

CITATION: Morris v. Solar Brokers Canada Corp., 2024 ONSC 3727
COURT FILE NO.: CV-19-00616354-00CP
DATE: 20240628

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: WILL MORRIS, Plaintiff

– and –

SOLAR BROKERS CANADA CORP., JEAN CLAUDE AWWAD & JOSEPH BARKER, Defendants

BEFORE: Justice E.M. Morgan

COUNSEL: *Andrew Monkhouse and Alexandra Monkhouse, and Taiwu Onabolu*, for the Plaintiff

Zoya Alam, for the Defendant, Jean Claude Awwad

HEARD: June 28, 2024

SETTLEMENT AND FEE APPROVAL

[1] The Plaintiff in this class action seeks approval of a settlement he has reached with the Defendants. He also seeks approval of notice plan for the settlement. In addition, class counsel seek approval of their fees.

[2] The claim arises out of the alleged misclassification of individuals working for the Defendants. The employer of the class members was the corporate Defendant. The individual Defendants are the two directors of the corporation. The corporate Defendant and the Defendant, Joseph Barker, are both in default. The settlement was negotiated by the Defendant, Jean Claude Awwad, along with his counsel, and the settlement amount will be paid by Mr. Awwad.

[3] The Plaintiff alleges that the non-managerial sales representatives who worked, among other things, selling solar panels and related services to homeowners should have been classified as employees. The Claim alleges that they were improperly characterized as independent contractors.

[4] The action was commenced by on March 18, 2019. In it, the Plaintiff, on behalf of the class, claim seeks damages resulting from the Defendants’ failure to compensate the nonmanagerial sales representatives for benefits prescribed by the *Employment Standards Act* (“ESA”) and other employment benefits legislation. The claim alleges that the Defendants failed to pay compensation at the prescribed minimum hourly wage. It further alleges that the Defendants improperly withheld overtime pay, vacation pay, holiday pay, premium pay, termination pay for

employees terminated without notice, severance pay for employees with more than 5 years tenure terminated without notice, CPP payments, and EI payments.

[5] On December 2, 2019, I certified the class action and approved the Plaintiff as the representative Plaintiff and his counsel as class counsel: *Morris v Solar Brokers*, 2019 ONSC 6817. The Class is defined as follows:

All non-managerial sales representatives who, from January 1, 2016 to December 31, 2019, worked or continue to work for Solar Brokers Canada, and who were classified as Independent Contractors.

[6] The Class members are further divided into two subclasses: Lead Generators and Appointment Bookers, who work or worked for the corporate Defendant since 2016. Class counsel advise that there are an estimated 100 Class members, based on financial records received from the Defendants and the evidence provided by the Defendants.

[7] Class Counsel also advise that Notice of the Settlement Approval Hearing was given to all Class members by email on February 7, 2024, as directed in my Order. No objections have been received.

[8] In order to maximize recovery for Class members, Class Counsel is prepared to administer the settlement for no extra fee. The proposed settlement provides that the Defendant, Jean Claude Awwad, will pay a total settlement amount of \$62,000 on account of both the Claim and Class Counsel's fees.

[9] On April 9, 2020, the Plaintiff and Mr. Awwad attended a mediation session before well-known employment lawyer and mediator, Barry Fisher. The parties exchanged detailed mediation briefs in advance of mediation, and, ultimately, were able to resolve their differences. On May 20, 2022, the Plaintiff and Mr. Awwad executed Minutes of Settlement where Mr. Awwad agreed, without admitting liability, to pay \$62,000 to the Class Members.

[10] The corporate Defendant is apparently insolvent and the other director, Mr. Barker, has not been located despite the best efforts of Class Counsel and Mr. Awwad. Mr. Awwad has deposed that he would not have any more funds to pay a full judgment of the Class action if the matter were to go to trial and the Plaintiff was successful.

[11] Once Class Counsel's fees are deducted, approximately \$42,000 will be distributed to each Class member. This will be done according to a predetermined formula based upon the dates each eligible Class member worked for the Defendants, the position worked, and the amounts earned by each Class member, as set out in the agreed-upon Distribution Plan. Depending on how many Class members apply for their share of the payment, individual Class members will receive between \$420 and \$840.

[12] The settlement amount is admittedly small for each Class member. That said, Class Counsel believes the quantum of the Settlement Amount is reasonable considering that it: a) provides the Class members with guaranteed recovery, b) avoids delays associated with appeals (if successful at trial), c) achieves behavior modification in the sense that it sends a message to

other employers in classifying employees, d) provides for pro-rata payments without the requirement that individuals prove their damages, e) achieves a benefit for all Class members, f) avoids the costs of lengthy litigation, g) eliminates the risk that a court could decide that the misclassification claim is too individualized to be decided at a common issues trial, h) eliminates the need for individual trials of damages following a common issues trial, i) eliminates the risk that all Defendants will be unable to satisfy a judgment.

[13] In *Loewenthal v Sirius XM Holdings, Inc et al*, 2021 ONSC 4482, at para 13, Justice Akbarali succinctly listed the most important features of a reasonable settlement:

When considering whether to approve a negotiated settlement, the court may consider, among other things: (a) the likelihood of recovery or likelihood of success; (b) the amount and nature of discovery, evidence or investigation; (c) the proposed settlement terms and conditions; (d) the recommendation and experience of counsel; (e) the future expense and likely duration of litigation and risk; (f) the recommendation of neutral parties, if any; (g) the number of objectors and nature of objections, if any; (h) the presence of good faith, arm's length bargaining and the absence of collusion; (i) the degree and nature of communications by counsel and the representative parties with class members during the litigation; and (j) information conveying to the court the dynamics of and the positions taken by the parties during the negotiation. [citations omitted]

e. Monkhouse Law has agreed to act as the claims administrator for the case,³² for no

[14] These criteria line up well with the criteria brought to bear on the Settlement by the Plaintiff and Class Counsel. In all, I view the Settlement as fair, reasonable, and in the best interests of the Class.

[15] Class Counsel also seek Court approval for \$20,000 in respect of all fees, disbursements, and HST. This amount is to come out of the Settlement funds.

[16] It is to be noted that Class Counsel assumed significant risk in pursuing the action on a contingency fee basis. The action was commenced in 2019 and survived many potential obstacles, including the COVID-19 and associated lockdowns.

[17] Class Counsel's records show that the law firm spent over 1,048 hours working on the file over the almost 6 years – i.e. equivalent to over \$400,000 in billable time. Accordingly, Class Counsel is not receiving any premium rate for contingency and is only receiving approximately half of what they would have received had they spent the same amount of time on hourly files at the same rates.

[18] This Court has on numerous occasions accepted that a one-third contingency fee agreement is presumptively valid. In the present case, as part of the notification process, the Class members were advised of the amount of fees sought by Class Counsel and voiced no objections.

[19] Class Counsel has advised that it intends to seek no further fees for work still to be done in this class action. In doing the administrative work for the Settlement at no extra fee, Class Counsel is conferring on the Class considerable savings, which will enure to the benefit of each Class member submitting a claim.

[20] In my view, Class Counsel's fee request is fair and reasonable.

Disposition

[21] The Settlement, the distribution plan, and the notice plan are all approved.

[22] Class Counsel's fee request is approved.

[23] There will be an Order to go as submitted by Class Counsel.

Date: June 28, 2024

Morgan J.