SUPERIOR COURT

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No: 500-11-055722-181
500-11-054155-185

DATE: February 3, 2020

BEFORE: THE HONOURABLE PETER KALICHMAN, J.S.C.

500-11-055722-181

CALIFORNIA STATE TEACHERS' RETIREMENT SYSTEM
Applicant
c.
BAUSCH HEALTH COMPANIES INC.
and
J. MICHAEL PEARSON
and
HOWARD B. SCHILLER
and
ROBERT L. ROSIELLO
and
ROBERT A. INGRAM
and
RONALD H. FARMER
and
THEO MELAS-KYRIAZI
and
G. MASON MORFIT
and
DR. LAURENCE PAUL
and

JK0261

ROBERT N. POWER
and
NORMA A. PROVENCIO
and
LLOYD M. SEGAL
and
KATHARINE B. STEVENSON
and
FRED HASSAN
and
COLLEEN GOGGINS
and
JEFFREY W. UBBEN
and
PRICEWATERHOUSECOOPERS LLP
and
AIG INSURANCE COMPANY OF CANADA
and
ALLIANZ GLOBAL RISKS US INSURANCE COMPANY
and
EVEREST INSURANCE COMPANY OF CANADA
and
ROYAL & SUN ALLIANCE INSURANCE COMPANY OF CANADA
and
TEMPLE INSURANCE COMPANY
and
XL INSURANCE COMPANY SE
and
CHUBB INSURANCE COMPANY OF CANADA (FORMERLY ACE INA INSURANCE)
and
IRONSHORE CANADA LTD.
and
LIBERTY MUTUAL INSURANCE COMPANY
and
LLOYD'S UNDERWRITERS
Defendants

500-11-054155-185

BLACKROCK ASSET MANAGEMENT CANADA
and
iSHARES TRUST
and
ISHARES INC.

and
BLACKROCK INSTITUTIONAL TRUST COMPANY, N.A.
Applicants
vs
BAUSCH HEALTH COMPANIES INC.
and
J. MICHAEL PEARSON
and
HOWARD B. SCHILLER
and
ROBERT L. ROSIELLO
and
ROBERT A. INGRAM
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RONALD H. FARMER
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and
NORMA A. PROVENCIO
and
LLOYD M. SEGAL
and
KATHARINE B. STEVENSON
and
FRED HASSAN
and
COLLEEN GOGGINS
and
JEFFREY W. UBBEN
Defendants

JUDGMENT
(Motions for authorization to bring actions pursuant to section 225.4 of the *Quebec Securities Act*)

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1. OVERVIEW

[1] Blackrock Assett Management Canada, iShares Trust, iShares Inc. and Blackrock Institutional Trust Company, N.A. (collectively **Blackrock**) and the California States Teachers' Retirement System (**CalSTRS**) seek authorization to bring actions in damages pursuant to section 225.4 of the *Quebec Securities Act* (**QSA**) against Valeant Pharmaceuticals International Inc. (n/k/a Bausch Health Companies Inc.) (**Valeant**) and other Defendants (the **Motions for Authorization**).

[2] The Applicants assert that as a result of Defendants' misrepresentations, the price of the Valeant securities they acquired in the secondary market[1], was artificially inflated. As these misrepresentations began to be publicly corrected, the price of Valeant securities dropped and the Applicants suffered damages.

[3] Division II of Chapter II of the *QSA* sets out a specific regime for the type of claims that the Applicants seek to bring. In order to benefit from that regime, the Applicants need court authorization. Such authorization is granted when an applicant establishes that it is acting in good faith and that there is a reasonable possibility that its action will be resolved in its favour.[2]

[4] On August 29, 2017, Chantal Chatelain, J.S.C. authorized Celso Catucci and Nicole Aubin to bring in one proceeding, a class action and an action pursuant to section 225.4 QSA against Valeant and many of the Defendants in the present matter (the **Catucci Authorization Judgment**). For all intents and purposes, the facts underlying the action which Justice Chatelain authorized (the **Catucci Class Action**) are the same as those at issue here. In fact, the parties have agreed to proceed on the same evidence.[3]

[5] Both CalSTRS and Blackrock were members of the class described in the Catucci Authorization Judgment. However, they each opted out of the Catucci Class Action and now seek to bring their own actions under the *QSA*. Blackrock filed its Motion for Authorization on March 2, 2018 while CalSTRS' was filed on December 19, 2018.

[6] Unlike the Catucci Class Action, in which the motion for authorization was the subject of a full-blown contestation, the contestation by the prospective Defendants in the present matter is extremely limited in scope. They argue that the Motions for Authorization should be denied because the Applicants' rights of action under the QSA have been forfeited or prescribed. The Defendants contend that the Applicants had until

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1 Generally this refers to the market in which previously issued securities are publicly traded. See section 225.2 QSA.

2 Section 225.4 QSA.

3 See Lists of factual admissions relevant to the hearing of both Applications for Authorization to bring an action in damages pursuant to Section 225.4 of the Securities Act (the **Lists of Admissions**).

March 5, 2018, to bring their claims under the QSA and that their failure to do so is fatal to the claims they seek to bring.

[7] In the case of Blackrock, the Defendants recognize that the Motion for Authorization was filed before March 5, 2018 but argue that it is the claim itself and not the request for authorization that needed to be brought within that delay. Since the delay could not be extended or, in the alternative, was not extended, the Defendants argue that Blackrock's claim has either been forfeited or prescribed. Either way, they argue, Blackrock has no reasonable possibility of success and its Motion for Authorization should therefore be denied.

[8] As far as CalSTRS is concerned, the Defendants emphasize that the Motion for Authorization was filed on December 19, 2018, many months after the delay had expired. Consequently, they argue that even if the Motion for Authorization was all that had to be filed by March 5, 2018, which they do not accept, CalSTRS would still have been outside the delay. They add that since the delay could not be extended or, in the alternative, was not extended, that CalSTRS' claim, like that of Blackrock, has been forfeited or prescribed. They argue that CalSTRS therefore has no reasonable chance of success and that its Motion for Authorization should also be denied.

[9] Except for the arguments of forfeiture and prescription, the Defendants do not contest that CalSTRS and Blackrock meet the threshold for authorization to bring their actions under the *QSA*.

[10] Before analyzing the arguments, it is useful to summarize the context in which the Motions for Authorization are presented. Because the claims which the Applicants seek authorization to bring are based on the same allegations and evidence as in the Catucci Class Action, the summary will begin there.

2. CONTEXT

[11] The Catucci Authorization Judgment traces in detail the corporate history of Valeant leading up to and following the institution of proceedings in the Catucci Class Action. The following section highlights certain essential facts that were contained in the detailed description prepared by Justice Chatelain.

[12] Valeant is a specialty pharmaceutical and medical device company that develops, manufactures and markets pharmaceuticals, over-the-counter products and medical devices.

[13] Valeant was established as a result of the amalgamation of Valeant Pharmaceuticals International and Biovail Corporation International. It is governed by the *British Columbia Business Corporations Act* and its corporate headquarters are in Laval, Quebec.

[14] During the period relevant to the Applicants' prospective claims, Valeant was a reporting issuer[4] in Canada. Its common shares traded in the secondary markets in the United States, Europe and Canada.

[15] In the years leading up to the filing of proceedings in the Catucci Class Action, Valeant experienced massive growth based primarily on a business strategy of acquiring other pharmaceutical businesses.

[16] In January of 2013, Valeant entered into a distribution agreement with Philidor, a specialty pharmacy licensed in several American states.

[17] In December of 2014, Valeant and Philidor entered into a purchase option agreement whereby Valeant made an upfront payment of $100 million and acquired an exclusive option to purchase 100% of the equity interest in Philidor at $0. From that point on, Valeant consolidated Philidor's financial results with its own.

[18] During the summer of 2015, Valeant's shares were trading at more than $340 on the Toronto Stock Exchange (**TSE**). At that time, it had a market capitalization of more than $116 billion, making it the highest-valued company listed on the TSE.

[19] In October of 2015, reports and articles were published calling into question Valeant's business practices through its relationship with Philidor.

[20] On October 26, 2015, the Board of Directors of Valeant announced the establishment of an *ad hoc* committee to review the allegations regarding its business practices (the **Ad Hoc Committee**).[5]

[21] Also on October 26, 2015, Mr. Catucci and Ms. Aubin brought a motion for authorization of a class action and for authorization to bring an action pursuant to s. 225.4 *QSA*.

[22] On October 30, 2015, Valeant issued a press release announcing that it was terminating its relationship and severing all ties with Philidor.[6]

[23] On February 22, 2016, based on the work of the Ad Hoc Committee, Valeant preliminarily determined that approximately US $58 million in net revenues relating to sales to Philidor during the second half of 2014 should not have been recognized upon

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4 According to section 68 *QSA*, a reporting issuer is an issuer that has made a distribution of securities to the public; a reporting issuer is subject to the continuous disclosure requirements of Chapter II of title III of the QSA.

5 P-145 and P-148.

6 Exhibit P-150: Valeant press release titled "Valeant to Terminate Relationship with Philidor", dated October 30, 2015.

delivery of products to Philidor. The sales should rather have been recognized when delivered to patients.[7]

[24] On March 21, 2016, Valeant provided an accounting and financial reporting update. The update states that Valeant's previously issued financial statements for the period from February 25, 2015 to October 26, 2015 "should no longer be relied upon due to the misstatements."

[25] Valeant also announced that it had identified material weaknesses in its disclosure controls and procedures and in its internal control over financial reporting. The Ad Hoc Committee specifically identified certain concerns regarding the "tone at the top of the organization"[8] and non-standard revenue transactions, particularly at or near quarter ends.[9]

[26] On April 5, 2016, Valeant issued a press release indicating that the Ad Hoc Committee had completed its review and that it had not identified any issue beyond what had already been disclosed.

[27] On April 29, 2016, Valeant restated its previously released financial statements.[10] As part of this restatement, Valeant acknowledged that there were misstatements regarding revenue recognition, compliance with Generally Accepted Accounting Principles (**GAAP**) and the efficacy of its internal controls from December 2014 until December 2015. The scope of the misstatements was not limited to the relationship with Philidor.

[28] As a result of the restatement, revenues were reduced by approximately US $58 million and diluted earnings for the year ended December 31, 2014, were reduced by approximately US $33 million or US $0.09 per share.

[29] In the Catucci Class Action, authorization was sought under the QSA to sue the following individuals and entities:

- Valeant;
- Sixteen individuals who were Valeant's directors or officers (the **Individual Defendants**); and

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7 Exhibit P-153: Valeant press release titled "Valeant Ad Hoc Committee has Made Substantial Progress in Its Review of Philidor and Related Accounting Matters", dated February 22, 2016.

8 "Tone at the top" is a term used in the context of internal control and describes the ethical climate in the corporation which is created by its management, board of directors, and the audit committee.

9 Exhibit P-74: Valeant Material Change Report dated March 21, 2016.

10 Exhibit P-78: Valeant Annual Report on Form 10-K for the year ended December 31, 2015, filed on SEDAR on April 29, 2016.

- PricewaterhouseCoopers LLP (**PwC**), Valeant's auditor.

[30] All of the prospective Defendants in the present Motions for Authorization were named as Defendants in the Catucci Class Action.[11]

[31] Justice Chatelain concluded that the applicants in the Catucci Class Action were acting in good faith and that there was a reasonable possibility they would succeed at trial. She therefore concluded that they had satisfied the requirements of the *QSA* as well as those governing class actions, and authorized them to bring a class action to advance their claim in damages under the *QSA*.

[32] On November 30, 2017, leave to appeal from the Catucci Authorization Judgment was denied.

[33] On June 19, 2018, both CalSTRS and Blackrock opted out of the Catucci Class Action. By that time, Blackrock had already filed its Motion for Authorization. CalSTRS filed its Motion for Authorization on December 19, 2018.

3. AUTHORIZATION

3.1 The test for authorization

[34] In 2007, the *QSA* was amended to provide a remedy to investors who allege that they have been harmed by wrongful conduct in the secondary market for publicly-traded securities.[12]

[35] The impetus for this change was the work of a committee created in the 1990's by the TSE (the **Allen Committee**). The Allen Committee concluded that "remedies available to investors in secondary trading markets who are injured by misleading disclosure are so difficult to pursue that they are, as a practical matter, largely hypothetical".[13]

[36] Most of the Allen Committee's recommendations, including the creation of a statutory regime of civil liability, were adopted by a group of provincial and territorial securities regulators and implemented across Canada.

[37] Quebec was the second province, after Ontario, to incorporate the new civil liability regime into its securities legislation, the *QSA*. Under this new regime, investors seeking compensation on the basis of wrongful conduct in the secondary market benefit

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11 Fred Hassan, and Anders O. Lonner are not named in the CalSTRS Motion for Authorization. Anders O. Lonner and PwC are not named in the Blackrock Motion for Authorization.

12 An Act to amend the Securities Act and other legislative provisions, S.Q. 2007, C. 15.

13 Toronto Stock Exchange Committee on Corporate Disclosure, Final Report : Responsible Corporate Disclosure : A Search for Balance (1999), ch. 2, p. 5.

from a "lightened burden" in establishing liability as compared to the general rules of civil liability contained in the Civil Code of Quebec (***CCQ***).[14]

[38] As Justice Chatelain observed in the Catucci Authorization Judgment, there is a significant advantage to investors bringing a claim in damages under the *QSA* as opposed to the general rules of civil liability under the *CCQ*. They benefit from two important rebuttable presumptions. First, they are not required to prove that they relied on the alleged misrepresentation when they acquired or disposed of the security.[15] Second, it is presumed that the loss of value of the security is due to the disclosure that corrects the misrepresentation.[16]

[39] The *QSA* provides for an authorization mechanism to permit only actions that are taken in good faith and that have a "reasonable possibility of success".[17] The criteria are set out at s. 225.4 *QSA*, which reads as follows:

> **225.4.** No action for damages may be brought under this division without the prior authorization of the court.
>
> The request for authorization must state the facts giving rise to the action. It must be filed together with the projected statement of claim and be served by bailiff to the parties concerned, with a notice of at least 10 days of the date of presentation.
>
> The court grants authorization if it deems that the action is in good faith and there is a reasonable possibility that it will be resolved in favour of the plaintiff.
>
> The request for authorization and, if applicable, the application for authorization to institute a class action required under article 574 of the Code of Civil Procedure (chapter C-25.01) must be made to the court concomitantly.

[40] As was noted by both the Quebec Court of Appeal and the Supreme Court of Canada in the *Theratechnologies* case, the new regime reflects "an attempt to strike a balance between preventing unmeritorious litigation and strike suits and, at the same time, ensuring that investors have a meaningful remedy when issuers breach disclosure obligations."[18]

[41] The phrase "reasonable possibility of success" has been interpreted as requiring the claimant to "offer both a plausible analysis of the applicable legislative provisions, and some credible evidence in support of the claim."[19]

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14 *Amaya inc. c. Derome*, 2018 QCCA 120, par. 7.
15 Sections 225.12, 225.17–225.27, QSA.
16 Sections 225.28-225.30 QSA.
17 Section 225.4 QSA.
18 *Theratechnologies Inc. c. 121851 Canada Inc.*, [2015] 2 S.C.R., par. 34.
19 *Theratechnologies Inc. c. 121851 Canada Inc.*, [2015] 2 S.C.R., par. 39.

[42] The Court must therefore be satisfied that the actions the Applicants seek authorization to bring are taken in good faith and that there is a reasonable possibility that they will succeed.

3.2 Good faith and the possibility of success

[43] As far as good faith is concerned, based on the allegations in the Applicants' projected statements of claim and the evidence to which they refer, the Court is satisfied that this requirement has been met.

[44] With respect to the reasonable possibility of success, the Court concludes that if the claims have not been forfeited or prescribed - issues which will be addressed below - then the Applicants have met this requirement as well. The Court's conclusion is based on the following considerations:

- The Catucci Authorization Judgment was rendered on the basis of the same evidence and virtually identical allegations as those at issue here;
- Justice Chatelain identified numerous alleged misrepresentations, which she grouped into the following categories:
    - Failure to disclose relationships with specialty pharmacies and related risks (including misrepresentations regarding Valeant's growth);
    - Misrepresentations regarding GAAP compliance;
    - Misrepresentations regarding the efficacy of Valeant's internal controls;
    - Misrepresentations regarding ethical business conduct of Valeant and Valeant's directors, officers and employees; and
    - Reiteration of the misrepresentations in press releases.
- For each of the different categories of misrepresentation, Justice Chatelain held that there was a reasonable possibility the Applicants would succeed at trial. Her conclusion was based on a detailed and thorough analysis of the extensive evidence before here, which included numerous expert reports;
- Justice Chatelain thus concluded that the Catucci applicants had satisfied the requirements under the *QSA* as well as those governing class actions, and authorized them to bring a class action to advance their claim in damages under the *QSA;*

- Leave to appeal the Catucci Authorization Judgment was denied;

- The prospective Defendants here, all of whom were Defendants in the Catucci Class Action, admit that except for their forfeiture and/or prescription arguments, there is a reasonable chance the Applicants' actions will succeed; and

- Although judges of the same court are not bound by the decisions of their colleagues, they should, as a general rule, follow each other's decisions unless there is a significant reason not to do so.[20] The Court sees no reason much less a significant reason, to reach a different conclusion than that of Justice Chatelain in the Catucci Authorization Judgment.

[45] Having concluded that the criteria for authorization are otherwise met, the Court will analyze the arguments of forfeiture and prescription. The Court will first consider whether or not the Applicants' claims have been forfeited. It will then turn to the argument of prescription.

3.3 Have the Applicants' claims been forfeited?

a) Introduction

[46] While there are important distinctions in their arguments, the Defendants all agree that s. 236 (3) *QSA* creates a delay of forfeiture that extinguishes the claims of both Applicants. Section 236 *QSA*, as well as the preceding section to which it refers, are reproduced below:

> **235.** Any action for damages under this title is prescribed by the lapse of three years from knowledge of the facts giving rise to the action, except on proof that tardy knowledge is imputable to the negligence of the plaintiff.
>
> However, in the case of an action under Division II of Chapter II, the plaintiff is deemed to have knowledge of the facts as of the date on which the document containing the misrepresentation was first released, the oral public statement containing the misrepresentation was made or the material change should have been disclosed.
>
> **236.** However, the prescriptive periods under section 235 are subordinate to the following limitations:
>
> (1) five years from the transaction, in the case of actions for damages provided for in sections 214, 215, 226, 227 and 228;
>
> (2) five years from the filing of the information document with the Authority, in the case of actions under sections 218, 219, 221, 223 and 225;

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[20] See *R. c. Bebawi,* 2019 QCCS 4393, pars. 24-32, in which Justice Cournoyer summarizes the principal of horizontal *stare decisis* and provides examples of its application.

> (3) six months from the publication of the press release announcing that authorization has been granted by the court to bring an action under Division II of Chapter II or comparable provisions of extra-provincial securities laws within the meaning of section 305.1 regarding the same misrepresentation or failure to make timely disclosure, in the case of actions under that division.

[47] The starting point of the six-month delay set out in s. 236 (3) *QSA* is the publication of a press release announcing that authorization has been granted to bring an action under Division II of Chapter II of the *QSA*. There is no dispute that the Catucci Authorization Judgment is such a judgment and that it is based on the same misrepresentations as are at issue here. According to Defendants, the press release contemplated by s. 236 (3) *QSA* was issued on September 5, 2017 (**the September 5, 2017 Press Release**[21]), which would make March 5, 2018 the end of the six-month limitation period.

[48] If s. 236 (3) of the *QSA* is a delay of forfeiture, as Defendants contend, that would mean that CalSTRS' claim was forfeited as its Motion for Authorization was only filed in December of 2018. Although Blackrock's Motion for Authorization was filed on March 2, 2018, before the six-month deadline, its claim would still have been forfeited according to Defendants, because merely seeking authorization is not what s. 236 (3) *QSA* contemplates and because a delay of forfeiture can neither be suspended nor interrupted.

[49] Before analyzing the Defendants' arguments in more detail, it is useful to review the guiding principles in regards to delays of forfeiture.

b) Guiding Principles

[50] A delay of forfeiture (délai de déchéance) establishes a strict deadline for the accomplishment of an act, such as the bringing of an action. If the act is not carried out within the delay, it is forfeited.

[51] Unlike a delay of prescription, a delay of forfeiture cannot be suspended or interrupted.[22] Furthermore, because it is a matter of public order, courts are bound to raise delays of forfeiture, regardless of whether or not the parties do.

[52] A delay of forfeiture is never presumed: "it results only where expressly provided for in a text."[23] While it is not necessary for the term "forfeiture" to actually appear, concluding that "the general scheme of prescription does not apply nonetheless requires clear, precise and unambiguous language."[24] If there is any ambiguity as to

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21 Tab 8 of the List of Admissions.
22 Céline GERVAIS, *La prescription*, Cowansville (Qc), Yvon Blais, 2009, p. 9.
23 Art. 2878 *CCQ*.
24 *L'Oratoire Saint-Joseph du Mont-Royal v. J.J.*, 2019 SCC 35, par. 126.

whether or not a text of law creates a delay of forfeiture, it must be interpreted as a prescriptive period.[25]

[53] While there is no definitive list of criteria by which to identify a delay of forfeiture, two characteristics have emerged as being useful in the analysis: first, the wording used and the context in which the provision applies; second, the policy objective of the provision.[26]

c) The position of the Defendants

[54] With the exception of PwC, the Defendants all have the same reading of s. 236 (3) *QSA*. Their position was advanced by Valeant, which argued that although the term "forfeiture" does not appear in the text, the Legislator's intention is clear both from the precise words used, the procedural context in which the provision applies and the objective sought.

[55] Valeant argues that unlike the time periods described in s. 235 *QSA*, those set out in s. 236 are not labelled as prescription. Furthermore, by making the three-year prescriptive period set out in s. 235 *QSA*, "subordinate" to the limitations imposed by s. 236 *QSA*, Valeant contends that it is clear that the Legislator intended for the six-month delay to be strict. It adds that the extremely short length of the delay is itself an indication of the Legislator's intention to create a delay of forfeiture.

[56] Valeant maintains that while the primary objective of the civil liability regime set out in Division II of Chapter II the *QSA* may be to make it easier for investors to successfully sue reporting issuers, the purpose of s. 236 (3) *QSA* is different. By imposing a six month limit, the Legislator intended to ensure that actions based on the same alleged misrepresentations would be brought quickly, thus serving the public interest in the stability of capital markets. This objective, it argues, is clear from the legislative debates surrounding the adoption of this provision.[27]

[57] Finally, Valeant raises an argument based on a July 2018 amendment to s. 235 *QSA*. While the parties all agree that the amendment has no direct application to the questions at issue, Valeant maintains that it nonetheless reinforces its reading of sections 235 and 236(3) *QSA*. By virtue of the amendment, the Legislator provided that the filing of a request for authorization would suspend the three-year prescription of s. 235 *QSA*. As amended, that provision now reads as follows:

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25 *L'Oratoire Saint-Joseph du Mont-Royal v. J.J.*, 2019 SCC 35, par. 125.

26 *L'Oratoire Saint-Joseph du Mont-Royal v. J.J.*, 2019 SCC 35, par. 127; Alexandre v. Dufour, J.E. 2005-36 (C.A.), par. 33.

27 Québec, Assemblée nationale, Journal des débats de la Commission permanente des finances publiques, « Étude détaillée du projet de loi no 19 – Loi modifiant la Loi sur les valeurs mobilières et d'autres dispositions législatives » in *Journal des débats de la Commission permanente des finances publiques*, vol. 40, no. 10 (25 octobre 2007), at p. 22ff.

> **235**. Any action for damages under this title is prescribed by the lapse of three years from knowledge of the facts giving rise to the action, except on proof that tardy knowledge is imputable to the negligence of the plaintiff.
>
> However, in the case of an action under Division II of Chapter II, the plaintiff is deemed to have knowledge of the facts as of the date on which the document containing the misrepresentation was first released, the oral public statement containing the misrepresentation was made or the material change should have been disclosed.
>
> The prescription provided for by this section is suspended by the filing of a request for authorization with the court under section 225.4; moreover, the suspension of prescription provided for by article 2908 of the Civil Code is effective only as of the filing of that request. The suspension ceases, as the case may be,
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> (1) when the court has rendered its decision on the request for authorization and the decision can no longer be appealed;
>
> (2) when the plaintiff has discontinued the action; or
>
> (3) at the time provided for in article 2908 of the Civil Code, with respect to a member of the group that is the object of a class action who is excluded from the class action by a judgment subsequent to that authorizing the action under section 225.4.
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> (Underlining added by the Court to highlight the amendment)

[58] Valeant contends that the Legislator's decision not to make the same amendment to s. 236 (3) *QSA* confirms that it creates a delay of forfeiture that cannot be suspended.

[59] PwC agrees that s. 236 (3) *QSA* is a delay of forfeiture. However, its reading of the provision departs markedly from that of Valeant and the other Defendants.

[60] According to PwC, the six-month delay of s. 236 (3) *QSA* is entirely independent and distinct from s. 235 *QSA*. Consequently, even if the three-year delay of s. 235 *QSA* is expired, the press release contemplated in s. 236 (3) will trigger the six-month delay in which to bring an action.

[61] PwC maintains that the policy objective of 236 (3) *QSA* is in line with the primary purpose of the statutory regime set out in Division II of Chapter II of the *QSA*; to facilitate civil liability claims by investors in the secondary market. PwC recognizes that allowing for the possibility that claims could be brought years after the three-year prescription of s. 235 *QSA* has expired, could make capital markets more unpredictable. However, it argues that this is a trade-off the Legislator is prepared to accept in order to ensure that investors who may have been unaware of their right to bring a claim, will not be left without a recourse.

[62] Like Valeant, PwC argues that the July 2018 amendment to the *QSA* supports its contention that s. 236 (3) *QSA* creates a delay of forfeiture.

d) The Court's determination

[63] The Court does not agree that s. 236 (3) *QSA* creates a delay of forfeiture. For the reasons set out below, neither the wording, the context nor the objective of the provision indicate that the Legislator intended to depart from the general scheme of prescription.

(i) Wording and context of s. 236 (3) *QSA*

[64] As far as the wording of s. 236 (3) *QSA* is concerned, there is nothing to suggest that the Legislator intended to create a delay of forfeiture as opposed to a delay of prescription. While the Defendants are correct to point out that the term "forfeiture" need not appear in the text, it must nonetheless be clear from the precise language used that the Legislator intended to create such a delay. In the Court's view, that is not the case.

[65] Section 236 (3) is contained in a chapter of the *QSA* entitled "Prescription and Miscellaneous Provisions." The Legislator therefore intended s. 236 (3) to come under one of those two headings.

[66] If s. 236 (3) *QSA* is meant to be a prescriptive provision, it obviously cannot be a delay of forfeiture. If, on the other hand, it is a "miscellaneous" provision, it cannot be said that the Legislator used precise and clear language to indicate its intention to create a delay of forfeiture. Either way, the descriptive heading of the chapter in which s. 236 (3) *QSA* is contained, does not support the Defendants' position.

[67] In the Court's view, the interconnection between sections 235 and 236 *QSA* is in line with the Applicants' contention that s. 236 (3) *QSA* (reproduced below) is a prescriptive delay.

> **236.** However, the prescriptive periods under section 235 are subordinate to the following limitations:
>
> (...)
>
> (3) six months from the publication of the press release announcing that authorization has been granted by the court to bring an action under Division II of Chapter II or comparable provisions of extra-provincial securities laws within the meaning of section 305.1 regarding the same misrepresentation or failure to make timely disclosure, in the case of actions under that division.
>
> (Underlined by the Court)

[68] The fact that the delays set out in s. 235 *QSA* are subordinate or subject to the limitation of s. 236 *QSA* indicates that the two sections are to be read together. This implies that the six-month delay of s. 236 (3) *QSA* is not independent of s. 235, as PwC argues. Instead, if the delay set out in s. 236 (3) *QSA* is triggered, it limits the three-year period provided for in s. 235 *QSA*.

[69] The Court's reading of sections 235 and 236 (3) *QSA* is consistent with the reasoning of the Supreme Court in *l'Oratoire Saint-Joseph du Mont-Royal v. J.J.*[28]. In that case, Appellants argued that the second paragraph of art. 2926.1 *CCQ* created a delay of forfeiture. Justice Gascon's analysis of the provision, which was endorsed by a majority of the Court, concluded that it did not.

[70] Article 2926.1 *CCQ* reads as follows:

> **2926.1.** An action for damages for bodily injury resulting from an act which could constitute a criminal offence is prescribed by 10 years from the date the victim becomes aware that the injury suffered is attributable to that act. However, the prescriptive period is 30 years if the injury results from a sexual aggression, violent behaviour suffered during childhood, or the violent behaviour of a spouse or former spouse. If the victim or the author of the act dies, the prescriptive period, if not already expired, is reduced to three years and runs from the date of death.
>
> (Underlined by the Court)

[71] Justice Gascon recognized that the Legislator chose to reduce the applicable period when one of the parties died. However, he did not see in this a clear intention to create a delay of forfeiture. In his view, "the second paragraph merely reduces the length of the period provided for in the first paragraph, but does not change its starting point".[29]

[72] Applying Justice Gascon's reasoning to sections 235 and 236 (3) *QSA*, it can be concluded that if the three-year delay of s. 235 *QSA* is running when the press release contemplated in s. 236 (3) is published, the delay will be reduced to six months. If the three-year delay has yet to start running when the press release is published – assuming that is even possible – the claimant must act within six months.[30]

[73] Accordingly, s. 236 (3) *QSA* does not create a delay of forfeiture; it merely limits the prescriptive delay set out in s. 235 *QSA*.

[74] Although the formulation is different, sections 235 and 236 (3) *QSA* create the same time limits for actions under Division II of Chapter II of the *QSA* as those set out in s. 138.14 of the Ontario Securities Act (***OSA***), which reads as follows:

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28 2019 SCC 35.
29 *L'Oratoire Saint-Joseph du Mont-Royal v. J.J.*, 2019 SCC 35, par. 139.
30 *L'Oratoire Saint-Joseph du Mont-Royal v. J.J.*, 2019 SCC 35, par. 141.

Limitation period. 138.14 (1) No action shall be commenced under section 138.3,

a) in the case of misrepresentation in a document, later than the earlier of, (i) three years after the date on which the document containing the misrepresentation was first released, and (ii) six months after the issuance of a news release disclosing that leave has been granted to commence an action under section 138.3 or under comparable legislation in the other provinces or territories in Canada in respect of the same misrepresentation;

(b) in the case of a misrepresentation in a public oral statement, later than the earlier of, (i) three years after the date on which the public oral statement containing the misrepresentation was made, and (ii) six months after the issuance of a news release disclosing that leave has been granted to commence an action under section 138.3 or under comparable legislation in another province or territory of Canada in respect of the same misrepresentation; and

(c) in the case of a failure to make timely disclosure, later than the earlier of, (i) three years after the date on which the requisite disclosure was required to be made, and (ii) six months after the issuance of a news release disclosing that leave has been granted to commence an action under section 138.3 or under comparable legislation in another province or territory of Canada in respect of the same failure to make timely disclosure. 2002, c. 22, s. 185; 2004, c. 31, Sched. 34, s. 23.

Suspension of limitation period. (2) A limitation period established by subsection (1) in respect of an action is suspended on the date a notice of motion for leave under section 138.8 is filed with the court and resumes running on the date, (a) the court grants leave or dismisses the motion and, (i) all appeals have been exhausted, or (ii) the time for an appeal has expired without an appeal being filed; or (b) the motion is abandoned or discontinued. 2014, c. 7, Sched. 28, s. 15.

(Underlined by the Court)

[75] Borrowing from the formulation of the *OSA*, the *QSA* rules can be summarized as follows: no damage action contemplated in Division II of Chapter II of the *QSA* shall be commenced "later than the earlier of" the three-year period of s. 235 *QSA* and the six-month period provided for in s. 236 (3) *QSA*.

[76] The Court agrees with PwC that it would be inappropriate to reject the clearly expressed intention of the Quebec Legislator in order to adopt an interpretation that better fits with the *OSA*. However, as the Supreme Court noted in *Theratechnologies*, when Quebec adopted the new civil liability regime through its amendments to the *QSA*, it was described as being "highly harmonized" with that of the *OSA*.[31] Consequently, if the provisions of the *QSA* can be read in harmony with those of the *OSA*, then, in the Court's view, they should be.

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31 *Theratechnologies Inc. c. 121851 Canada Inc.*, [2015] 2 S.C.R., par. 32.

[77] Not only does this approach favour a harmonized reading of the two statutes, it strongly suggests that had it been the Legislator's intention to depart from the prescriptive time limits set out in s. 138.14 *OSA*, it would have done so in clear and unequivocal language.

[78] Further support for the notion that the Quebec Legislator sought to harmonize the new provisions of the *QSA* with those of the *OSA*, can be found in the wording of s. 236 (3) itself. The six-month delay is not only triggered by the press release announcing that authorization has been granted under the *QSA*, but also under "comparable provisions of extra-provincial securities laws within the meaning section 305.1", which include those of the *OSA.*[32]

[79] It would be incongruous for the Legislator to have incorporated into s. 236 (3) *QSA*, a reference to extra-provincial securities laws, including the *OSA*, and yet have intended for that section to create a strict delay not found in those laws. Such an interpretation would create the possibility that an action that was time-barred under the *QSA* could nonetheless be instituted in Quebec because it had been authorized outside the Province.

(ii) The objective of s. 236 (3) *QSA*

[80] The Court agrees with Valeant that the objective of s. 236 (3) *QSA* is to limit the time frame in which actions can be brought under Division II of Chapter II of the QSA. More specifically, the Legislator intended that once a court, either in Quebec or elsewhere in Canada, had authorized the bringing of a claim based on misrepresentations in the secondary market, all claimants wishing to bring a claim on the basis of the same alleged misrepresentations, would have six months to act.

[81] Such an objective does not clearly and unambiguously require the establishment of a delay of forfeiture. The desire to maintain predictably and stability in capital markets is equally consistent with the establishment of a prescriptive time limit.

[82] The legislative debates surrounding the adoption of s. 236 (3) *QSA* point to the desire to ensure that actions based on the same alleged misrepresentations be brought expeditiously. However, no reference is made in those exchanges, to the creation of a delay of forfeiture and it is far from clear that the distinction between such a delay and a mere prescriptive delay, was contemplated.[33]

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[32] Under s. 305.1 QSA, "extra-provincial securities laws" mean the laws administered by an extra-provincial securities commission that deal with regulating securities markets and are equivalent to Québec securities laws.

[33] Québec, Assemblée nationale, Journal des débats de la Commission permanente des finances publiques, « Étude détaillée du projet de loi nº 19 – Loi modifiant la Loi sur les valeurs mobilières et d'autres dispositions législatives » in *Journal des débats de la Commission permanente des finances publiques*, vol. 40, nº 10 (25 octobre 2007).

[83] Finally, the Court does not agree with PwC's contention that the objective behind s. 236 (3) QSA was to facilitate the bringing of actions under Division II of Chapter II QSA by potentially extending the delay beyond the three years set out in s. 235 QSA. This view is at odds with the legislative debates which emphasize the importance of proceeding quickly in order to maintain stability in the markets. Furthermore, because of the reference in s. 236(3) *QSA* to authorizations issued by other Canadian courts, PwC's interpretation would imply that the Legislator intended to provide an opportunity for claimants across Canada to bring a claim in Quebec that might be prescribed in another province or territory. In the Court's view, this interpretation is implausible.

e) Conclusion regarding forfeiture

[84] The Defendants have failed to convince the Court that s. 236 (3) *QSA* creates a delay of forfeiture. The six-month delay set out in s. 236 (2) *QSA* is therefore one of prescription.

[85] The Court will now consider whether or not the claims the Applicants propose to bring have been prescribed.

3.4 Are the Applicants' claims prescribed?

[86] In regards to prescription, the Defendants[34] contend that the six-month delay of s. 236 (3) *QSA* began to run with the publication of the September 5, 2017 Press Release and expired on March 5, 2018. They argue that prescription was neither suspended nor interrupted and therefore that both claims are prescribed.

[87] The Applicants disagree. They argue that the September 5, 2017 Press Release did not trigger the six-month delay of s. 236 (3) *QSA*. At any rate, they add, as members of the Catucci Class Action, they benefitted from a suspension of prescription in accordance with art. 2908 *CCQ* until the time they chose to opt out. Furthermore, they contend that the Motions for Authorization interrupted prescription according to art. 2892 *CCQ*.

[88] In order to determine whether or not the Applicants' claims are prescribed, the Court must therefore answer the following questions:

(a) Did the September 5, 2017 Press Release trigger the six-month delay set out in s. 236 (3) *QSA* ?

(b) Did the Applicants benefit from a suspension of prescription until they opted out of the Catucci Class Action? and

(c) Did the Motions for Authorization interrupt prescription?

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[34] PwC does not raise a prescription argument but will benefit if the Court concludes that the CalSTRS claim is prescribed.

(a) Did the September 5, 2017 Press Release trigger the six-month delay set out in s. 236 (3) *QSA* ?

[89] The six-month delay set out in s. 236 (3) *QSA* begins to run from "the publication of the press release announcing that authorization has been granted by the Court to bring an action under Division II of Chapter II or comparable provisions of extra-provincial securities laws..."

[90] The requirement to issue a press release once authorization is granted is set out at s. 225.5 *QSA*. It reads as follows :

> **225.5.** On filing the request for authorization with the court, the plaintiff must send a copy to the Authority.
>
> If authorization is granted by the court, the plaintiff must promptly issue a press release disclosing that fact. Within seven days after authorization is granted, the plaintiff must send a written notice to the Authority, together with a copy of the press release. In addition, on filing the statement of claim with the court, the plaintiff must send a copy to the Authority.

[91] The Defendants argue that the September 5, 2017 Press Release is precisely what s. 225.5 *QSA* contemplates and that it therefore triggered the six-month delay of s. 236 (3).

[92] The Applicants counter that at the time the September 5, 2017 Press Release was issued, the Catucci Authorization Judgment was still appealable and that an application for leave to appeal had in fact been filed. In their view, it is only once leave had been denied by Justice Mainville of the Court of Appeal on November 30, 2017, that the Catucci Authorization Judgment could be seen as final and that the press release contemplated by s. 225.5 *QSA* could be sent. Consequently, they argue that the September 5, 2017 Press Release could not have triggered the six-month delay of s. 236 (3) *QSA*.

[93] According to the Applicants, it was the April 6, 2018 notice entitled "Notice of Authorization (Certification) and the Granting of Leave to Proceed with Statutory Secondary Market Misrepresentation Claims"[35] (the **April 6, 2018 Notice**) that triggered the six-month delay of s. 236 (3) *QSA*. They argue that this position is reinforced by the fact that the September 5, 2017 Press Release contemplates that further notice will be sent and states that " a notice detailing the impact of the authorization of the action as a class proceeding on the rights of individual investors will be delivered at a later date in accordance with a further order of this Court. "

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[35] Tab 13 of the List of Admissions.

[94] The Applicants therefore argue that the six-month delay of s. 236 (3) *QSA* only began to run as of the April 6, 2018 Notice.

[95] The Court does not agree.

[96] Section 236 (3) *QSA* refers not to "a" press release but rather to "the" press release.[36] Since s. 225.5 is the only provision of the *QSA* that requires the issuance of a press release once authorization to bring an action in damages has been granted, it is clearly to this section that s. 236 (3) refers.

[97] The Applicants' position is at odds with the clear wording of the *QSA*. Section 225.5 sets out that if authorization is granted, the plaintiff must "promptly" issue a press release disclosing that fact. Furthermore, the section goes on to specify that within seven days of authorization, the plaintiff must send a written notice to the Authority (*Autorité des marchés financiers*) "together with a copy of the press release."

[98] If the press release must be issued promptly and a copy provided to the Authority within seven days of authorization, it stands to reason that the Legislator could not have intended for a plaintiff to wait until the authorization judgment was final before issuing the press release. The Applicants' interpretation is therefore untenable.

[99] It is possible that the court granting authorization could choose to delay the publication of the press release contemplated in s. 225.5 QSA.[37] However, nothing in the September 5, 2017 Press Release or in the April 6, 2018 Notice suggests that this is what Justice Chatelain intended.

[100] The delay of s. 236 (3) *QSA* thus began to run on March 5, 2018, six months after the September 5, 2017 Press Release.

(b) Did the Applicants benefit from a suspension of prescription until they opted out of the Catucci Class Action?

[101] The Applicants argue that by virtue of art. 2908 *CCQ*, their right to bring a claim against the Defendants was suspended when the application for leave to bring the Catucci Class Action was filed. They contend that the suspension remained in effect until they opted out of the class action on June 19, 2018. Since both of their Motions for Authorization were filed within six months of that date, they plead that their claims are not prescribed.

[102] The Defendants disagree. They argue that the six-month delay set out in s. 236 (3) *QSA* applies regardless of art. 2908 *CCQ*. According to Defendants, this position is supported by the Supreme Court's decision in *Canadian Imperial Bank of Commerce v.*

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36 In French « publication du communiqué ».

37 See *Silver v. Imax*, 2012 ONSC 1047, par. 105.

Green[38] (***Green***) and by a subsequent amendment to the *QSA*. Furthermore, they contend that if s. 236 (3) *QSA* is found to conflict with art. 2908 *CCQ*, it is the former provision that must prevail.

[103] The Court disagrees with the Defendants. For the reasons that follow, the Court concludes that the Applicants' right to bring a claim against the Defendants was suspended by art. 2908 *CCQ*.

[104] The issues in *Green* are similar to those raised here. In three separate cases before the Ontario Superior Court of Justice, the Plaintiffs brought motions in class proceedings claiming damages under the common law tort of negligent misrepresentation and signalling their intention to bring a claim in damages under the *OSA* for alleged misrepresentations in regards to shares purchased in the secondary market. None of the Plaintiffs had obtained authorization under the *OSA* to bring their claims and the limitation period established by s. 138.14 *OSA*, if not suspended, had run out.

[105] The Ontario Court of Appeal ruled that in all three cases, the Plaintiffs' time limit in which to bring statutory claims under the *OSA* had been suspended by s. 28 of the Class Proceedings Act[39] (***CPA***). The majority of the Supreme Court disagreed and held that the Plaintiffs' statutory claims were time-barred.

[106] Like the *OSA*, the *QSA* contains no internal mechanism to suspend or interrupt prescription. In the case of the *QSA*, it is the provisions of the *CCQ* that apply.

[107] The Defendants recognize that the provisions of the *CPA* regarding the suspension of time limitations differ from those set out in the *CCQ* but argue that the logic underlying the Supreme Court's decision in *Green* applies nonetheless. They maintain that the institution of a class proceeding should not suspend the time limitation to bring a statutory claim under the *QSA*. According to the Defendants, applying the general regime of art. 2908 *CCQ* would undermine the delicate balance struck by the Legislator « between deterence and compensation. »[40]

[108] The Supreme Court's decision in *Green* focuses on the particular wording of s. 28 CPA and, more specifically, the meaning of the word "assert". Under that provision, "any limitation period applicable to a cause of action asserted in a class proceeding is suspended in favour of a class member on the commencement of the class proceeding... " Writing for the majority, Justice Côté held that "pleading a factual matrix and an intention to seek leave under s. 138.8 OSA cannot amount to the assertion of the statutory cause of action."[41] Accordingly, the Supreme Court held that s. 28 *CPA*

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38 [2015] 3 S.C.R. 801.
39 1992, S.O. 1992, c. 6, s. 28.
40 *Canadian Imperial Bank of Commerce v. Green*, [2015] 3 S.C.R. 801, par. 69.
41 *Canadian Imperial Bank of Commerce v. Green*, [2015] 3 S.C.R. 801, par. 51.

does not suspend the limitation period to institute an action in damages under the *OSA*, until authorization to bring such an action has been granted.

[109] In the Court's view, the *Green* decision is of limited assistance in determining whether or not the Applicants benefitted from a suspension of prescription. Art. 2908 *CCQ* provides that "an application for leave to bring a class action suspends prescription in favour of all the members of the group for whose benefit it is made..." Unlike s. 28 *CPA*, suspension of prescription under art. 2908 *CCQ* is not contingent on authorization being granted. Accordingly, the Court does not agree that the result reached in *Green* applies in the present case.

[110] Subsequent to the Supreme Court's decision in *Green*, s. 235 *QSA* was amended to specify that the three-year time limit set out therein is suspended by the filing of a request for authorization under s. 225.4.[42] The Legislator further specified that the suspension of prescription provided for by art. 2908 *CCQ* is effective as of the date of the request for authorization.

[111] Although the Defendants recognize that the amendment has no direct application to the issues here, they contend that it reinforces their argument regarding the interaction of art. 2908 *CCQ* and s. 236 (3) *QSA*. More specifically, they maintain that if the Applicants' view was correct, there would have been no need for the Legislator to amend s. 235 *QSA*. On the contrary, they argue, by making the amendment, the Legislator sought to change the prevailing situation so that in the future an investor seeking authorization to bring a claim under Division II of Chapter II of the QSA would benefit from the suspension of prescription provided for at art. 2908 *CCQ*.

[112] In order to accept the Defendants' argument regarding the amendment to s. 235 *QSA*, one would also have to accept that the only reason the Legislator might have to make such a change would be to modify the state of the law. The Court does not agree with this submission.

[113] The Legislator may have amended s. 235 *QSA* to simply clarify or confirm the state of the law and to avoid the controversy that had existed in Ontario before the *Green* decision and subsequent amendments to the *OSA*. At any rate, the amendment to s. 235 *QSA*, which was adopted in July of 2018, subsequent to the facts at issue here, is not determinative of the Legislator's intention prior to that point in time.[43]

[114] Finally, the Defendants contends that its view of the interaction between art. 2908 *CCQ* and s. 236(3) *QSA* is consistent with the rules of statutory interpretation. They argue that as the newer and more specific rule, s. 236(3) *QSA*, should prevail over art. 2908 *CCQ*, the older and more general rule.

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42 See further discussion of this amendment at par. 57 above.

43 Pierre-André Côté, *Interprétation des lois*, 4th ed., (Montréal : Thémis, 2009), p. 621, par. 1933.

[115] There is no conflict between these two provisions that requires one to be favoured over the other. The *QSA* establishes a prescription period at s. 236(3) but does not contain a mechanism to suspend or interrupt that prescription.[44] Consequently, it is the rules of the *CCQ* governing suspension and interruption of prescription that apply, including art. 2908.

[116] The Court concludes that in accordance with art. 2908 *CCQ*, the time limit for the Applicants to seek authorization under s. 225.4 *QSA* was suspended as of October 26, 2015 with the filing of the motion for authorization in the Catucci Class Action, and began to run again when they opted out on June 19, 2018. This leaves the question of whether the Motions for Authorization interrupted that prescription or whether the Applicants claims have now been prescribed.

(c) Did the Motions for Authorization interrupt prescription?

[117] The Applicants submit that the Motions for Authorization are judicial applications within the meaning of art. 2892 *CCQ* and that their filing interrupted the six-month prescription of s. 236(3) *QSA*.

[118] The Defendants disagree. They contend that the Motions for Authorization merely seek permission to bring judicial applications but cannot themselves be qualified as such. Here again, they point to the Supreme Court's decision in *Green* and to the July 2018 amendments to the *QSA* as support for their position.

[119] In the Court's view, the Motions for Authorization are judicial applications within the meaning of art. 2892 *CCQ* and therefore interrupted the prescriptive period set out in s. 236(3) *QSA*.

[120] The term "judicial application" has been interpreted liberally to apply to a variety of different procedural vehicles by which a party may seize a court.[45] The distinction that the Defendants draw between a proceeding that seeks authorization to bring a claim and the claim itself, was rejected by the Court of Appeal in *Mayrand c. Serge Morency et Associés inc.*[46] In the *Mayrand* case, the Appellants argued that a motion for permission to sue a trustee in bankruptcy did not constitute a judicial application. The Court of Appeal concluded that such a view was outdated and inconsistent with the "interprétation large et libérale", which should be applied. It concluded that so long as the proceeding demonstrates a plaintiff's intention to seek the recognition of its rights before the courts, it constitutes a judicial application.

[121] The Court sees no reason why a different conclusion should apply in the case of a motion for authorization under s. 225.4 *QSA*. The fact that the Legislator requires that

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44 This conclusion does not take account of the subsequent amendments made to the *QSA*.

45 *Société canadienne des postes c. Rippeur*, 2013 QCCA 1893 and *Daniel c. Mont St-Hilaire (Ville de)*, 2016 QCCA 493.

46 *Mayrand c. Serge Morency et Associés Inc.*, 2010 QCCA 1190.

authorization be granted before the claim can be brought does not alter the fact that the applicant, by its motion, is clearly seeking the recognition of its rights.

[122] Furthermore, the Supreme Court's decision in *Green* provides no support for the Defendants' argument. As was indicated above, the *Green* decision turned on the interpretation of the specific wording of s. 28 *CPA* and, in particular, the term "assert". The Supreme Court concluded that a cause of action cannot be asserted within the meaning of s. 28 CPA, until after authorization to bring a claim under the *OSA* has been granted. This reasoning has no bearing on the interpretation of the term "judicial application."

[123] As regards the July 2018 amendments to the *QSA*, the Defendants acknowledge that the Legislator added a third paragraph to s. 235 *QSA* in order to establish that a motion for authorization under s. 225.4 *QSA* interrupts the three-year prescription. They argue that this confirms that the motion for authorization is not and never was a judicial application. Otherwise, they contend, the amendment would not have been necessary.

[124] The Court is not persuaded by this argument.

[125] Whether the Legislator intended for the July 2018 amendments to the *QSA* to modify the state of the law or merely to confirm it, the amendment sheds little if any light on the intention of the Legislator at the time the provisions at issue were adopted. Consequently, the July 2018 amendment does not assist the Defendants in establishing that a motion for authorization under s. 225.4 *QSA* is a judicial application.[47]

3.5 Conclusion

[126] Having concluded that the Applicants' rights of action have neither been forfeited nor prescribed, the Court will grant the Motions for Authorization with costs.

[127] Despite the fact that the parties agreed to import the evidence from the Catucci Class Action, including the expert evidence, the costs granted here do not include expert costs.

FOR THESE REASONS, THE COURT:

In regards to CalSTRS (500-11-055722-181)

[128] **GRANTS** the Motion for Authorization to bring an action pursuant to section 225.4 of the *Quebec Securities Act*;

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47 In addition to its legal arguments regarding prescription, CalSTRS had also invoked the benefit of a tolling agreement with certain Defendants. Given the Court's conclusion that its claim has neither been forfeited nor prescribed, it is not necessary to deal with this argument.

[129] **AUTHORIZES** the California State Teachers' Retirement System to bring an action pursuant to section 225.4 of the *Quebec Securities Act*;

[130] **WITH** costs.

In regards to Blackrock (500-11-054155-185)

[131] **GRANTS** the Motion for Authorization to bring an action pursuant to section 225.4 of the *Quebec Securities Act*;

[132] **AUTHORIZES** Blackrock to bring an action pursuant to section 225.4 of the *Quebec Securities Act*.

[133] **WITH** costs.

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Date of hearing: November 27, 2019