

No ship without a captain – class action decertified in absence of suitable representative plaintiff

November 04, 2020

Overview

In <u>Azar v Strada Crush Limited</u>, Justice Morgan of the Ontario Superior Court of Justice, considered whether to re-appoint a previously disqualified representative plaintiff, despite his problematic post-certification conduct. In view of the conduct of the representative plaintiff and with no suitable replacement available, Justice Morgan decertified the class action.

Background and decision

<u>Azar v Strada Crush Limited</u> involved a class action in which employees of the defendant company claimed for unpaid overtime wages. Justice Morgan certified the class in August 2018, at which time the court determined that the representative plaintiff, George Azar, was an appropriate representative of the class.

Nearly one year after certification, the plaintiff brought a motion to appoint new class counsel. The motion stemmed from a personal and unrelated business dispute between Mr. Azar and class counsel. Class counsel brought a cross-motion to disqualify Mr. Azar as representative plaintiff and to allow counsel time to locate a new representative. Justice Morgan found that Mr. Azar had a conflict of interest and had acted out of personal interest in seeking to replace class counsel, rather than acting in the interests of the class. Accordingly, the plaintiff's motion was denied and Mr. Azar was disqualified as representative plaintiff. The Court granted class counsel 60 days to locate a new representative plaintiff.

Unable to find a replacement, class counsel asked the Court to re-appoint Mr. Azar as representative plaintiff. In response, the defendant sought to have the class decertified arguing that the requirement of a representative plaintiff to "fairly and adequately represent the interests of the class" under s.5(1)(e)(i) of the <u>Class Proceedings Act</u>, 1992, had not been met.



The Court approached the issue by considering whether a class member who was removed as representative plaintiff because he put his own interest ahead of that of the class, can be re-appointed if no replacement can be found.

Justice Morgan found that Mr. Azar was too self-focused and distracted from the interests of the class and concluded that he was not a suitable representative plaintiff. The Court held that the certification requirement for a representative plaintiff had not been satisfied by Mr. Azar and that no suitable representative plaintiff was available. Accordingly, Justice Morgan de-certified the class.

Takeaways

The decision highlights the importance of selecting a suitable representative plaintiff in accordance with the requirements of the <u>Class Proceedings Act</u>, <u>1992</u>. A representative plaintiff plays a substantive role in the proceedings and must represent the interests of the class fairly and adequately. Representative plaintiffs should not take the responsibilities they owe to other members of the class lightly. <u>Azar v Strada Crush Limited</u> cautions that the conduct of the representative plaintiff, even after certification, can result in serious ramifications for the class.

Ву

Amitha Carnadin

Expertise

Disputes, Class Action Defence

BLG | Canada's Law Firm

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 725 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

blg.com

BLG Offices

Calgary

Centennial Place, East Tower 520 3rd Avenue S.W. Calgary, AB, Canada T2P 0R3

T 403.232.9500 F 403.266.1395

Ottawa

World Exchange Plaza 100 Queen Street Ottawa, ON, Canada K1P 1J9

T 613.237.5160 F 613.230.8842

Vancouver

1200 Waterfront Centre 200 Burrard Street Vancouver, BC, Canada V7X 1T2

T 604.687.5744 F 604.687.1415



Montréal

1000 De La Gauchetière Street West

Suite 900

Montréal, QC, Canada

H3B 5H4

T 514.954.2555 F 514.879.9015 Toronto

Bay Adelaide Centre, East Tower 22 Adelaide Street West Toronto, ON, Canada M5H 4E3

T 416.367.6000 F 416.367.6749

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing unsubscribe@blg.com or manage your subscription preferences at blg.com/MyPreferences. If you feel you have received this message in error please contact communications@blg.com. BLG's privacy policy for publications may be found at blg.com/en/privacy.

© 2025 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.