

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE
MR. JUSTICE PERELL

THURSDAY, THE 16th
DAY OF SEPTEMBER, 2010

B E T W E E N :

STEPHANIE GRAHAM AND ANGELA MICELI

Plaintiffs

- and -

IMPERIAL PARKING CANADA CORPORATION
carrying on business as IMPARK

Defendant

PROCEEDING UNDER THE *CLASS PROCEEDINGS ACT, 1992*, S.O. 1992, c.6, as amended

ORDER RE: CERTIFICATION

THIS MOTION, made by the plaintiffs, Stephanie Graham and Angela Miceli, for certification of this action as a class proceeding was heard on September 1 and 2, 2010, at Toronto, Ontario.

ON READING THE Fresh as Amended Motion Record Re: Certification, including the notice of motion, affidavit of Stephanie Graham and exhibits, sworn January 6, 2010; affidavit of Angela Miceli and exhibits, sworn January 8, 2010; affidavit of Jason Zhang and exhibits sworn May 17, 2010; the Undertakings Brief of the

plaintiffs; the Responding Motion Record of the defendant including the affidavit of Gordon Craig and exhibits sworn April 30, 2010; the Supplementary Responding Motion Record of the defendant; the plaintiffs' Factum, dated July 9, 2010; the Brief of Authorities of the plaintiffs; the defendant's Responding Factum dated August 17, 2010; the Briefs of Authorities of the defendant, Volumes 1 and 2; the Reply Factum of the plaintiffs dated August 27, 2010; the plaintiffs' Supplementary Book of Authorities dated August 26, 2010; and upon hearing submissions from counsel for the parties, and the court having reserved its judgment issuing Reasons for Decision, September 16, 2010;

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

- a. **"Action"** means this proceeding, Court File No. 09-CV-00379652-00CP, commenced in the Ontario Superior Court of Justice in Toronto;
- b. **"Class Member"** means a registered owner of a vehicle:
 - i. whose vehicle was parked at an Impark parking lot in Ontario between May 29, 2007 and September 1, 2010;
 - ii. who was not the driver or a passenger in the vehicle that was parked on the Impark parking lot;
 - iii. who received from Impark a written demand for payment of a violation fee that stated "Our right to claim this amount from owners

of vehicles improperly parking on facilities managed by us has been confirmed by Canadian Federal Court of Appeal decision;” and,

iv. who paid the violation fee in whole or in part.

c. **“Class Counsel”** means Bates Barristers and Scarfone Hawkins^{LLP}; and

d. **“Impark”** means the defendant, Imperial Parking Canada Corporation carrying on business as Impark.

2. THIS COURT ORDERS that this Action is hereby certified against Impark as a class proceeding, pursuant to the *Class Proceedings Act, 1992*, S.O. 1992, c.6, conditional upon the appointment by the court of an appropriate representative plaintiff pursuant to motion on notice to Impark, or on consent of the parties, as referenced in paragraph 6 below;

3. THIS COURT ORDERS that the Class definition shall be comprised of Class Members as defined in paragraph 1(b) above;

4. THIS COURT ORDERS that the common issues for the Class are:
 - a. Has Impark by its correspondence to Class Members engaged in unfair practices in contravention of ss. 14, 15, and 17 of the Consumer Protection Act, 2002?
 - b. Is Impark liable to Class Members for unjust enrichment based on its receipt of violation fees from Class Members in whole or in part?
 - c. Are violation fees received by Impark held in trust for the benefit of Class Members?

5. THIS COURT ORDERS that the plaintiffs Stephanie Graham and Angela Miceli are not Class Members, are disqualified and are not appropriate representative plaintiffs;

6. THIS COURT ORDERS that the issue of the adequacy of the Litigation Plan is adjourned until a date to be set after the appointment, if any, of an appropriate representative plaintiff;

7. THIS COURT ORDERS that the setting of an opt-out deadline shall be adjourned until the Court completes its assessment of the adequacy of the Litigation Plan and certification notice;

8. THIS COURT ORDERS that if the parties cannot agree with respect to costs, they may make submissions in writing beginning with Class Counsel within 20 days of September 16th, 2010, followed by the submissions of Impark within a further 20 days.

Perell J

(Signature of judge, officer or registrar)

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ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

DEC 22 2010

AS DOCUMENT NO.:
À TITRE DE DOCUMENT NO.:

PER / PAR:

[Handwritten signature]

STEPHANIE GRAHAM et al.

Plaintiffs

-and- IMPERIAL PARKING CANADA CORPORATION, carrying on
business as IMPARK
Defendant

Court File No. CV-09-00379652-00CP

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PROCEEDING COMMENCED AT
TORONTO

ORDER RE: CERTIFICATION

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