



This is the 2nd affidavit of Gregg Rafter
filed in these proceedings

No. S190672
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

VICTOR CARDOSO

PLAINTIFF

AND:

CANADA DRY MOTT'S INC

DEFENDANT

AFFIDAVIT

I, Gregg Rafter, shareholder of Boughton Law Corporation ("BLC"), with an address for service c/o BLC, 700-595 Burrard Street, in the City of Vancouver, in the Province of British Columbia, SWEAR THAT:

1. I am one of the Class counsel in this matter, and, as such, have personal knowledge of the facts and matters hereinafter deposed to except where same are stated to be based upon information and belief and, where so stated, I verily believe them to be true.

SETTLEMENT TERMS

2. The proposed settlement agreement is that:

(a) Canada Dry Mott's Inc. ("Canada Dry") will pay \$218,607.61 to the class, inclusive of all expenses, fees and disbursements (the "Settlement Amount"), in exchange for a full release of all claims.

(b) The balance of the Settlement Amount available for distribution to the class members after payment of any expenses, fees and disbursements, will be distributed cy-pres to the Law Foundation of British Columbia.

(c) Canada Dry expressly denies any liability in this matter and Canada Dry will not be required to make any changes to its product labelling or advertising for products marketed in Canada.

(the "Settlement Agreement")

3. It is my view that the Settlement Agreement is reasonable, particularly given the following challenges that became apparent as the case developed:

- (a) The case has evolved since it was filed based on new information that came to light. Initially, there was an allegation plead that the Canada Dry Ginger Ale beverages ("Ginger Ale") contained no real ginger. At the time this allegation was plead it was unknown to the plaintiff if the formula for the Ginger Ale was the same of different from the American lawsuits that had been filed. As it turned out, the formula was the same and the expert report that we jointly commissioned with Quebec counsel confirmed that fact and the Ginger Ale did contain a trace amount of processed ginger root. This resulted in the plaintiff amending the notice of civil claim to reflect that fact and which removed one of the core complaints that was being advanced.
- (b) In the further amended notice to civil claim, the plaintiff advanced an allegation that he had been misled, but this was now founded in part on the marketing campaign referred to as Jack's Ginger Farm. This campaign depicted ginger root being picked out of the ground and bottles of Ginger Ale being attached to the ginger root. This presented a challenge for the plaintiff because now given that consumers likely interpreted that representation differently, individual reliance was going to be a very live issue at the certification hearing
- (c) Another challenge at the certification hearing related to the allegation that the plaintiff was misled about the health benefits of Ginger Ale. It certainly seemed that the defendant was trying to use the halo of health benefits associated with real ginger but to the plaintiff's knowledge the defendant never went so far as to expressly make this claim.
- (d) In the event that the plaintiff was successful on having some aspect of the case certified, and assuming the claim was successfully prosecuted, it was going to be very challenging to arrive at a formula for damages.
- (e) Further, the defendant was seeking summary dismissal of the claim on numerous grounds.
- (f) Finally in the settlement was reached in the United States, I was advised by Ms Hunter, Q.C. that the total amount paid out by Canada Dry to US class members was less than \$600,000, which presented a risk that could be factored into the damage award possibly resulting in an award for less than \$100,000.00.

4. For the foregoing reasons, it seemed to me that a settlement of \$\$218,607.61 was reasonable in all of the circumstances and in the best interests of the plaintiff and the proposed class.

NOTICE OF SETTLEMENT

5. Given that Dry Ginger Ale is sold throughout Canada in supermarkets, at gas stations, in restaurants (in cans, bottles and fountain form) and in vending machines, it is not possible for the parties to directly identify individuals who may be class members (although class members are easily able to identify themselves). Attempts to locate or identify individual class members so as to quantify their claims and distribute proportionate shares of the Settlement Amount to each

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SCHEDULE "A"

You are receiving this message as you previously indicated that you may be a class member in a proposed class action relating to the marketing of Canada Dry Ginger Ale.

The British Columbia Supreme Court has approved a settlement of claims of all Canadian resident persons, excluding persons resident in Quebec, who purchased any Canada Dry Ginger Ale product marketed as "Made from Real Ginger".

The terms of the approved settlement are set out in the attached order. In summary:

- (a) Canada Dry Mott's Inc. ("Canada Dry") will pay \$218,607.61 to the class, inclusive of all expenses, fees and disbursements (the "Settlement Amount"), in exchange for a full release of all claims.
- (b) The balance of the Settlement Amount available for distribution to the class members after payment of any expenses, fees and disbursements, will be distributed cy-pres to the Law Foundation of British Columbia.
- (c) Canada Dry expressly denies any liability in this matter and Canada Dry will not be required to make any changes to its product labelling or advertising for products marketed in Canada.

If you would like to opt out of this settlement, you must send written notice to Boughton Law Corporation by pre-paid mail, courier, or email to mcanofari@boughtonlaw.com in the form attached by March 23, 2020.

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SCHEDULE "B"

OPT OUT FORM

Complete this form ONLY if you do NOT wish to participate in the settlement reached between the plaintiffs and Canada Dry Mott's Inc. You must return this form before March 23, 2020.

Name: _____

Mailing address: _____

Telephone: _____

Email: _____

State the reason you believe you are a class member: _____

I confirm that I will take full personal responsibility for taking all necessary legal steps to protect any claim I may wish to pursue against Canada Dry Mott's Inc.

FULL LEGAL NAME

_____, 2020

DATE

RETURN A COPY OF THIS OPT-OUT FORM TO THE FOLLOWING ADDRESS:

Boughton Law corporation
700-595 Burrard street
Vancouver BC v7x 1s8
604-687-6789
mcanofari@boughtonlaw.com