

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT
(Class Action)

N^o.: 500-06-001104-203

BENJAMIN VIOT

Plaintiff

v.

U-HAUL CO. (CANADA) LTÉE.

and

WEB TEAM ASSOCIATES INC.

Defendants

**APPLICATION FOR LEAVE TO ADDUCE RELEVANT EVIDENCE OF THE
DEFENDANTS, U-HAUL CO. (CANADA) LTÉE. AND WEB TEAM ASSOCIATES INC.**

(ART. 574 al. 3 CCP)

**TO THE HONOURABLE PIERRE-C. GAGNON OF THE SUPERIOR COURT, ACTING
AS THE DESIGNATED JUDGE IN THE PRESENT CASE, DEFENDANTS U-HAUL CO.
(CANADA) LTÉE. AND WEB TEAM ASSOCIATES INC., RESPECTFULLY SUBMIT
AS FOLLOWS:**

Introduction

1. The Defendants, U-Haul Co. (Canada) Ltée. ("**U-Haul Canada**") and Web Team Associates Inc. ("**Web Team**") are seeking leave from this Honourable Court to file relevant evidence to be used in the context of the hearing of the *Demande d'autorisation d'exercer une action collective et pour être représentant* (the "**Application for Authorization**"), the whole pursuant to article 574 al. 3 of the *Code of Civil Procedure* (the "**CCP**").
2. More specifically, U-Haul Canada seeks leave to (i) adduce a solemnly affirmed declaration from Ryan Baldwin (the "**Declaration**"), Vice President of Rates and Distribution of U-Haul International Inc., together with Exhibit RB-1 and (ii) examine the Class Applicant, Mr. Viot, in order to ensure that the Court has the necessary facts to fairly consider the criteria for authorization set out at article 575 CCP. The Declaration is communicated thereto as **Exhibit-A1**.

The Application for Authorization

3. By way of the Application for Authorization dated November 18, 2020, Mr. Viot seeks to initiate a class action proceeding against U-Haul Canada and Web Team on behalf of the following class:

“Tout consommateur ayant conclu un contrat, au Québec, auprès des défenderesses, ayant pour objet la location d’un véhicule, depuis le 18 novembre 2017 et ayant payé un montant supérieur à celui initialement annoncé, à l’exception de la TPS, la TVQ et des droits exigibles en vertu d’une loi fédérale ou provinciale lorsque, en vertu de cette loi, ces droits doivent être perçus directement du consommateur pour être remis à une autorité publique” (the “Proposed Class”);

4. Mr. Viot alleges that the Defendants have violated sections 218, 224 and 228 of the *Consumer Protection Act* (the “CPA”).
5. He alleges that the Defendants have misled consumers in the context of vehicle rentals in order to give consumers the false impression that they have access to some rental prices that would not be, in reality, the charged prices.
6. As a result, Mr. Viot seeks to obtain the following condemnations: (i) the difference between the amount paid and the amount allegedly advertised and (ii) punitive damages for an amount to be determined.
7. With respect to his personal situation, Mr. Viot alleges at paragraph 3.15 of the Application for Authorization, that on August 30, 2019, he booked a 9-foot van on U-Haul Canada’s website “www.uhaul.com”, as would appear from Exhibits P-3 and P-10 in support of the Application for Authorization.
8. He further alleges, at paragraph 3.19 of the Application for Authorization, that he saw the amount charged for the kilometres only at the second step of the booking process on the website.
9. He claims, at paragraphs 3.17 and 3.18 of the Application for Authorization, that he rented the van after seeing U-Haul Canada’s advertisement: “\$19.95 plus km/fees”, without providing further details.
10. On August 31, 2019, he then rented the 9-foot van for a period of 3 hours and 3 minutes and for a total distance of 14,1 kilometres, as appears from paragraph 3.16 of the Application for Authorization.
11. According to Mr. Viot and stated at paragraph 3.20 of the Application for Authorization, when he went to take possession of the car, a U-Haul Canada representative insisted that he took an additional insurance for an amount of \$18 and he felt compelled to accept this addition to the final price to be paid.

12. Mr. Viot, at paragraph 3.47, incorrectly states (without any factual basis in support) that the Defendants have the means and the ability to advertise the complete price when they first show the price to customers, but that they have made the choice to mislead consumers instead.
13. Moreover, he incorrectly infers (without specific evidence) that all booking and rental processes as well as the representations made (either online, in-person and by phone) are the same, without drawing the appropriate distinctions for each booking channel.

The Usefulness of the Proposed Declaration for Authorization Assessment

14. The allegations contained in the Application for Authorization only partially depict the factual matrix of the case, with respect to:
 - i. The different booking and rental processes of U-Haul Canada (either online, in-person or by phone);
 - ii. The different types of bookings offered by U-Haul Canada, in particular the difference between in-town rentals and one-way bookings;
 - iii. The operations of U-Haul Canada's website and, in particular, the legal relationship between U-Haul Canada and Web Team;
 - iv. The fact that the online booking process is not a sales transaction but rather a reservation process to provide estimates offered by U-Haul Canada to customers;
 - v. That U-Haul Canada cannot provide a final price until the rental vehicle has been returned because U-Haul Canada is not certain of the customers specific needs with the rental vehicle; and
 - vi. The specific circumstances and facts surrounding the booking and rental process of Mr. Viot in August 2019.
15. Therefore the Declaration and the Exhibit attached thereto will permit to clarify, complete and correct the factual elements and allegations raised in the Application for Authorization with respect to the above-mentioned elements.
16. The Declaration will also enlighten the Court as to the whole booking and rental processes deployed by U-Haul Canada either online, by phone or in person during the class period.
17. In addition, the Declaration will serve to clarify the legal relationship between U-Haul Canada and Web Team and the ownership, operation and control of U-Haul Canada's online platform, since the Application for Authorization only contains, at paragraphs 2.4 to 2.6, general allegations on the fact that Web Team acts as an

intermediary for U-Haul Canada, without specific factual details on the relationship between the two entities.

18. The Declaration will also shed light on the services comprised in a booking process and the way estimated rental fees are calculated and ultimately charged by U-Haul Canada with regards to different information that can only be provided by the customer.
19. The Declaration will explain how the estimated rental fees are calculated based on parameters that have been set out by the customer, such as the date and the duration of the rental as well as the type of truck to be rented.
20. Finally, the Declaration will help clarify the specific steps that both U-Haul Canada and Mr. Viot undertook during the booking of Mr. Viot's rental in August 2019.
21. All of the elements mentioned above will permit to this Honourable Court to determine if Mr. Viot has sufficiently pleaded his personal cause of action.
22. This will further allow this Honourable Court to have all of the necessary facts in its assessment of the criteria provided at Article 575 CCP.

The Usefulness of the Proposed Examination of Class Applicant for Authorization Assessment

23. The Examination of Class Applicant, for a period up to 2 hours, will also be useful to assess if the criteria for authorization are met, and more particularly to determine:
 - i. The specific "ads" consulted by Class Applicant before booking online, as appears notably from paragraph 3.18 of the Application for Authorization and his understanding of these "ads";
 - ii. The circumstances surrounding the online booking made by Class Applicant and the specific representations made by U-Haul Canada's representative to Mr. Viot about the prices and services offered, as notably alleged at paragraphs 3.20 to 3.24 and 4.5;
 - iii. His understanding of the different types of bookings offered by U-Haul Canada and the homogeneity (or lack thereof) of his proposed Class;
 - iv. The verifications made by the Class Applicant with regards to the Proposed Class, including (a) the efforts made to obtain knowledge on the class members; (b) to ensure that the class members support the Application for Authorization and (c) to verify if the class members suffered similar issues;
 - v. The verifications made by the Class Applicant regarding his alleged damages, in particular the cost of alternative truck rentals at U-Haul Canada or the other

rental companies; and

vi. The circumstances in which the plaintiff has accepted to act as Class Applicant and his qualifications to act as Class Applicant.

24. The answers to be provided concerning these circumscribed subjects are necessary for this Honourable Court to assess:

i. If the claims of the class members raise identical, similar or related issues of law or fact (art. 575 (1) CCP);

ii. If the facts alleged appear to justify the conclusions sought (art. 575 (2) CCP);

iii. If the Class Applicant has a viable personal claim with regards to the facts alleged and is in a position to properly represent the class members (575 (4) CCP); and

iv. The scope and definition of the proposed class.

Conclusion

25. In light of the foregoing, U-Haul Canada respectfully submits that the Declaration and the examination of Class Applicant are necessary, useful and reasonable in order for this Honourable Court to take cognizance of relevant facts in order to determine whether Mr. Viot has an “arguable case” and whether the authorization criteria set out at article 575 CCP are met.

26. Under the circumstances, the present application is proportional and in the interest of justice.

27. Moreover, such evidence will be helpful to determine the appropriate class description and identify the questions to be dealt with collectively, if necessary, as required by article 576 CCP.

28. This application is well founded in fact and in law.

WHEREFORE, MAY PLEASE THE COURT TO:

GRANT the present *Application for Leave to Adduce Relevant Evidence of the Defendants, U-Haul Co. (Canada) Ltée. and Web Team Associates Inc.*;

AUTHORIZE the Defendants, U-Haul Co. (Canada) Ltée. and Web Team Associates Inc., to submit and file into the Court record the Declaration of Ryan Baldwin (Exhibit-1A), together with Exhibit RB-1:

AUTHORIZE U-Haul Co. (Canada) Ltée. and Web Team Associates Inc. to examine the proposed Class Applicant, Benjamin Viot, for a period of 2 hours before the hearing of the *Demande d'autorisation d'exercer une action collective et pour être représentant*;

THE WHOLE without costs, except in the event of contestation.

MONTREAL, April 30, 2021



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Plaintiff

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NOTICE OF PRESENTATION

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TAKE NOTICE that the *Application for leave to adduce relevant evidence of the Defendants, U-Haul Co. (Canada) Ltée and Web Team Associates Inc. (Art. 574 (3) C.C.P.)* will be presented for adjudication before the Honourable Pierre-C. Gagnon, at a

time and room to be determined by the Court and by a technological means to be determined and communicated to the parties.

PLEASE GOVERN YOURSELF ACCORDINGLY.

MONTREAL, April 30, 2021



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