

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

BRENDA AUSTIN, MATTHEW BELTRANO, GABRIEL LEVESQUE

Plaintiffs

and

FORD MOTOR COMPANY OF CANADA LIMITED

Defendant

Proceeding under the *Class Proceedings Act, 1992*

FRESH AS AMENDED STATEMENT OF CLAIM

AMENDED/MODIFIÉ

FEB 2 20 09

FILED FOR

CLERK OF COURT A

Consent R26.02

Ches

Local Registrar

Geoffrey Street

Superior Court of
Justice (Toronto)

TO THE DEFENDANT(S)

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff(s). The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date August 7, 2008 Issued by Jane Kraemer
Local Registrar

Address of court office:
491 Steeles Avenue East
Milton, Ontario
L9T 1Y7

TO **FORD MOTOR COMPANY OF CANADA LIMITED**
1 The Canadian Road
P.O. Box 2000
Oakville, Ontario
L6J 5E4

DEFINITIONS

The following definitions apply for the purpose of this Statement of Claim:

- (a) “**Gabriel**” means Gabriel Levesque, an individual residing in the City of Hamilton, Ontario;
- (b) “**Brenda**” means Brenda Austin, an individual residing in the City of St. Catharines, Ontario;
- (c) “**Matthew**” means Matthew Beltrano, an individual residing in the City of Hamilton, Ontario;
- (d) “**Class**” or “**Class Members**” means all individuals in Canada, not covered by a Collective Bargaining Agreement between Ford and the Canadian Autoworkers Union (“CAW”), who were offered employment by **Ford** commencing on or about July 28, 2008 as part of a **Third Work Shift** at its Oakville plant;
- (e) “**Ford**” means the defendant, Ford Motor Company of Canada Limited;
- (f) “**Third Work Shift**” means a third work shift of 8 hours’ duration at **Ford’s** Oakville manufacturing plant, which was supposed to have commenced on or about July 28, 2008;

CLAIM FOR RELIEF

1. The plaintiffs claim:

- (a) an order certifying this action as a class proceeding and appointing them as representative plaintiffs;
- (b) general damages and special damages in the amount of TEN MILLION DOLLARS (\$10,000,000.00), or such further sum as this Honourable Court may find appropriate in the circumstances;
- (c) punitive damages in the amount of TWO MILLION DOLLARS (\$2,000,000.00);
- (d) prejudgment interest in accordance with section 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (e) postjudgment interest in accordance with section 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (f) the costs of this proceeding on a full indemnity basis, as well as costs of notice and of administering the plan of distribution of recovery in this action, plus disbursements and applicable taxes;
- (g) such further and other relief as this Honourable Court may deem just and appropriate in the circumstances.

THE NATURE OF THIS ACTION

2. Ford is a manufacturer and distributor of automobiles with a manufacturing plant in the City of Oakville, Ontario.
3. Ford determined that it needed employees for the Third Work Shift.
4. Ford advertised its need for employees and offered positions of employment to all Class Members.
5. Ford subsequently determined, immediately prior to the employment start date of all Class Members that it would not implement the Third Work Shift, and resiled from its offer of employment to and/or terminated the employment of all Class Members, causing Class Members to suffer damages.

THE PARTIES

6. Brenda is an individual residing in the City of St. Catharines, Ontario.
7. Matthew is an individual residing in the City of Hamilton, Ontario.
8. Gabriel is an individual residing in the City of Hamilton, Ontario.
9. Ford is a manufacturer and distributor of automobiles. Ford operates in multiple jurisdictions and operates a large manufacturing plant in the City of Oakville, Ontario.

BACKGROUND INFORMATION

10. Ford made a business decision to initiate a Third Work Shift in its Oakville manufacturing plant. Ford announced this decision in or about April, 2008.
11. Ford announced the Third Work Shift as part of its Oakville plant's production of its Edge, Flex and Lincoln MKX vehicles.
12. Ford communicated its need for employees to work the Third Work Shift through various means.
13. Class Members applied to Ford for employment in connection with its need for employees for the Third Work Shift.
14. Ford hired all Class Members and/or offered them positions of employment for the Third Work Shift, to commence on or about July 28, 2008.
15. Ford made offers of employment to all Class Members in the same or similar fashion as described below with respect to Brenda, Matthew and Gabriel. The plaintiffs believe that offers of employment were made to approximately 350 individuals.
16. Many Class Members were already gainfully employed in secure employment at the time they received the offer of employment from Ford.
17. Many Class Members withdrew from their employment with others and/or advised their then-employers of their intention to withdraw from their employment to begin employment with Ford.

18. Employment was scheduled to commence for all Class members with paid training commencing on or about July 28, 2008.
19. Immediately prior to commencement of employment of Class Members, Ford advised that the offered employment positions were no longer available and that Ford was terminating the employment and/or withdrawing the employment offers in favour of Class Members.
20. Ford attributes its change of decision to extreme shifts in market conditions based on a downturn in sales of crossover vehicles.
21. Ford made no payment of compensation to affected Class Members, nor did it offer any compensation to affected Class Members.

SITUATION OF THE REPRESENTATIVE PLAINTIFFS

Brenda

22. Brenda applied for employment with Ford in May, 2008.
23. Brenda attended an interview with Ford on or about June 25, 2008 and was then asked by Ford to attend two medical appointments in order to complete testing to be eligible for an employment offer.
24. The medical appointments were attended by Brenda and the required testing was completed successfully.
25. The position applied for was specifically part of the Third Work Shift.

26. Brenda was offered employment by Ford on July 16, 2008 with a start date of July 28, 2008. Brenda accepted the offer of employment.
27. The offer specified that Brenda would be compensated at \$23.85 per hour plus benefits.
28. Brenda was gainfully employed elsewhere as of July 16, 2008. Upon receiving and accepting the employment offer from Ford, Brenda resigned from her previous employment.
29. Brenda was advised by Ford on July 22, 2008 that the offered employment position was no longer available and that Ford was terminating the employment and/or withdrawing the employment offer.
30. Brenda was unable to withdraw resignation from her previous employment and was left unemployed.
31. Brenda contacted the CAW and requested that the union grieve her situation. Brenda was told that the CAW was unable to file a grievance on her behalf as she was not a member of the bargaining unit and that her dispute did not fall under the collective agreement.

Matthew

32. Matthew applied for employment with Ford in or about May, 2008.

33. Matthew attended an interview with Ford on or about June 24, 2008 and was then asked by Ford to attend two medical appointments in order to complete testing to be eligible for an employment offer.
34. The medical appointments were attended by Matthew and the required testing was completed successfully.
35. The position applied for was specifically part of the Third Work Shift.
36. Matthew was offered employment by Ford on July 17, 2008, with a start date of July 28, 2008. Matthew accepted the offer of employment.
37. The employment terms offered to Matthew were the same as those offered to Brenda as set-out above.
38. Matthew was gainfully employed elsewhere as of July 17, 2008. Upon receiving and accepting the employment offer from Ford, Matthew resigned from his previous employment on or about July 21, 2008, effective July 25, 2008.
39. Matthew was advised by Ford on July 22, 2008 that the offered employment position was no longer available and that Ford was terminating the employment and/or withdrawing the employment offer.
40. Matthew was unable to withdraw resignation from his previous employment and was left unemployed.

Gabriel

41. Gabriel applied for employment with Ford on or about April 23, 2008.

42. Gabriel attended an interview with Ford on June 26, 2008 and was then asked by Ford to attend two medical appointments in order to complete testing to be eligible for an employment offer.
43. The medical appointments were attended by Gabriel and the required testing was completed successfully.
44. The position applied for was specifically part of the Third Work Shift.
45. Gabriel was offered employment by Ford on July 18, 2008, with a start date of July 28, 2008. Gabriel accepted the offer of employment.
46. The employment terms offered to Gabriel were the same as those offered to Brenda as set-out above.
47. Gabriel was gainfully employed elsewhere as of July 18th, 2008. Upon receiving and accepting the employment offer from Ford, Gabriel resigned from his previous employment on July 19th, 2008.
48. Gabriel was advised by Ford on July 22, 2008 that the offered employment position was no longer available and that Ford was terminating the employment and/or withdrawing the employment offer.
49. Gabriel was unable to withdraw resignation from his previous employment and was left unemployed.

BREACH OF CONTRACT AND NEGLIGENCE

50. Ford's conduct on or about July 22, 2008 constitutes anticipatory breach of contract, wrongful dismissal and/or a repudiation of the contract of employment with all Class Members by failing to provide them with promised positions of employment.
51. At all material times Ford owed Class Members a duty of care in respect of the promised positions of employment. Ford breached that duty of care by failing to provide the promised positions of employment offered by it and accepted by Class Members. Ford knew or ought to have known that Class Members would rely upon the promise of employment and would withdraw from other employment positions.
52. As a result of Ford's negligence and breach of contract and negligence, Class Members suffered and continue to suffer significant damages.

DAMAGES

53. As a result of the conduct of Ford described above, Class Members have suffered the following damages and losses:
 - (a) loss of income and employment benefits;
 - (b) loss of tenure with their previous employers;
 - (c) loss of opportunity in connection with the promised employment position with Ford;

- (d) special damages, being out-of-pocket expenses in applying for employment with Ford, accepting employment with Ford and in connection with attempts to mitigate losses so as to secure new employment;
- (e) damages for failure of Ford to provide reasonable notice or pay in lieu thereof in connection with Ford's withdrawal of employment offers and/or termination of employment.

PUNITIVE DAMAGES

- 54. The plaintiffs state that the conduct of Ford was entirely without care, deliberate, callous, wilful and in intentional disregard of the individual rights and circumstances of Class Members, and indifferent to the consequences.
- 55. Class Members were at all material times vulnerable to Ford considering the unequal bargaining position between the parties.
- 56. Ford behaved in bad faith and with deceit and complete insensitivity to the Class.
- 57. The conduct of Ford as set-out above renders it liable to Class Members for payment of punitive damages.

LEGISLATION

- 58. The plaintiffs plead and rely upon the provisions of
 - (a) the *Class Proceedings Act*, S.O., 1992, c.C.6;
 - (b) the *Negligence Act*, R.S.O. 1990, c. N.1, as amended;

(c) the *Courts of Justice Act*, R.S.O. 1990, C. C.43, as amended;

(d) the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 as amended.

PLACE OF TRIAL

59. The plaintiffs propose that this action be tried in the City of Milton in the Province of Ontario.

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RCP-E 14A (July 1, 2007)

BRENDA AUSTIN, et al
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FORD MOTOR COMPANY OF CANADA LIMITED
Defendant

Court File No. 4767/08

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