

SUPERIOR COURT

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No: 500-06-000344-065

DATE: October 27th, 2011

By: **THE HONOURABLE PAUL-MARCEL BELLAVANCE, J.S.C.**

CARTISE SPORTS INC.

Plaintiff

vs

CARGOLUX AIRLINES INTERNATIONAL S.A. et als.

Defendants

JUDGMENT

- [1] **WHEREAS** the parties hereto are involved in a Class Action;
- [2] **WHEREAS** Plaintiff now seeks a Judgment of this Court approving the Settlement Agreement entered into with Cargolux Airlines International S.A. ("Cargolux");
- [3] **WHEREAS** having taken cognizance of the materials filed relating to the Motion herein, including the Settlement Agreement attached to this Judgment as "Schedule A" (the "Settlement Agreement") and on hearing the submissions of counsel for the Plaintiff and counsel for Cargolux, Defendant;
- [4] **WHEREAS** on being advised that the Plaintiff and Cargolux, Defendant consent to this Judgment, and and having heard the submissions of the Non-Settling Defendants;
- [5] **WHEREFORE, THIS COURT:**
- [6] **GRANTS** Plaintiff's Motion for Approval of a Settlement Transaction;

[7] **ORDERS AND DECLARES** that in addition to the definitions used elsewhere in this Judgment, for the purposes of this Judgment, the definitions set out in the Settlement Agreement apply to and are incorporated into this Judgment and form an integral part thereof;

[8] **ORDERS** that the Action be authorized as a class action as against Cargolux only and for settlement purposes only;

[9] **ORDERS** that the Québec settlement class (the "Settlement Class" and "Settlement Class Members") be defined as:

all individuals resident in the province of Québec and all legal persons established for a private interest, partnership or association in the province of Québec which, at all times between May 5, 2005 and May 5, 2006, had under its direction or control no more than 50 persons bound to it by a contract of employment, who purchased Airfreight Shipping Services during the Purchase Period, including those legal persons who purchased Airfreight Shipping Services* through freight forwarders, from any air cargo carrier, including without limitation, the Defendants, and specifically including Cargolux. Excluded from the Québec Settlement Class are the Defendants and their respective parents, employees, subsidiaries, affiliates, officers and directors, and Persons who validly and timely opted-out of the Québec Action in accordance with the order of the Québec Court dated April 14, 2008.

* Airfreight Shipping Services means airfreight cargo shipping services for shipments within, to, or from Canada, but specifically excluding airfreight shipping services for shipments to or from the United States.

[10] **ORDERS** that Cartise Sports Inc. be appointed as the representative plaintiff for the Settlement Class;

[11] **ORDERS** that the Settlement Agreement is fair, reasonable and in the best interests of the Settlement Class and constitutes a transaction within the meaning of Article 2631 of the Civil Code of Québec, which is binding on all Parties and the Settlement Class Members;

[12] **ORDERS** that the Settlement Agreement is hereby approved pursuant to Article 1025 of the Code of Civil Procedure and shall be implemented in accordance with its terms. Where any term of this Judgment and the Settlement Agreement conflict, the term contained in this Judgment shall govern;

[13] **ORDERS** that the Settlement Agreement is incorporated by reference into and forms part of this Judgment, and is binding upon the representative Plaintiff and all Settlement Class Members;

[14] **ORDERS** that, upon the Effective Date, each Settlement Class Member shall consent and shall be deemed to have consented to the dismissal as against the Released Parties of any and all of the Settlement Class Member's Released Claims, he, she or it has commenced in Quebec, without costs;

[15] **ORDERS** that, upon the Effective Date, any and all Released Claims commenced in Quebec by any Settlement Class Member shall be dismissed against the Released Parties, without costs;

[16] **ORDERS** that, upon the Effective Date, each Releasing Party has released and shall be conclusively deemed to have forever and absolutely released the Released Parties from from any and all Claims arising from or in any way related to the Released Claims;

[17] **ORDERS** that each Releasing Party shall not now or hereafter institute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other person, any action, suit, cause of action, claim or demand against any Released Parties or any other person who may claim contribution or indemnity from any Released Parties in respect of any Released Claim or any matter related thereto, except for the continuation of the Action against the Non-Settling Defendants or unnamed co-conspirators;

[18] **DECLARES** that, pursuant to the Settlement Agreement, Plaintiff and the Settlement Class Members expressly waive and renounce the benefit of solidarity against the Non-Settling Defendants with respect to the facts, deeds, or other conduct of Cargolux;

[19] **ORDERS** that any action in warranty or any other claim or joinder of parties to obtain any contribution or indemnity from Cargolux relating to the Released Claims shall be inadmissible, null and void in the context of this class action;

[20] **ORDERS** that Plaintiff and the Settlement Class Members shall henceforth only be able to claim and recover damages, including punitive damages, interests and costs (including investigative costs claimed pursuant to s. 36 of the Competition Act) attributable to the proportionate liability of the Non-Settling Defendants, the sales by the Non-Settling Defendants, and/or other applicable measure of the proportionate liability of the Non-Settling Defendants; "proportionate liability" means that proportion of any judgment that the court attributes or apportions to the several liability of any Non-Settling Defendant whether pursuant to *pro rata*, proportionate fault, *pro tanto* or another method;

[21] **DECLARES** that the rights of the Non-Settling Defendants to examine on discovery a representative of Cargolux shall be governed by the rules of the Code of Civil Procedure, and Cargolux shall retain and reserve all of their rights to oppose such discovery under the Code of Civil Procedure;

- [22] **DECLARES** that a Non-Settling Defendant may validly serve the proceedings referred to in the preceding paragraph on Cargolux by serving such proceedings to Cargolux's lawyers, as identified in the Settlement Agreement;
- [23] **ORDERS** that for purposes of enforcement of this Judgment, this Court will retain an ongoing supervisory role and Cargolux will attorn to the jurisdiction of this Court for these purposes;
- [24] **ORDERS** that except as provided herein, this Judgment does not affect any Claims that any Settlement Class member has or may have against the Non-Settling Defendants or unnamed co-conspirators in the Action;
- [25] **ORDERS** that the Released Parties have no responsibility for and no liability whatsoever with respect to administration of the Settlement Agreement;
- [26] **ORDERS** that the Settlement Amount be held in trust for the benefit of the Settlement Class, pending further order of this Court, which shall be sought by the Plaintiff on a motion in the Action, brought on notice to Cargolux;
- [27] **ORDERS** that the Action be and is hereby settled with Cargolux without costs;
- [28] **ORDERS** that this Judgment shall be declared null and void in the event that the Settlement Agreement is terminated in accordance with its terms.
- [29] **ORDERS** that this Judgment is contingent upon the approval of the Ontario Court and BC Court of the same Settlement Agreement and this Judgment will be of no force and effect if such approval is not secured in Ontario and British Columbia;
- [30] **THE WHOLE** without costs.



PAUL-MARCEL BELLAVANCE, J.S.C.

