Roadblock Remains for Rent-A-Car Class Action

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In ***Vaugeois v. Budget Rent-A-Car of B.C. Ltd.***, the British Columbia Court of Appeal upheld the dismissal of a certification application, providing thoughtful commentary on what will advance the access to justice, judicial economy and behavioural goals of class proceedings.

Background and Procedural History

The defendants offered rental vehicles to consumers in British Columbia. The representative plaintiff alleged that the defendants conspired to improperly charge (or over-charged) consumers for auto body and window repair costs. The certification judge held that the pleadings disclosed three causes of action: civil conspiracy; unjust enrichment; and deceptive acts or practices contrary to the ***Business Practices and Consumer Protection Act***.

The certification judge dismissed the certification application for failing to meet the preferability criterion, finding that common issues were overwhelmed by individual issues and that, if the action were certified, "there would only be a mirage of judicial economy."

On appeal, the plaintiff claimed that the certification judge erred in his analysis of the access to justice, judicial economy and behavioural modification aims of a class action and, when properly assessed, these three factors weighed in favour of certification.

Discussion

First, the Court affirmed that a class action would not advance the aims of judicial economy, because "the litigation will not finally determine claims, either way" (emphasis in original).The Court highlighted that *Vaugeois* was distinctive in that "not only will success for the class fail to significantly advance the cause of any individual plaintiff but it can also be said that dismissal of the class action will not finally determine the claim of any class member."

Second, the Court held that the purpose of the access to justice criterion would not be served in this case, primarily based on the finding at certification that separate liability hearings were "inevitable" and "a class proceeding 'would merely be a prelude to many individual trials'." The Court affirmed the certification finding that proceedings in the Provincial Court would be a suitable alternative to a class proceeding.

Third, the Court held that the certification judge did not err by relying on the hypothetical prospect that the BPCPA Director could take action against the defendants, even though there was no evidence of such action being pending. The Court held that certification judges "may fairly proceed on the assumption that the officers of the Legislature will use the tools at their disposal to protect consumers and effect behaviour modification as necessary."

Take-Away:

- **Judicial Economy:** The fact a class action will not finally determine claims either way (i.e., either if the plaintiffs are successful or if the class action is dismissed) must be weighed in assessing whether certification will serve the end of judicial economy.
- **Access to Justice:** The fact that separate liability hearings are "inevitable" may be fatal to the argument that a class action advances access to justice. Independently, the small claims procedure available through the provincial courts may represent the preferable forum for resolution of class members' claims even if relief that is unique to the Supreme Court (e.g., injunctive relief, or punitive damages) is unavailable in the provincial court.
- **Behavioural Modification:** A class action may not always be necessary in order to bring about meaningful behavioural modification. The Courts are entitled to proceed on an assumption that the government, where such legal tools exist, will use the tools at their disposal to protect consumers and effect behavioural modification.