iv) Talvest's legal representatives, successors and assigns, (v) any judge to whom the Litigation is assigned and the members of his or her immediate family and (vi) all Persons who opt-out of the Class pursuant to the Settlement Notice disseminated and published in accordance with the Approval Order."

DECLARES that the Settlement Agreement executed by the Parties, Exhibit R-1, is fair, reasonable and in the best interests of the Class Members;

APPROVES the Settlement Agreement;

DECLARES that the Settlement Agreement is a transaction within the meaning of article 2631 of the *Civil Code of Quebec*;



DECLARES that the present class action has been fully, finally and irrevocably resolved and settled;

APPROVES the Settlement Notice attached as Exhibit R-3 to the Motions for Authorization and Approval of a Class Action Settlement and for the Approval of Class Counsel Costs and Fees, which notice shall specify the date of the judgment rendered herein;

DECLARES that any Class Member who has not opted-out of the Settlement Agreement, Exhibit R-1, in accordance thereto shall be bound by the Settlement Agreement and the decision of this Court authorizing and approving the class action settlement contemplated therein;

ORDERS the Parties and all Class Members who have not opted-out in accordance with the Settlement Agreement to respect its terms and conditions and to be bound by same;

ORDERS that the Settlement Notice, Exhibit R-3, be published in the following manner:

- By publishing it once on Saturday, October 30, 2010 in the business sections of *La Presse* and *Le Soleil*;
- By publishing it once on Saturday, October 30, 2010 in the business section of *The Gazette*;
- By publishing it once on Saturday, October 30, 2010 in the business section of *The Globe & Mail*; and
- By posting a link to the Settlement Notice on the website of Class Counsel;

ORDERS Talvest to pay for the costs of publishing the Settlement Notice, in the manner described herein, in *La Presse*, *Le Soleil*, *The Gazette* and *The Globe & Mail*;

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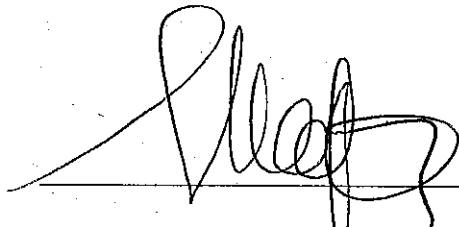
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SETS November 30, 2010 as the deadline for Class Members to opt-out the Settlement Agreement, failing which they will be bound by same;

APPROVES class counsel fees for the sum of \$168,327.79 CDN (plus GST and PST for a grand total of \$190,000 CDN), which fees shall be paid by Talvest in the manner described in the Settlement Agreement;

RESERVES the jurisdiction of this Court, to the exclusion of any other jurisdiction, body, tribunal or court, with regard to the interpretation and application of the Settlement Agreement or any issue or dispute arising from same;

RESERVES the right of the Parties to make any other motion or petition for the implementation and enforcement of the Settlement Agreement;

WITHOUT COSTS



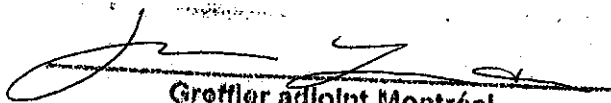
GUYLÈNE BEAUGÉ, J.S.C.

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Date of hearing: October 25, 2010

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