

SUPERIOR COURT

CANADA
PROVINCE OF QUEBEC
DISTRICT OF QUEBEC CITY

N° : 200-06-000121-098

DATE : December 9, 2011

PRESIDING: THE HONOURABLE MR. JUSTICE JEAN-FRANÇOIS ÉMOND, J.S.C.

KAREN COOKE AND TERRY COOKE

- and -

COOPÉRATIVE D'HABITATION LÉZARTS

- and -

STÉPHANE MORISSETTE, person designated by Coopérative d'habitation Lézarts
Plaintiffs

v.

IPEX INC.

Defendant

JUDGMENT
ON A MOTION FOR APPROVAL OF A SETTLEMENT
(Article 1025 of the *Code of Civil Procedure*)

[1] **UPON** reading the motion for approval of a transaction¹;

[2] **WHEREAS**, pursuant to said motion, Plaintiffs ask this Court to:

¹ Translator's Note: "Transaction is a contract by which the parties prevent a future contestation, put an end to a lawsuit or settle difficulties arising in the execution of a judgment, by way of mutual concessions or reservations."
(*Civil Code of Québec*, Art. 2631)

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[CERTIFIED TRUE TRANSLATION]

- (1) approve the agreement attached hereto as Schedule “A”, executed on March 11, 2011, which settles the class action brought by Plaintiffs (the “Settlement”);
 - (2) approve the plan of distribution and allocation of the Settlement Fund (the “Plan of Distribution and Allocation”) attached hereto as Schedule “B”;
 - (3) appoint Gilardi & Co. LLP as the Claims Administrator;
- [3] **WHEREAS** the Settlement relates to actions brought in the Province of Quebec, Canada (outside the Province of Quebec), and the United States;
- [4] **WHEREAS** the Settlement is contingent on final approval being granted by the Courts seized of the actions in the United States, the Province of Ontario and the Province of Quebec;
- [5] **WHEREAS** on November 17, 2011, in the proceedings pending in the United States in *In Re Kitec Plumbing System Products Liability Litigation*, file no. 09-md-2098, Justice Royal Furgeson of the United States District Court, Northern District of Texas (the “MDL Court”) issued a final order and judgment whereby he approved the Settlement and the Plan of Distribution and Allocation, and appointed Gilardi & Co. LLP as Claims Administrator;
- [6] **WHEREAS** on November 29, 2011, in the Canadian proceedings, the Ontario Court approved the Settlement and Plan of Distribution and Allocation, and appointed Gilardi & Co. LLP as Claims Administrator;
- [7] **UPON** reviewing the evidence adduced, including the affidavit of Mtre.² Linda Visser sworn on November 28, 2011, the affidavit of Mr. Hanson (exhibit “W” attached to the Visser affidavit), the affidavit of Tricia M. Solórzano sworn on November 28, 2011, and exhibits R-8 and R-9;
- [8] **WHEREAS** Gilardi & Co. LLP agrees to act as Claims Administrator and attorns to the jurisdiction of this Court for the purposes hereof;
- [9] **UPON** hearing the submissions made by counsel for Plaintiffs and counsel for Defendants;
- [10] **IN VIEW OF** Plaintiffs’ and Defendant’s consent to this Judgment;
- [11] **IN VIEW OF** the settlement notice given to the members of the Quebec class to inform them of the existence of this action, the Settlement, the hearing on the motion for approval, their right to object to or opt out of the Settlement, their right to appear at the formal fairness hearing, and the claims process;

² Translator’s Note: “Mtre.” is short for “Maître”, a title born by barristers and solicitors in civil law jurisdictions.

[CERTIFIED TRUE TRANSLATION]

[12] **WHEREAS** no member of the Quebec class has either appeared to object to the Settlement or spoken thereto;

NOW THEREFORE, THIS COURT:

[13] **APPROVES** the Settlement and **DECLARES** same to be in full force and effect;

[14] **DECLARES** that the Settlement is a transaction within the meaning of Art. 2631 of the *Civil Code of Québec*;

[15] **ORDERS** that the Settlement shall be implemented in accordance with its terms;

[16] **DECLARES** that the Settlement shall be binding upon each and every member of the Quebec class;

[17] **APPROVES** the Plan of Distribution and Allocation as attached hereto as Schedule "B";

[18] **APPOINTS** Gilardi & Co. LLP as Claims Administrator to carry out the duties described in the Settlement;

[19] **ORDERS** that Gilardi & Co. LLP shall maintain the records necessary for the purposes of withholding, in favour of the *Fonds d'aide aux recours collectifs*³, any sums required by the Settlement or by law;

[20] **DECLARES** that this Court shall have jurisdiction over Gilardi & Co. LLP and all of its employees, subcontractors and agents;

[21] **DECLARES** that any information received by the Gilardi & Co. LLP in connection with the Settlement that pertains to a particular member of the Quebec class shall be deemed confidential, and the Claims Administrator shall not disclose such information to any other settlement class member or any third party, except with authorization from this Court or with the written consent of the member of the Quebec class to whom such information pertains;

[22] **DECLARES** that Gilardi & Co. LLP shall distribute the Settlement Fund in accordance with the requirements of the Plan of Distribution and Allocation, the Settlement and this judgment;

[23] **APPOINTS** Siskinds Desmeules s.e.n.c.r.l.⁴ to act as counsel for the Quebec class;

³ Translator's Note: "The Fonds d'aide aux recours collectifs is an assistance fund for class action suits established under the [Quebec] Act respecting class actions." (<http://www.justice.gouv.qc.ca/english/ministere/organisation/organism-a.htm#recours>).

⁴ Translator's note: "s.e.n.c.r.l." is the French equivalent of "LLP" (this law firm has no official English commercial name).

[CERTIFIED TRUE TRANSLATION]

- [24] **DECLARES** that, no later than February 28 of each calendar year during the claims period, class counsel shall file with this Court and serve upon counsel for Defendants IPEX an annual status report regarding the Settlement Fund;
- [25] **DECLARES** that the annual report shall identify the number of claims submitted, the amount of each claim, the number of claims paid and the amount paid, the interest accrued on the funds contained in the Settlement Fund, and the balance remaining in the Settlement Fund;
- [26] **DECLARES** that this Court shall have jurisdiction over motions brought by class counsel or any member of the Quebec class to amend the Plan of Distribution and Allocation in order to accelerate the initial payment or increase the amount thereof provided by the Plan of Distribution and Allocation, or to define or clarify the method for determining the final payment provided by the Plan of Distribution and Allocation;
- [27] **DECLARES** that, at any time during the claims period, class counsel and any member of the Quebec class may bring a motion for directions from this Court with regard to the Plan of Distribution and Allocation, in which case this Court may request submissions and may, for such purpose, convene a hearing regarding the Plan of Distribution and Allocation;
- [28] **DECLARES** that, notwithstanding any other provision hereof, this Court shall retain the power and jurisdiction to refuse to allow increased, full, or accelerated payment of qualifying claims before the end of the claims period, in order to ensure that all qualifying claimants are treated equally regardless of when their claim is submitted;
- [29] **DECLARES** that Defendants IPEX shall retain the right to object to or comment on class counsel's annual report or any position asserted by class counsel, the subrogated insurers or others regarding the Plan of Distribution and Allocation;
- [30] **DECLARES** that members of the Quebec class may file a claim under the Settlement by filling out the claims form, sent by mail to the Claims Administrator at the address specified on the claims form, postmarked before the claims deadline;
- [31] **DECLARES** that the claims period shall be eight years from the effective date, that each member of the Quebec class who fails to submit a claims form to the Claims Administrator in accordance with the provisions of the Settlement by the claims deadline shall not be entitled to any payment of funds from the Settlement Fund;
- [32] **DECLARES** that if any funds remain in the Settlement Fund at the end of the claims period after completion of the claims process and implementation of the Plan of Distribution and Allocation, all such remaining funds together with the interest accrued thereon shall be paid within sixty days by the Claims Administrator to the IPEX funding entities, subject to any statutory withholdings in favour of the *Quebec Fonds d'aide aux recours collectifs* in relation to such portion of such remaining funds;

[CERTIFIED TRUE TRANSLATION]

[33] **DECLARES** that the Court shall retain jurisdiction over the matter, *inter alia* to oversee the performance of the agreement and decide any disputes between members of the Quebec class and Gilardi & Co. LLP;

[34] **THE WHOLE** without costs.

[SIGNATURE]

JEAN-FRANÇOIS ÉMOND, J.S.C.

Mtre. Simon Hébert
Siskins, Desmeules s.e.n.c.r.l.
Attorneys for the Plaintiffs

Mtre. Christopher Richter
Mtre. Rafal Jeglinski
Woods LLP
Attorneys for the Defendants

Date of hearing: December 1, 2011

CANADA

PROVINCE OF QUEBEC
DISTRICT OF QUEBEC

NO: 200-06-000121-098

SUPERIOR COURT
(CLASS ACTION)

KAREN COOKE AND TERRY COOKE,

- and -

**COOPÉRATIVE D'HABITATION
LÉZARTS,**

- and -

STÉPHANIE MORISSETTE,

Plaintiffs

v.

IPEX INC.,

Defendant

AFFIDAVIT

I, Christian Robitaille, residing and domiciled at 5498 Hutchison Street, H2V 4B3, in the City of Montreal, Province of Quebec, Canada, do hereby solemnly affirm as follows:

1. I am fluent in the French language and the English language;
2. I hold a bachelor's and a master's degree in law;
3. I am a professional legal translator with over 15 years of experience;
4. I have carefully examined a copy of the original French version of the judgment on a motion for approval of a settlement handed down on December 9, 2011 by Mr. Justice Jean-François Émond of the Superior Court for the District of Quebec City, in the Province of Quebec, Canada, in the case of *Karen Cooke and Terry Cooke and Coopérative d'habitation Lézarts and Stéphanie Morissette v. IPEX Inc.*, Superior Court file number 200-06-000121-098;


5. I am the author of the attached document, drafted in the English language, being a translation of the aforementioned judgment, and consisting of 5 pages which I have initialized; and
C.R.
6. To the best of my knowledge and belief, the attached document is a true, accurate and correct translation, in the English language, of the aforementioned judgment
7. All the facts alleged in the present Affidavit are true.

AND I HAVE SIGNED:



CHRISTIAN ROBITAILLE

SOLEMNLY affirmed before me
in Montreal, on December 16, 2011



Commissioner of Oaths #134 898

