

CITATION: Pavlioglu et al. v. FinanceIt Canada Inc.;
Quinn v. Vault Home Credit Corp., 2025 ONSC 4545
COURT FILE NO.: CV-25-00034752-00CP and CV-25-00034796-00CP
DATE: 20250805

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: VASILE PAVLIOGLU and ABRAM BRAUN, Plaintiffs

AND:

FINANCEIT CANADA INC., Defendant

COUNSEL: M. Seddigh, J. Foreman and B. Pascutto, for the Plaintiffs

M. Rosenberg, for the Defendant

AND RE: DIANNE LEONA QUINN, Plaintiff

AND:

VAULT HOME CREDIT CORPORATION, Defendant

COUNSEL: M. Seddigh and B. Pascutto, for the Plaintiff

P.E. Veel, for the Defendant

BEFORE: Kalajdzic J.

HEARD: August 1, 2025

CASE CONFERENCE ENDORSEMENT

- [1] This case conference was held to set a litigation timetable. The defendants seek an expedited certification schedule due to the reputational damage caused by the litigation. The plaintiffs request a slightly modified certification timetable that accounts for an interim motion they wish to schedule on an urgent basis. The focus of the case conference was on the propriety of scheduling the interim motion.
- [2] The FinanceIt action was commenced on April 7, 2025. A similar action against Vault Home Credit Corporation was commenced the following week. The two actions have not been formally consolidated but on consent, they are being case managed together.
- [3] Both proposed class proceedings relate to consumer loans by the defendant corporations. The loans are primarily associated with HVAC and home improvement purchases. The plaintiffs allege that the defendants engaged in unlawful business practices that misled consumers into signing agreements in breach of consumer protection legislation, and that the loan agreements, therefore, are invalid and unenforceable.

- [4] The defendants have commenced lawsuits, primarily in Small Claims Court, against putative class members to enforce the loan agreements where there has been a default. Some putative class members have also themselves commenced litigation against the defendants to terminate the agreements. Collectively, these are referred to as “Related Proceedings”. Plaintiffs’ counsel estimate that there are a few hundred Related Proceedings but they have been unable to determine the number with precision due to the limitations of case searches in our court houses.
- [5] The plaintiffs have filed a motion in each of the proposed class actions for temporary stays of the Related Proceedings pending the final disposition of the class actions, subject to the putative class members’ opt-out rights. They seek this relief to avoid a multiplicity of proceedings and the potential prejudice to putative class members that would result from having to defend against or advance the Related Proceedings on their own against better resourced defendants. Specifically, if the defendants succeed in enforcing the loan agreements before this action is certified and tried, the defendants will have effectively won the case without the merits having been decided.
- [6] The defendants submit that the interim motions are “ill-conceived” and should not be scheduled before certification. They say that if the defendants want class-wide relief, they should move expeditiously to obtain certification of the class. The defendants also characterize the interim motion as akin to an injunction rather than a stay.

Legal Framework

- [7] My role now is not to predetermine the outcome of the proposed motions but to decide if the motions should be argued before or after the certification motion.
- [8] Section 12 of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6 (“CPA”) gives the court discretion to decide the sequencing of motions based on what is appropriate to ensure the fair and expeditious determination of a class proceeding. Section 13 provides that the court, on the motion of a party or class member, “may stay any proceeding related to the proceeding under this Act before it, on such terms as it considers appropriate.”
- [9] As a result of the amendments to the CPA that took effect on October 1, 2020, certain types of motions are presumed to be argued before the hearing of the certification motion. Section 4.1 stipulates that if a motion “may dispose of the proceeding in whole or in part or narrow the issues to be determined or the evidence to be adduced, that motion *shall* be heard and disposed of before the motion for certification” [emphasis added]. The parties have the presumptive right to have certain motions heard prior to a certification motion: *Dufault v. Toronto Dominion Bank*, 2021 ONSC 6223 at para. 7.
- [10] Outside of the s. 4.1 context, courts have long applied the list of factors set out in *Canon v. Funds for Canada Foundation*, 2010 ONSC 146 at para. 15 to determine sequencing of motions. These factors are:
- a. Whether the motion will dispose of the entire proceeding or substantially narrow the issues to be determined;
 - b. The likelihood of delays and costs;
 - c. Whether the outcome of the motion will promote settlement;

- d. Whether the motion would give rise to interlocutory appeals and delays that would affect certification;
- e. Interest of economy and fairness and efficient determination; and
- f. Generally, whether scheduling the motion in advance of certification would promote the “fair and efficient determination” of the proceeding.

Analysis

- [11] The plaintiff’s interim motions do not fall within the scope of s. 4.1. Whether argued as a stay motion or as an interlocutory injunction, the issue of the enforceability of the consumer loans will not be determined on its merits. Thus, nothing will be determined that would narrow the issues for the purposes of certification or trial.
- [12] For the same reason, factor (a) in the *Canon* factors favours the defendants.
- [13] The motions will not cause significant delay. Defence counsel conceded that the interim motion and the certification motion can proceed in parallel. The plaintiffs have already served their motion records and agree that a certification timetable should be set. A three-day certification hearing cannot be scheduled before the fall of 2026 in any event. Thus, *Canon* factor (b) favours the plaintiffs.
- [14] Neither counsel made submissions regarding settlement promotion or the effect of any appeal of the stays, if granted, on the certification timetable. Factors (c) and (d), therefore, are neutral.
- [15] Is it in the interest of economy and fairness to schedule the interim motions in advance of certification? Will doing so promote the fair and efficient determination of the proceeding?
- [16] Counsel for the defendants submit that there are both legal and practical reasons the motions should not be scheduled. First, they argue that the representative plaintiffs themselves cannot meet the test for a stay/injunction since they do not allege any personal prejudice in the notice of motion; they only allege that prejudice will inure to putative class members if the stays are not granted. Moreover, the named plaintiffs cannot seek class-wide relief prior to certification. Second, as a practical matter, the plaintiffs will have to identify and serve each putative class member who has a Related Proceeding. The affected litigants will have to attend the hearing of the motion in Windsor to argue why their case should or should not be stayed.
- [17] It is improper for me to consider the merits of the proposed motion to decide whether to schedule it: *Grossman v. Apple Canada Inc.*, 2024 ONSC 4127, at para. 91. Which test is applicable on the motion and whether the plaintiffs can meet it will be decided at the motion, with the benefit of full argument by all parties.
- [18] I do note that stay motions are frequently argued before certification. Motions by defendants to stay the proposed class action are not unusual in the context of overlapping class actions. Far less usual is a motion by a representative plaintiff to stay their own action, but it, too, is argued before certification: *Grossman v. Apple*. Motions by plaintiffs to stay competing or overlapping proposed class actions must be brought within 60 days of the day on which the first of the proceedings was commenced: CPA, s. 13.1(3).

- [19] Neither counsel could provide me an authority in which the proposed representative plaintiff sought to stay or enjoin *enforcement* actions between putative class members and defendants.
- [20] However, courts have denied stays of individual actions between putative class members and the defendants in other circumstances: *Herold v. Wasserman*, 2022 SKCA 103; *Dumoulin v. Ontario (Ontario Realty Corp.)*, 2004 CanLII 1285 (ON SC). Unlike the plaintiffs in those cases, plaintiffs' counsel submit that their clients intend to respect the right of individuals to prosecute their own claims, by instituting an opt-in process if the interim motion is granted.
- [21] Whether the plaintiffs are successful in getting the stay, however, is for another day. The important point is that both *Herold* and *Dumoulin* were argued before certification.
- [22] Under all of the circumstances, I find that fairness and efficiency dictate that the interim motions be heard before certification. If the requested relief is granted, dozens, if not hundreds, of small individual actions will be temporarily stayed. Such an outcome would promote efficiency in the civil justice system as a whole and reduce the possibility of inconsistent judgments. In addition, issues of fairness are engaged because, according to the plaintiffs, the defendants' enforcement measures effectively moot the class proceeding.
- [23] I accept that the plaintiffs' motion raises practical challenges. Unlike defendants who seek to stay a duplicative class action, the plaintiffs in the case before me are not parties in the Related Proceedings. The litigants in the Related Proceedings, therefore, must be served with the motion material and be given the opportunity to respond. Their participation is warranted under r. 37.07(1) of the *Rules of Civil Procedure*, RRO 1990, Reg. 194, and pursuant to s. 14 of the CPA which provides for the participation of class members at any time in a class proceeding with leave of the court. "Class member" in this context includes a person who would, if the action is certified, be a member of the class: CPA, s. 1(3).
- [24] The defendants have not consented to providing a list for service. As a result, I will need to hear submissions on this point.
- [25] Mr. Veel has proposed a timetable with which other counsel substantially agree. Based on his proposal, I order the following timetable:
- a. Plaintiffs' motion records delivered: July 31, 2025
 - b. Plaintiffs' submissions re: service list: August 29, 2025
 - c. Defendants' responding motion records and submissions re: service list: September 26, 2025
 - d. Plaintiffs' reply record, if any: October 3, 2025
 - e. Cross-examinations to be completed: October 17, 2025
 - f. Plaintiffs' factum: October 31, 2025
 - g. Defendants' responding factum: November 14, 2025
 - h. Plaintiffs' reply factum: November 21, 2025
 - i. Motion hearing: December 2025.

- [26] Either my judicial assistant or the trial coordinator will contact counsel with possible dates for a one-day hearing in December 2025. To facilitate participation of the litigants in the Related Proceedings, the hearing will be held virtually on zoom.
- [27] The parties are expected to adhere to the 20-page limit for their factums.
- [28] Counsel will also be contacted once three days have been identified in my fall 2026 schedule for the hearing of the certification and summary judgment motions. I ask counsel to provide me with a proposed timetable for the exchange of material and cross-examinations once the certification hearing dates are fixed.

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Jasminka Kalajdzic
Justice

Date: August 5, 2025