

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

THE HONOURABLE MR.

JUSTICE SPROAT

Thurs DAY, THE *21st*

DAY OF JANUARY, 2010

BRENDA AUSTIN, MATTHEW BELTRANO, GABRIEL LEVESQUE

Plaintiffs

and

FORD MOTOR COMPANY OF CANADA LIMITED

Defendant

Proceeding under the *Class Proceedings Act, 1992*

ORDER

THIS MOTION, made by the plaintiffs, Brenda Austin, Matthew Beltrano and Gabriel Levesque, for an Order seeking certification of this action as a class proceeding, and other incidental relief, was read this day at the Court House, 7755 Hurontario Street, Brampton, Ontario, L6W 4T6.

ON READING the plaintiffs' Motion Record regarding certification, the draft plan of proceeding, and hearing submissions from the parties,

1. THIS COURT ORDERS AND DECLARES that for purposes of this Order, the following definitions are applicable:

- a. **"Action"** means this action, given Court File No. 4767/08, commenced in the Ontario Superior Court of Justice in Milton;
- b. **"Class"** or **"Class Members"** means all individuals (or the estates of any deceased individuals) who were offered employment by Ford Canada as general assemblers in connection with Ford Canada's plan to introduce a third shift at the Oakville Assembly Complex, training for which was to commence July 28, 2008, except for those individuals (or estates of any deceased individuals) who, at the time the offers were made, were bargaining unit employees on lay-off from Ford Canada's operations in Windsor, Ontario with recall rights.
- c. **"Class Counsel"** means together Scarfone Hawkins LLP, Shinehoft Law, Ball & Alexander and Chris Sweeney;
- d. **"Ford Canada"** means the defendant, Ford Motor Company of Canada, Limited;
- e. **"Notice"** refers to the document attached as Schedule "A" to this Order;
and
- f. **"Opt-Out Form"** refers to the document attached as Schedule "B" to this Order.

2. THIS COURT ORDERS that this Action is hereby certified as a class proceeding, on consent, pursuant to the *Class Proceedings Act, 1992*, S.O. 1992, c. 6.
3. THIS COURT ORDERS that the class definition shall be as set out in paragraph 1(b) above.
4. THIS COURT ORDERS that Brenda Austin, Matthew Beltrano and Gabriel Levesque be appointed as representative plaintiffs for the Class.
5. THIS COURT ORDERS that the claims to be asserted by Brenda Austin, Matthew Beltrano and Gabriel Levesque on behalf of the Class shall be as set out in the Statement of Claim, including the following:
 - (a) the plaintiffs assert that Class Members were offered employment by Ford Canada, that the offers were accepted and that Ford Canada subsequently terminated their employment and/or withdrew the employment offers;
 - (b) the plaintiffs assert that Ford Canada's conduct constitutes anticipatory breach of the employment contracts, wrongful dismissal and/or a repudiation of the contracts of employment; and
 - (c) the plaintiffs assert that Ford Canada has been negligent and/or has breached employment contracts resulting in Class Members suffering damage.

6. THIS COURT DECLARES that the common issues in this action are:
- (a) did Ford Canada anticipatorily breach contracts of employment with Class Members by failing to provide them with employment?
 - (b) alternatively, did Ford Canada breach employment contracts with Class Members?
 - (c) alternatively, did Ford Canada repudiate contracts of employment with Class Members?
 - (d) alternatively, did Ford Canada wrongfully dismiss Class Members?
 - (e) if there were employment contracts between Ford Canada and Class Members, were those contracts frustrated?
 - (f) were the offers of employment made by Ford Canada to Class Members subject to conditions, including the requirement that they become members of Local 707 of the CAW and subject to the provisions of the applicable collective agreement between Ford Canada and the CAW?
 - (g) if the answer to (e) or (f) is yes, what effect, if any, does this have on any determination of Ford Canada's liability to Class Members and/or any calculation of damages?
 - (h) was Ford Canada negligent in its conduct in withdrawing offers of employment made to Class Members?
 - (i) could Class Members be entitled to damages from Ford Canada?

- (j) if the answer to (i) is yes, what types of damages, if any, could Class Members be entitled to?
 - (k) does the conduct of Ford Canada justify an award of punitive damages in the circumstances?
 - (l) if the answer to (k) is yes, what is the amount of punitive damages to be awarded?
7. THIS COURT ORDERS that the Notice and Opt-Out Form are hereby approved.
8. THIS COURT ORDERS that notice of this Order be provided to Class Members as follows (the "Notice Plan"):
- (a) Ford Canada will send the Notice and Opt-Out Form by regular mail to the Class Members at the addresses in the possession of Ford Canada at the time of mailing, being the addresses contained on the employment application forms, or any updated addresses subsequently obtained by Ford Canada from the Class Members. Ford Canada will also send the Notice and Opt-Out Form via e-mail to Class Members who provided their e-mail addresses to Ford Canada when applying for employment;
 - (b) Ford Canada will make arrangements for the Notice to be published once in the Toronto Sun newspaper, at least ¼ page in size, said publication to occur within 10 days of the mailing referenced in (a) above;
 - (c) Class Counsel will post the Notice and Opt-Out Form on the websites of Class Counsel at www.classactionlaw.ca, www.shinehofflaw.ca and www.oakvilleclass.ca; and

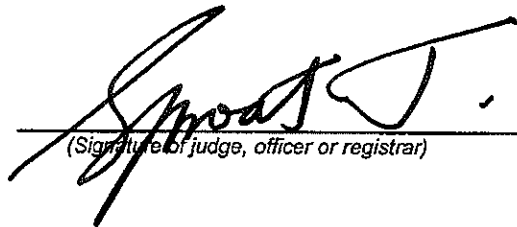
- (d) Class Counsel will forward the Notice and Opt-Out Form to any person who requests it from Class Counsel.

9. THIS COURT ORDERS that, with the exception of costs associated with the actions described in paragraph 8(c) and (d) of this Order, the costs of the Notice Plan will be paid by Ford Canada.
10. THIS COURT DECLARES that the Notice Plan provided for in paragraph 8 above satisfies the requirements of section 17 of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6.
11. THIS COURT ORDERS that Nicholas Mastroluisi, C.A., Pettinelli Mastroluisi LLP be and is hereby appointed to receive any Opt-Out Forms from Class Members.
12. THIS COURT ORDERS that the costs of Nicholas Mastroluisi, C.A., Pettinelli Mastroluisi LLP are to be paid by Ford Canada.
13. THIS COURT ORDERS that any Class Member who elects to opt-out of the Action must do so by sending a fully completed Opt-Out Form to Nicholas Mastroluisi, C.A., Pettinelli, Mastroluisi LLP, by mail, 6th Floor, 1 James Street South, Hamilton, Ontario, L8P 4R5, by fax, 905-522-6574, or by e-mail, nickm@petmas.ca, on or before the date specified in the Notice.
14. THIS COURT ORDERS that Nicholas Mastroluisi, C.A., Pettinelli, Mastroluisi LLP, 6th Floor, 1 James Street South, Hamilton, Ontario, L8P 4R5, shall within 45 days following the opt-out date specified in the Notice, file with this Court an affidavit advising

of the names and other identifying information of those Class Members who have opted-out of the Action, on notice to Class Counsel and Ford Canada.

15. THIS COURT ORDERS that pursuant to Rule 6.01 of the *Rules of Civil Procedure*, section 106 of the *Courts of Justice Act*, and section 13 of the *Class Proceedings Act, 1992, Kendrick v. Ford Motor Co. of Canada*, an action commenced in the Ontario Superior Court of Justice and given Court File No. 4442/09, is stayed pending the determination of this Action, including any and all appeals there from, or Mr. Kendrick opting out of this Action, as provided for in the Notice, whichever shall occur first.

16. THIS COURT ORDERS that Ford Canada shall pay the costs of this motion to the plaintiffs on a partial indemnity basis, fixed in the amount of \$15,000.00 inclusive of disbursements and G.S.T., within 30 days.


(Signature of judge, officer or registrar)

77-54

JAN 27 2010

SUPERIOR COURT OF JUSTICE
MILTON

Schedule "A"

NOTICE OF CERTIFICATION OF CLASS PROCEEDING AGAINST FORD CANADA MOTOR COMPANY OF CANADA, LIMITED ("FORD CANADA") RE: OAKVILLE ASSEMBLY COMPLEX THIRD WORK SHIFT

Read this notice carefully as it may affect your legal rights.

PURPOSE OF THIS NOTICE

This notice is to all individuals (or the estates of any deceased individuals) who were offered employment by Ford Canada as general assemblers in connection with Ford Canada's plan to introduce a third shift at the Oakville Assembly Complex, training for which was to commence July 28, 2008, except for those individuals (or estates of any deceased individuals) who, at the time the offers were made, were bargaining unit employees on lay-off from Ford Canada's operations in Windsor, Ontario with recall rights (the "Class Members").

In 2008, Brenda Austin, Matthew Beltrano and Gabriel Levesque commenced a proposed class proceeding against Ford Canada in the Ontario Superior Court of Justice, given Court File No. 4767/08. The plaintiffs allege that Ford Canada offered employment to Class Members and then withdrew those offers, wrongfully terminating their employment, committing anticipatory breach of employment contracts and/or repudiating the employment contracts.

On _____, 2010, Mr. Justice Sprout of the Ontario Superior Court of Justice certified this action as a class proceeding pursuant to a consent arrangement reached between the parties. This does not mean that the Court has made a decision as to the likelihood of recovery by the representative plaintiffs, other Class Members, or as to the merits of the claims or defences asserted by either side.

[For mailing: This notice is being provided because the parties believe you are a Class Member whose rights might be affected by the lawsuit.] [For publication: This notice is being published to provide notice to Class Members whose rights might be affected by the lawsuit.]

COMMON ISSUES

The class proceeding will determine the following common issues:

- did Ford Canada anticipatorily breach contracts of employment with Class Members by failing to provide them with employment?
- alternatively, did Ford Canada breach employment contracts with Class Members?
- alternatively, did Ford Canada repudiate contracts of employment with Class Members?
- alternatively, did Ford Canada wrongfully dismiss Class Members?
- if there were employment contracts between Ford Canada and Class Members, were those contracts frustrated?
- were the offers of employment made by Ford Canada to Class Members subject to conditions, including the requirement that they become members of Local 707 of the CAW and subject to the provisions of the applicable collective agreement between Ford Canada and the CAW?
- if the answer to (e) or (f) is yes, what effect, if any, does this have on any determination of Ford Canada's liability to Class Members and/or any calculation of damages?
- was Ford Canada negligent in its conduct in withdrawing offers of employment made to Class Members?
- could Class Members be entitled to damages from Ford Canada?
- if the answer to (i) is yes, what types of damages, if any, could Class Members be entitled to?
- does the conduct of Ford Canada justify an award of punitive damages in the circumstances?
- if the answer to (k) is yes, what is the amount of punitive damages to be awarded?

PARTICIPATION AND EXCLUSION FROM THE CLASS

If you wish to remain a Class Member you do not have to do anything at this time. If you wish to obtain more information about your rights as a Class Member, you may contact any of the class counsel listed at the end of this notice. If you wish to opt-out of the class, you must follow the procedure set out in this notice.

If you wish to exclude yourself from the class proceeding ("opt-out") you must deliver a written notice (the "Opt-Out Form") to the opt-out administrator at the contact information set-out below. [For mailing: A copy of the Opt-Out Form is attached to this notice.] [For publication: You can request a copy of the Opt-Out Form from the opt-out administrator or from class counsel.] The Opt-Out Form must be received by the opt-out administrator on or before [date].

Any Class Member who does not deliver an Opt-Out Form to the opt-out administrator on or before [date] will be bound by the result in the class proceeding, whether favourable or not. You must deliver an Opt-Out Form if you wish to proceed with individual legal action.

Opt-out administrator contact information:

- by mail to: Nicholas Mastroluisi, C.A.,
Pettinelli, Mastroluisi LLP
6th Floor, 1 James Street South
Hamilton, ON L8P 4R5
- by fax to: 905-522-6574
- by e-mail to: nickm@petmas.ca

FINANCIAL CONSEQUENCES

The class proceeding will deal with the common issues as set out in this notice. No Class Member will be liable for costs with respect to the determination of the common issues. However, once the Court has determined the common issues, it might be necessary for individual Class Members to participate in individual proceedings to determine issues which are not common to the Class in order to establish their claims. If this is necessary, each Class Member may have to bear the costs of such individual proceedings and, if unsuccessful, could be liable to pay a portion of Ford Canada's costs incurred with respect to such individual proceedings. Class Members may be entitled to receive financial compensation from Ford Canada if the class proceeding is successful, but this has not yet been determined.

The representative plaintiffs have entered into agreements with class counsel whereby fees related to the trial of the common issues will be payable only in the event of success in the class proceeding. Any fees charged by class counsel must be approved by the Court. The class counsel acting in this case are as follows:

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|---|--|---|--|
| CHRISTOPHER SWEENEY (LSUC #53864F) Barrister and Solicitor 2061 Gerrard St. East Toronto, Ontario M4E 2B4 c.sweeney@rogers.com Tel: 416-834-2251 Fax: 647-477-6891 | SHINEHOFF LAW 15 Bold Street Hamilton, Ontario L8P 1T3 JACK SHINEHOFF jshineho@shinehofflaw.ca JEF FREY & SHINEHOFF jefrey@shinehofflaw.ca Tel: 905-529-3476 Fax: 905-529-3563 | BALL & ALEXANDER Barristers and Solicitors 82 Scotland Street Toronto, Ontario M5C 2W7 KEN ALEXANDER kalexander@887scotland.com Tel: 416-921-7997 Fax: 416-921-3662 | SCARFONE HAWKINS LLP Barristers & Solicitors One James Street South 14 th Floor P.O. Box 926, Depot 1 Hamilton, Ontario L8N 3P9 DAVID THOMPSON dthompsons@shlaw.ca Tel: 905-523-1374 ext. 278 Fax: 905-523-5878 |
|---|--|---|--|

ADDITIONAL INFORMATION

Questions for class counsel should be directed by telephone or in writing to:

CHRISTOPHER SWEENEY (LSUC #53864F)
Barrister and Solicitor
2061 Gerrard St. East
Toronto, Ontario
M4E 2B4

c.sweeney@rogers.com
Tel: 416-834-2251
Fax: 647-477-6891

Additional information regarding the action can be found at www.classactionlaw.ca,
www.shinehofflaw.ca and www.oakvilleclass.ca.

This notice has been approved by the Superior Court of Justice.
Questions about this notice should NOT be directed to the court.

Schedule "B"

CLASS PROCEEDING AGAINST FORD MOTOR COMPANY OF CANADA, LIMITED
RE: OAKVILLE ASSEMBLY COMPLEX THIRD WORK SHIFT

OPT-OUT FORM

In order to opt-out of the Class, you must complete this Opt-Out Form and send it to Nicholas Mastroluisi, C.A., Pettinelli Mastroluisi LLP, 1 James Street South, 6th Floor, Hamilton, Ontario, L8P 4R5 by fax 905-522-6574 or by email nickm@petmas.ca on or before [Opt-Out Date]

NAME _____

ADDRESS _____

TELEPHONE _____

Area code / phone no. (Ext. if applicable)

I understand that if I Opt-Out through completion and submission of this form, I will not participate in this class proceeding and agree to be excluded from it, not being bound by the result whether favourable or unfavourable.

I understand that I will not be entitled to any benefits under the class proceeding.

I understand that if I intend to proceed with my own legal action, I must commence my lawsuit within a specified limitation period or my claim will be legally barred. I take full responsibility for obtaining legal advice about the limitation period applicable and for taking all necessary steps to protect my individual claim.

DATE: _____

WITNESS

OPT-OUT OR REPRESENTATIVE

TO CONSTITUTE A VALID OPT-OUT, THIS FORM MUST BE MAILED, FAXED OR EMAILED TO NICHOLAS MASTROLUISI, C.A., PETTINELLI MASTROLUISI LLP, 1 JAMES STREET SOUTH, 6TH FLOOR, HAMILTON, ONTARIO, L8P 4R5, FAX 905-522-6574; EMAIL NICKM@PETMAS.CA

BRENDA AUSTIN, MATTHEW BELTRANO, GABRIEL LEVESQUE
Plaintiffs

-and- **FORD MOTOR COMPANY OF CANADA LIMITED**
Defendant

Court File No. 4767/08

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT
MILTON

ORDER

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