

Federal Court of Appeal



Cour d'appel fédérale

Date: 20220106

Docket: A-464-19

Citation: 2022 FCA 3

**CORAM: NADON J.A.*
DE MONTIGNY J.A.
MACTAVISH J.A.**

BETWEEN:

**AIRBNB, INC., AIRBNB CANADA INC.,
AIRBNB IRELAND UNLIMITED
COMPANY, AIRBNB PAYMENTS UK
LIMITED**

Appellants

and

ARTHUR LIN

Respondent

Heard by online video conference hosted by the Registry on March 4, 2021.

Judgment delivered at Ottawa, Ontario on January 6, 2022.

REASONS FOR JUDGMENT BY:

DE MONTIGNY J.A.

CONCURRED IN BY:

MACTAVISH J.A.

NOT TAKING PART IN THE JUDGMENT:

NADON J.A.*

*Nadon J.A. was unable to participate in the Court's deliberations as he retired from the Court effective July 25, 2021. This Judgment and Reasons are therefore issued under subsection 45(3) of the *Federal Courts Act*.

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REASONS FOR JUDGMENT

DE MONTIGNY J.A.

[1] The respondent, Mr. Lin, alleged that Airbnb violated section 54 of the *Competition Act*, R.S.C. 1985, c. C-34 by displaying more than one price for the same product. He sought an order certifying his action as a class proceeding against the appellants, pursuant to Rule 334.16(1) of the *Federal Courts Rules*, S.O.R./98-106, and claimed compensation from the appellants on

behalf of all individuals residing in Canada who, on or after October 31, 2015, reserved an accommodation anywhere in the world using Airbnb.

[2] After making some adjustments to the proposed class description, the Federal Court (Justice Gascon) certified Mr. Lin's action as a class proceeding (2019 FC 1563).

[3] On December 16, 2019, the appellants filed a Notice of Appeal, alleging that the Federal Court erred in finding that the test for certification mandated by Rule 334.16(1) was met. This appeal was heard on March 4, 2021, and was taken under reserve.

[4] While judgment was still pending, on May 27, 2021, the parties jointly requested a delay of the release of the Court's decision, so as to allow the parties to determine whether a resolution of this matter could be reached out of court. This initial request was followed by further requests to the same effect, on June 29, July 14 and 28, 2021. These requests were all granted by the Court.

[5] On August 18, 2021, the parties informed the Court that the parties had reached a settlement and would return to the Federal Court to obtain its approval of that agreement. As part of this Settlement Agreement, the parties contemplated that the appeal proceeding would be held in abeyance until the Federal Court's approval of the settlement becomes final. The Court acceded to that request.

[6] We have now been informed that the Federal Court approved the parties' class action settlement on November 19, 2021: *Lin v. Airbnb Inc.*, 2021 FC 1260. The settlement has now taken effect, as the appeal period for the Settlement Approval Judgment has expired.

[7] Article 6.3(3) of the Settlement Agreement, which is appended to the Settlement Approval Judgment, provides that:

If the Court [referring to the Federal Court] approves the settlement, and upon the Effective Date [December 20, 2021], the parties shall execute any necessary order(s) to dismiss the appeal in A-464-19.

[8] In those circumstances, the parties' joint request that the appeal be dismissed without costs should be granted.

"Yves de Montigny"

J.A.

"I agree
Anne L. Mactavish J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-464-19

STYLE OF CAUSE: AIRBNB, INC., AIRBNB CANADA INC., AIRBNB IRELAND UNLIMITED COMPANY, AIRBNB PAYMENTS UK LIMITED v. ARTHUR LIN

PLACE OF HEARING: HEARD BY ONLINE VIDEO CONFERENCE HOSTED BY THE REGISTRY

DATE OF HEARING: MARCH 4, 2021

REASONS FOR JUDGMENT BY: DE MONTIGNY J.A.

CONCURRED IN BY: MACTAVISH J.A.

NOT TAKING PART IN THE JUDGMENT: NADON J.A.

DATED: JANUARY 6, 2022

APPEARANCES:

Jill Yates
Patrick Williams FOR THE APPELLANTS

Simon Lin
Jérémie John Martin
Sébastien A. Paquette FOR THE RESPONDENT

SOLICITORS OF RECORD:

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