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Ontario Court keeps lawsuit in court despite arbitration agreement

The Ontario Superior Court of Justice recently dismissed an attempt by GM Canada to stay a lawsuit brought against it by several of its Canadian dealerships. In *Stoneleigh Motors Limited et al. v. General Motors of Canada Limited*[1], GM Canada argued that the plaintiffs had previously agreed to resolve disputes by arbitration and that this precluded the dealerships from suing GM Canada in the courts. The court disagreed.

While the *Stoneleigh* decision involves automotive dealerships and a specific arbitration regime established under the National Automobile Dealer Arbitration Program ("NADAP"), the case contains important lessons for manufacturers and suppliers generally. If your company operates a dealer network that requires disputes to be arbitrated, and you have ever wondered what might happen if multiple dealers join together to assert common claims, read on.

the facts in *Stoneleigh*

The plaintiffs in *Stoneleigh* are 19 independently-owned GM Canada dealerships. In the wake of the economic meltdown that started in 2008, GM Canada experienced severe financial difficulties (similar to its American parent, General Motors Corp., who filed for bankruptcy protection in the US). Endeavouring to redress its financial woes, GM Canada notified 240 of its Canadian dealerships (including the 19 plaintiffs) in May of 2009 that their dealerships would not be renewed when they expire in October, 2010. The notices included a Wind-Down Agreement that provided for a financial payout to the dealers and a release in favour of GM Canada.

While the majority of the 240 dealers accepted the terms of the Wind-Down Agreement, the 19 plaintiffs in *Stoneleigh* rejected the notice and commenced a lawsuit against GM Canada. The claim alleges that GM Canada violated its duties of fair dealing and to act in good faith (under Ontario's franchise legislation). The plaintiffs also claim that GM Canada breached its assurance that all dealers would have the opportunity to renew their dealer agreements for an additional five years as of October 2010.

[1] [2010] O.J. No. 1621 (S.C.J.), decision released in April, 2010.

GM Canada moved to stay the lawsuit on the basis that most of the plaintiffs had previously agreed to resolve disputes by way of arbitration. All but three of the 19 plaintiffs had signed NADAP implementation agreements requiring that disputes with GM Canada be arbitrated.

NADAP was created over a decade ago to provide a private mechanism for the resolution of certain types of disputes between auto manufacturers and dealers. Instead of going to court, the parties first try to mediate their disputes. If mediation is unsuccessful, the dispute is arbitrated. NADAP's Rules provide that arbitral hearings are conducted in private and that the parties have extremely limited recourse to the courts (to which resort may be had for disputes that are not eligible for arbitration).

GM Canada argued that the plaintiffs who had entered NADAP implementation agreements must resolve their disputes under NADAP and not in the courts. Alternatively, GM Canada argued that, even if the court permits the law suit to proceed, the claims should be severed and heard as 19 separate and individual actions.

the Court held that multi-party claims are not "arbitrable" under NADAP

The first issue the court addressed on GM Canada's motion was whether the plaintiffs' claims are capable of being arbitrated under NADAP. The court construed the language of the NADAP Rules narrowly and held that the plaintiffs' claims fell outside its ambit. Accordingly, the court dismissed GM Canada's argument that the plaintiffs must arbitrate, rather than litigate, their dispute.

Among other things, the court found that the provision in NADAP that enumerates the specific types of disputes which are arbitrable is subordinate to another provision that excludes certain non-arbitral disputes. Rule 20(c) of NADAP expressly excludes "class, *multi-party* or representative claims against the Manufacturer" from arbitration under the scheme. The court accordingly held that NADAP is designed to handle individual disputes between one dealer and a manufacturer. When common claims arising from the same facts are asserted by multiple dealers against the same manufacturer, however, such disputes are not arbitrable under NADAP by virtue of Rule 20(c). Given its finding that the plaintiffs' claims are not arbitrable under NADAP, the court dismissed this part of GM Canada's motion and held that the claims may proceed by court action.

The court went on to reject GM Canada's alternative argument that the claims should be severed and resolved by way of 19 separate actions. The Court found that severing the claims would not result in efficient litigation and could lead to delay, duplication, and a multiplicity of proceedings. The court noted that while one action with 19 separate plaintiffs will be somewhat cumbersome, the alternative of 19 separate actions is "a significantly greater ill" that would not promote the administration of justice. The court observed that the plaintiffs lacked the financial resources, human capital and organizational structure to litigate individually, and would be materially disadvantaged if forced to do so.

the lessons for manufacturers and suppliers

The decision in *Stoneleigh* runs somewhat counter to the prevailing judicial tendency to give effect to private arbitration agreements so as to encourage the out-of-court resolution of disputes. Particularly over the past twenty years, Canadian courts have consistently affirmed the importance of upholding and enforcing arbitration agreements. It is a modern rule of construction that where an arbitration clause is capable of two interpretations and one favours arbitration, the court should adopt that interpretation.

In *Stoneleigh*, however, the court exhibited very little deference for the arbitral process. In reaching its decision, the court was clearly motivated by the fact that the plaintiffs lacked the money to litigate their claims individually. In an effort to give the plaintiffs a "fighting chance", and to improve efficiency and avoid delay, the court rejected GM Canada's motion.

While the *Stoneleigh* decision is particularly applicable to automotive manufacturers and dealers who are subject to NADAP, it is of broader significance. Manufacturers and suppliers in other industries may expect their dealers and/or customers to combine resources and assert multi-party claims against them in court in an effort to dodge otherwise binding arbitration clauses in their agreements. Although much depends on the actual language of the applicable arbitration provisions, the underlying sentiments in *Stoneleigh* will weigh against any manufacturer who tries, like GM Canada did, to stop multiple plaintiffs with common or similar claims in their litigation tracks.

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a cautionary note